

Bail Slip

The Petitioner/Accused viz., Krishnan was released on bail as per order of this Court dated 16/04/2013 in CrI.M.P.No.1 of 2013 in CrI.RC.No.486 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

CrI.R.C.No.486 of 2013

Krishnan

.. Petitioner

Vs.

The State by
Inspector of Police
Kavindapadi Police Station
Erode District
Crime No.269 of 2010

.. Respondent

Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the conviction imposed in the judgment dated 30.01.2013 made in C.A.No.175 of 2012 on the file of the I Additional Sessions Judge of District Court, Erode dismissing the appeal against conviction imposed in judgment dated 20.09.2012 made in C.C.No.67 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai.

For Petitioner : Mr.M.Guruprasad

For Respondents : Ms.P.Kritika Kamal
Government Advocate (CrI.Side)

O R D E R

This Criminal Revision has been preferred challenging the judgment and order dated 30.01.2013 passed by the I Additional Sessions Judge, Erode in C.A.No.175 of 2012 confirming the conviction and sentence dated 20.09.2012 passed by the District Munsif-cum-Judicial Magistrate in C.C.No.67 of 2011.

2.It is the case of the prosecution that on 12.12.2010 at around 12.30 to 1 Noon when the complainant Lakshmi was returning home from her farm, a motorcycle borne two persons came near her and the pillion snatched her gold chain and sped away. She was rudely shaken and called for help. On her complaint (Ex.P1), the police registered a case in Crime No.269 of 2010 under Section 392 r/w.34 IPC and took up investigation of the case. Krishnan (A1) was arrested by the police on 29.12.2010 and based on his disclosure statement, they identified Palani @ Palanisamy (A2), who was arrested on the same day subsequently. Based on the disclosure statement of Palani @ Palanisamy (A2), the gold chain (M01) was recovered from him. After completing the investigation, the police filed a final report in C.C.No.67 of 2011 in the Court of District Munsif-cum-Judicial Magistrate, Perundurai against Krishnan (A1) and Palani @ Palanisamy (A2) for the offence under Section 394 read with Section 34 IPC and the trial Court framed charges for the aforesaid offences and when questioned, the accused pleaded guilty.

3. To prove the case, the prosecution examined eight witnesses PWs 1 to 8 and marked seven exhibits as Exs.P1 to P7. On behalf of the accused, no witness was examined nor any document marked.

4. When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same.

5. After hearing either side and considering the evidence on record, the trial Court by judgment and order 20.09.2012 in C.C.No.67 of 2011 convicted and sentenced the accused as under:

Provision under which convicted	Sentence
Section 392 IPC	1 year rigorous imprisonment and fine of Rs.250/-, in default to undergo one month simple imprisonment

6. The appeal in C.A.No.175 of 2012 filed by Krishnan (A1) was dismissed on 30.01.2013 by the First Additional District and Sessions Court, Erode. Challenging the conviction and sentence, Krishnan (A1) is before this Court by filing the revision under Sections 397 and 401 Cr.P.C.

7. The recovery of the chain via the confession of the accused has been established through the evidence of the Investigating Officer and the independent witness Jagadeeswaran (PW5). Mr.M.Guruprasad, learned counsel contended that Lakshmi (PW1) was not earlier acquainted with the accused and in her complaint to the police she has stated that the persons involved were of roughly around 40 to 45 years. He further built up his argument by stating that the accused in this case were aged 25 years and 31 years respectively and it did not suit the description given in the FIR. Hence, learned counsel contended that, in the absence of identification in a test identification parade, the identification of the accused for the first time by Lakshmi (PW1) becomes suspect and conviction should not be based on such an identification.

8. Per contra, learned Government Advocate (Criminal Side) refuted the contention raised by the learned counsel for the accused.

9. This Court gave its anxious consideration to the rival submissions. Non-conduct of identification parade will not vitiate the dock identification in all the cases. The Supreme Court vide Birbal Choudhary @ Mukhiya Jee Vs. The State of Bihar reported in (2018) 12 SCC 440 and Mahabir Vs. State of Delhi reported in (2008) 16 SCC 281.

10. In this case, the offence had taken place in broad daylight i.e., between 12 and 1 Noon on 12.12.2010. It is not the case of Lakshmi that the riders were wearing helmets. Therefore, she has had all the opportunity to see them and remember their face. Just because the age given by her in the complaint was little on the higher side, that by itself will not vitiate her evidence. Both the courts below have appreciated the evidence of Lakshmi (PW1) and other prosecution witnesses in the right prospective and this Court does not find any perversity or illegality in the findings of fact arrived at by the two Courts below warranting interference. However, Mr.Guruprasad contended that Palani @ Palanisamy (A2) has already undergone sentence and that there is no previous case against this accused (A1) and pleaded for reduction of sentence.

11. Taking into consideration the aforesaid submission, the sentence is reduced from one year to eight months.

In the result, this revision petition is partly allowed. The conviction of the accused stands confirmed but, the sentence is reduced from one year rigorous imprisonment to eight months rigorous imprisonment. The period already undergone shall be set off. The trial Court is directed to secure the accused and commit him in prison for serving the sentence. Registry is directed to send the original records to the appellate Court and the trial Court forthwith.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

gpa

To

1. I Additional Sessions Judge of District Court
Erode
2. The District Munsif-cum-Judicial Magistrate
Perundurai.
3. The Chief Judicial Magistrate,
Erode (For Information)
4. The Inspector of Police
Kavindapadi Police Station
Erode District
5. The Section Officer,
ER Section, High Court, Madras.
6. The Section Officer,
Criminal Section,
High Court, Madras.
7. The Public Prosecutor,
High Court, Madras - 600 104.

+1cc to Mr.M.Guruprasad, Advocate SR.No.80322

Cr1.R.C.No.486 of 2013

SPD(CO)
GMY(25/10/2019)