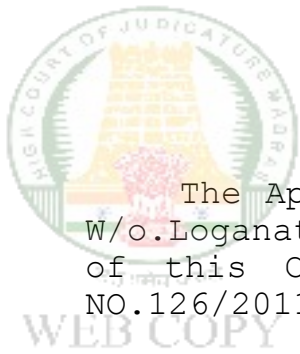




Bail Slip

The Appellant/Sole Accused namely Janaki, Female, aged 70/2010, W/o.Loganathan, was directed to be released on bail as per the order of this Court dated 08/03/2011 in MP(MD).1/2011 in Crl.RC(MD). NO.126/2011 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.126 of 2011

Janaki
W/o.Loganathan

...Petitioner/Appellant/Accused

Vs.

State Represented by
Sub Inspector of Police,
Vathalagundu Police Station,
Battalagundu.
[Crime No.99 of 2008]

...Respondent/Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the order dated 20.10.2010 made in Criminal Appeal No.12 of 2010 on the file of the District and Sessions judge cum Fast Track Court, Dindigul confirming the order dated 04.02.2010 made in C.C.No.143 of 2008 passed by the Judicial Magistrate, Nilakottai and set aside the same.

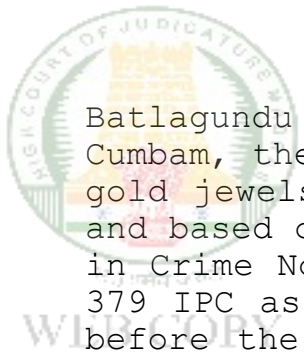
For Petitioner : Mr.T.Antony Arul Raj
for Mr.I. Irulappan

For Respondent : Mrs.S.Bharathi
Government Advocate (Crl Side)

ORDER

This Criminal Revision Case is filed as against the conviction and sentence imposed on the petitioner by the learned Judicial Magistrate, Nilakottai in C.C.No.143 of 2008, dated 04.02.2010 and confirmed by the learned District and Sessions Judge, (Fast Track Court), Dindigul in C.A.No.12 of 2010, dated 20.10.2010.

2.The case of the prosecution is that while the defacto complainant [PW1] and her mother-in-law [PW2] were waiting in



Batlagundu Bus stand on 07.02.2008 at about 02.30 pm, to go to Cumbam, the revision petitioner/accused had stolen 2 ¼ sovereigns of gold jewels worth about Rs.25,000/- from the basket of PW2 and based on the complaint lodged by the defacto complainant, a case in Crime No.99 of 2008 was registered for the offence under Section 379 IPC as against the petitioner and a final report was also laid before the Judicial Magistrate, Nilakottai. The trial Court, after full fledged trial, by order dated 04.02.2011 found the appellant guilty under Section 379 IPC, convicted and sentenced her to undergo two years rigorous imprisonment with a fine of Rs.100/-. As against the same, the petitioner preferred an appeal before the learned Additional District and Session Judge, (Fast Track Court), Dindigul in C.A.No.12 of 2010, wherein, the appeal was dismissed by confirming the conviction and sentence imposed by the trial Court. As against the same, this revision case has been filed by the petitioner/ accused.

3.Heard Mr.T.Antonry Arul Raj, learned Counsel for the revision petitioner and Mrs.S.Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

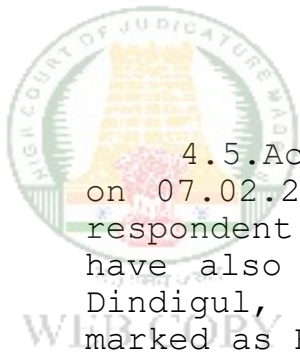
4.The learned Counsel for the revision petitioner has raised the following grounds:

4.1.The complaint [Ex.P1] preferred by PW1 itself is not proved. There are discrepancies between the evidence of PW1 and PW2 / mother-in-law of PW1 with regard to the lodging of complaint. According to PW1, she herself had prepared the complaint and lodged the same before the respondent Police, but, according to her mother-in-law [PW2], the complaint was reduced into writing by the Police party and they had signed in the complaint and their signatures have been obtained in blank papers also. Therefore, the very complaint itself is doubtful.

4.2.The occurrence is said to have taken place in a public place at Batlagundu Bus stand and the accused is said to have been caught red handed by PW1, PW2 and the general public. However, no general public and no shop owners nearby were examined in this case. Therefore, non-examination of the persons nearby the occurrence place is fatal to the case of the prosecution.

4.3. The trial Court by relying upon the evidence of PW3 convicted the petitioner. However, the evidence of PW3 did not support the case of the prosecution and PW1 and PW2 never stated in their evidence or complaint that PW3 was also present in the police station. Therefore, the evidence of PW3 cannot be taken into consideration.

4.4.The prosecution failed to prove the recovery of 2¼ sovereigns of jewels from the petitioner and therefore, the petitioner cannot be convicted under Section 379 IPC and the sentence imposed on the petitioner is not proper.



4.5. According to the prosecution, they arrested the petitioner on 07.02.2008. But, on 05.02.2008 itself, without any reason, the respondent Police have forcibly arrested her. In this regard, they have also made a representation to the Superintendent of Police, Dindigul, on 05.02.2008 itself. The copy of the representation is marked as Ex.D1 and the copy of the Certificate of Posting is marked as Ex.D2.

4.6. As an alternate plea, the learned Counsel for the petitioner submitted that at the time of occurrence, the petitioner was aged about 65 years. At present, she is aged about 78 years, loosing her vision and therefore, she is depending on her daughter and prays for modification of the sentence, by considering the petitioner's age, health condition. It is also represented by the learned Counsel that the revision petitioner has already undergone 12 days of imprisonment, during the trial.

5. Per contra, the learned Government Advocate (Crl Side) appearing for the respondent Police submitted that the prosecution has proved it's case beyond reasonable doubt through the evidence of the prosecution witnesses and therefore, there is no reason to interfere with the conviction and sentence imposed on the petitioner by the Courts below and prayed for dismissal. However, the learned Government Advocate submitted that the revision petitioner is not having any bad antecedents.

6. Heard the learned Counsel on either side and perused the materials placed on record.

7. The occurrence has taken place on 07.02.2008 at about 02.30 pm, when PWs.1 & 2 were waiting in Batlagundu Bus Stand to go to Cumbam, the revision petitioner had stolen the gold jewels from the basket of PW2. She was caught red handed by PWs.1 to 3 and the general public, when she attempted to snatch away the basket and was produced before the Police Station at about 02.45 pm, and PW1 lodged the complaint [Ex.P1].

8. Thiru Gangatharan [PW3], a shopkeeper in the bus stand and has clearly spoken about the occurrence that on the relevant date, this accused has attempted to snatch away the basket from PW1. At the instance of PWs.1 & 2 and the general public, they caught the accused red-handed and recovered the jewels, immediately. PW3 is an independent witness and his evidence corroborates with that of the evidence of PWs.1 & 2.

9. The petitioner has taken out a plea that two days prior to the occurrence, she was taken to the Police Station by the respondent, for which, her daughter, Latha [DW2] lodged a complaint with the Superintendent of Police, Dindigul District. The



complaint dated 05.02.2008 was marked as Ex.D1. In order to establish that this complaint was sent by post to the concerned authority, a copy of the Certificate of Posting was also marked as Ex.D2. But, on a perusal of Ex.D2, there is no date seal available showing the exact date of posting. Further in her complaint Ex.D1, there is no averment as to the reasons or motive for the police to unnecessarily took a old lady to illegal custody two days prior to the arrest and for foisting the false case after two days.

10.In view of the foregoing discussions, this Court is of the considered opinion that the prosecution has proved its case beyond any reasonable doubts, through the prosecution witnesses. But then, it is the submission of the learned Government Advocate (Crl. Side) that the petitioner has no bad antecedents and that at the time of the occurrence, she was aged about 65 years. This revision petition was filed in the year 2011 and by this time, the petitioner / accused is aged about 78 years. Considering her age, the nature of offence, the fact that she was not involved in any other previous cases, and that she has already undergone 12 days of imprisonment, during the trial, this Court, while confirming the conviction, is inclined to modify the sentence to the period already undergone.

11.In the result, the conviction ordered by the learned Judicial Magistrate, Nilakottai, in C.C.No.143 of 2008, dated 04.02.2010, as confirmed by the learned District and Sessions Judge, Fast Track Court, Dindigul, in C.A.No.12 of 2010, dated 20.10.2010, stands confirmed. However, the period of imprisonment is modified to that of the period already undergone by her.

12.This Criminal Revision Petition is ordered, accordingly.

Sd/-

Assistant Registrar ()

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/ /2020

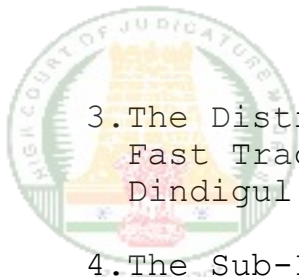
Sub Assistant Registrar(CS)

dsk/gk

To

1.The Judicial Magistrate,
Nilakottai.

2.The Judicial Magistrate, Nilakottai Thro'
The Chief Judicial Magistrate, Dindigul.



3.The District and Sessions Judge,
Fast Track Court,
Dindigul.

4.The Sub-Inspector of Police,
Vathalagundu Police Station,
Battalagundu.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.I. IRULLAPPAN, Advocate (SR-86877[F] dated
16/09/2019)

Crl.R.C(MD)No.126 of 2011

13.09.2019

NR(09.06.2020) 5P 7C