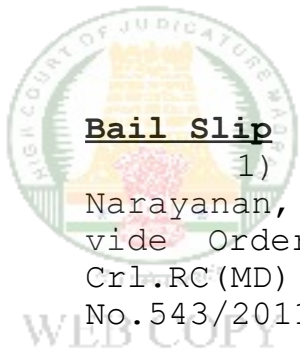


**Bail Slip**

1) Kathar Sulthan, S/o.Sheik Abdul Kadhar, aged 52 years, 2) Narayanan, S/o.Kasi Thevar, aged 32 years, were released on bail vide Order dated 08.11.2011, 13.07.2012 in MP(MD).No.2/2011 in CrI.RC(MD).No.727 of 2011 and MP(MD).No.1/2011 in CrI.RC(MD).No.543/2011 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.R.C(MD)Nos.543 and 727 of 2011

Kathar Sulthan ... Petitioner in CrI.R.C.(MD)No.543 of 2011

Narayanan ... Petitioner in CrI.R.C.(MD)No.727 of 2011

Vs

State represented by,  
The Inspector of Police,  
Perumalpuram Police Station,  
Cr.No.675/2008,  
Tirunelveli District. ... Respondent in both CrI.R.Cs.

**Prayer in CrI.R.C.(MD)No.543 of 2011:** Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records from the Lower Court and to duly set aside the orders passed by the Additional Sessions Judge, Fast Track Court No.II, Tirunelveli, Tirunelveli District in his C.A.No.135/2010, dated 12.11.2010 confirming the conviction of the Principal Assistant Sessions Judge, Tirunelveli, Tirunelveli District in his S.C.No.76 /2009, dated 28.07.2010 by allowing this revision.

**Prayer in CrI.R.C.(MD)No.727 of 2011:** Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in C.A.No.165 of 2010, dated 12.11.2010 by the Additional Sessions Judge, Fast Track Court No.2, Tirunelveli, confirming the conviction passed in S.C.No.76 of 2009, dated 28.07.2010 by the Principal Assistant Sessions Judge, Tirunelveli revise the same.

For Petitioner : Mr.K.Prabhu  
(in CrI.R.C.(MD)No.543 of 2011)

For Petitioner : Mr.N.Mohideen Basha  
(In CrI.R.C.(MD)No.727 of 2011)



For Respondent : Mrs.S.Bharathi  
(in both CrI.R.Cs) Government Advocate (CrI.side)

WEB COPY

**COMMON ORDER**

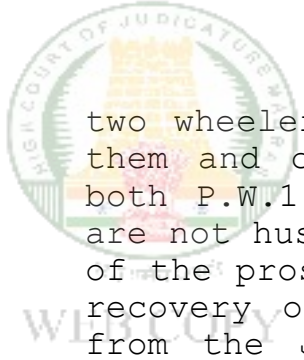
One Kathar Sulthan and Narayanan were shown as A1 and A2 in S.C.No.76 of 2009 on the file of the Principal Assistant Sessions Judge, Tirunelveli and charged with the offences under Sections 341 and 397 of IPC. The learned trial Judge, by Judgment dated 28.07.2010, found the accused guilty of the offence, with which, they were charged and sentenced them to two weeks simple imprisonment for the offence under Section 341 of IPC and 7 years rigorous imprisonment for the offence under Section 397 of IPC. Questioning the same, Kathar Sulthan filed Criminal Appeal No.135 of 2010. While Narayanan filed Criminal Appeal No.165 of 2010 before the Additional Sessions Judge, Fast Track Court No.II, Tirunelveli. By Judgment dated, 12.11.2010, both the appeals were dismissed and the Judgment of the trial Court was confirmed. Questioning the same, Kathar Sulthan filed CrI.R.C.(MD)No.543 of 2011. Narayanan filed CrI.R.C.(MD)No.727 of 2011.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the revision petitioner submitted that the scene of occurrence itself is highly doubtful. This because, it was said to have taken place in Bypass Road, Tirunelveli. Admittedly, the occurrence is said to have taken place on 30.08.2008 at about 10.00 p.m. During the relevant time, the construction of the bye-pass road itself was not over and there was absolutely no traffic. Therefore, the prosecution case that P.W.1 and P.W.2 were coming via the said route is itself intrinsically not believable.

4.The petitioner's counsel further submitted that the complaint-Ex.P1 was not lodged immediately. More than anything else, in the complaint, the basic features of the accused were not set out. It was totally dark. The petitioner's counsel submitted that none of these aspects were appreciated by the Courts below. It was further contended that the Test Identification Parade though said to have been conducted, the report was not marked. The Magistrate who was said to have conducted the parade also, was not examined as witness. These infirmities go to the root of the matter as submitted by the learned counsel appearing for the petitioner.

5.Per contra, the learned Government Advocate(Clr.side) submitted that the petitioners herein were involved in a number of cases and that, this Court ought to sustain the Judgments passed by the Courts below. The Courts below have concurrently found that the petitioners herein were involved in the occurrence in question. The case of the prosecution is that P.W.1 and P.W.2 were going in the



two wheeler, when the petitioners herein waylaid them and attacked them and committed robbery. In support of the prosecution case, both P.W.1 and P.W.2 were examined as witnesses. P.W.1 and P.W.2 are not husband and wife. This, in my view enhances the credibility of the prosecution case. What clinches the prosecution case is the recovery of Cellphone and Chain. M.O.1-Gold Chain was recovered from the Jewellery Shop pursuant to the confession made by A1. M.O.2-Cellphone was recovered from the person of A1 pursuant to his confession.

6.P.W.1 and P.W.2 are not having animosity against the petitioners herein. It may be true that the prosecution failed to establish the holding of the Test Identification Parade. But then, Identification in the Court alone would constitute substantive evidence. P.W.1 and P.W.2 clearly identified both the accused in the open Court. In view of the identification of the accused by the victims P.W.1 and P.W.2 in the Open Court coupled with recovery of Gold Chain-M.O.1 and Cellphone-M.O.2, the Courts below came to the conclusion that the petitioners herein were involved in the occurrence. I see no ground to interfere with this finding. But then, as rightly contended by the learned counsel appearing for the petitioner, Aruval was not recovered. The petitioners have only caused a simple hurt on P.W.1. It was only a minor scratch on the back side. This aspect of the matter has been confirmed by P.W.8-Doctor. Thus, it has not been established that the petitioners herein while committing robbery, attempted to cause grievous hurt on P.W.1. Therefore, charge under Section 397 of IPC is clearly not established. At best, Section 394 of IPC alone has been established. Therefore, the conviction of the petitioners herein is modified to one under Section 341 of IPC and 392 of IPC. The first accused is said to have spent about four years in custody. The second accused is said to have spent around three years in custody. Therefore, I am of the view that the interest of justice will be served by reducing the period of imprisonment from seven years to the period already undergone by them.

7.With this modification in the matter of conviction and sentence, these criminal revision cases are partly allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Additional Sessions Judge,  
<https://hcservices.ecourts.gov.in/hcservices/>  
 Fast Track Court No.II, Tirunelveli,  
 Tirunelveli District.



2.The Principal Assistant Sessions Judge,  
Tirunelveli, Tirunelveli District.

3.The The Inspector of Police, Perumalpuram Police Station,  
Tirunelveli District.

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

**Copy to:**

The Section Officer, (2 Copies)  
Criminal Section, (Records)  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.K.PRABHU, Advocate ( SR-72313[F] dated 28/06/2019 )

Cr1.R.C(MD)Nos.543 and 727 of 2011  
28.06.2019

rmi

JMN(12.09.2019) 4P : 8C