

Bail Slip

The Appellant/Accused, namely 1.V.Krishnan 2. S.Dhandapani
Accused 2 & 4 were enlarged on bail vide order dated 22.11.2013
in MP.NO.1/13 IN Crl.R.C.No.1451 of 2013 on the file of this
Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1451 of 2013

1.V.Krishnan

2. S.Dhandapani ... Petitioners/Accused 2 & 4

Vs.

State represented by
The Sub-Inspector of Police,
Malayampalayam Police Station,
Erode District.
(Crime No.227 of 2009)

... Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C.,
to set aside the judgment and order dated 20.09.2013 made in
C.A.No.39 of 2013 on the file of the Principal sessions Judge,
Erode, partly allowed the conviction imposed in judgment dated
04.06.2013 made in C.C.No.58 of 2010 on the file of the District
Munsif cum Judicial Magistrate, Kodumudi.

For Petitioners : Ms.R.Shasi
for Mr.M.Guruprasad
For Respondent : Mr.R.Surya Prakash
Government Advocate
(Crl.Side)

O R D E R

This criminal revision has been filed seeking to set aside
the judgment and order dated 04.06.2013 passed in C.C.No.58 of
2010 on the file of the District Munsif-cum-Judicial Magistrate,
Kodumudi, partly confirmed by the judgment and order dated
20.09.2013 passed in C.A.No.39 of 2013 on the file of the
Principal Sessions Court, Erode.

2. Shanmugam (PW1) was constructing a house in November
2009, for which, he purchased iron rods and had kept it in the

construction site at Nadupalayam. There was heavy rain for two or three days, on account of which, the construction work was stopped temporarily. On 08.11.2009, when Shanmugam (PW1) went to the site, he found that the iron rods were missing. Therefore, he lodged a complaint (Ex-P1), based on which, the police registered a case in Malayampalayam Police Station Crime No.227 of 2009 on 08.11.2009 for the offence under Section 379 IPC against unknown accused.

3. Chelladurai (PW11), Inspector of Police, Malayampalayam Police Station, took up investigation of the case and went to the place of occurrence and prepared the observation mahazar (Ex-P2) and rough sketch (Ex-P7).

4. While so, on 14.11.2009, Senthil Kumar (PW9), Sub-Inspector of Police, Kodumudi Police Station, and his parties, during the course of investigation in Kodumudi Police Station Crime Nos.294 & 296 of 2009, intercepted a lorry bearing Registration No.TN 59 A 2656, in which, four persons viz., Mani (A1), Krishnan (A2), Selvam (A3) and Dhandapani (A4) were available. Mani (A1) was on the wheels and the others were in the rear portion of the lorry. The lorry contained large quantities of iron rods. The accused were not able to give satisfactory explanation, as to from where, they were transporting the iron rods.

5. The accused were arrested and their confession statements were recorded. In their confession statements, they disclosed about the theft of iron rods from the construction site at Nadupalayam. Senthil Kumar (PW9), Sub-Inspector of Police, Kodumudi Police Station, informed the same to Chelladurai (PW11), Inspector of Police, Malayampalayam Police Station, who interrogated the accused in Crime No.227 of 2009 and recovered the iron rods from the scrap iron shop of Palanisamy (PW8) in the presence of witnesses Muthusamy (PW4) and Gunasekaran (PW5).

6. After examining witnesses, Chelladurai (PW11), Inspector of Police, completed the investigation and filed a final report in C.C.No.58 of 2010 before the District Munsif-cum-Judicial Magistrate Court, Kodumudi, for the offence under Section 379 IPC against Mani (A1), Krishnan (A2), Selvam (A3) and Dhandapani (A4).

7. The trial Court framed charges for the aforesaid offence against the accused and when questioned, they pleaded "not guilty".

8. To prove the case, the prosecution examined eleven witnesses and marked seven exhibits and one material object

(iron rod series).

9. When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. From the side of the accused, no witness was examined nor any document marked.

10. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 04.06.2013 in C.C.No.58 of 2010, convicted and sentenced the accused as follows:

Accused	Provision under which convicted	Sentence
Mani (A1) Krishnan (A2) Selvam (A3) Dhandapani (A4)	Section 379 IPC	One year rigorous imprisonment.

11. Challenging the above conviction and sentence, accused 1,2 and 4 filed an appeal in C.A.No.39 of 2013 before the Principal Sessions Court, Erode, in which, the learned Principal Sessions Judge, by judgment and order dated 20.09.2013, confirmed the conviction, but, reduced the sentence from one year rigorous imprisonment to six months rigorous imprisonment.

12. Aggrieved by the concurrent findings of fact arrived at by the Courts below, accused 2 and 4 have preferred the present revision under Section 397 r/w 401 Cr.P.C.

13. Heard Ms.Shasi, learned counsel representing Mr.M.Guruprasad, learned counsel on record for the accused and Mr.R.Surya Prakash, learned Government Advocate (Crl.Side) for the respondent/State.

14. Before advertng to the rival submissions, it may be necessary to state here that while exercising revisional jurisdiction in a case involving concurrent findings of fact arrived at by two Courts below, the High Court cannot act as a second appellate Court [See State of Maharashtra vs. Jagmohan Singh Kuldip Singh Anand and Others, etc.¹]. In Bir Singh vs. Mukesh Kumar², the Supreme Court has held as under:

"17. As held by this Court in Southern Sales & Services v. Sauermilch Design and Handels GmbH [Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457] , it is a well-established principle of law that the Revisional Court will not interfere even if a wrong order is passed by a court having

¹(2004) 7 SCC 659

²(2019) 4 SCC 197

jurisdiction, in the absence of a jurisdictional error....." (emphasis supplied)

15. The learned counsel for the accused submitted that the prosecution had failed to prove that the iron rods were indeed purchased by Shanmugam (PW1) as no bills or invoices were marked. She further submitted that when the accused were intercepted on 14.11.2009, they already had some iron rods and it is strange, as to how, the police could effect recovery subsequently from the shop of Palanisamy (PW8).

16. Per contra, the learned Government Advocate (Crl.Side) refuted the submissions made by the learned counsel for the accused.

17. Shanmugam (PW1) and his wife Vasantha Devi (PW2), in their evidence, have stated that they were constructing a small house for themselves in Nadupalayam; they had bought iron rods and kept them in their site; because of rains, they had to stop construction work for two days; on 08.11.2009, when they went to the site, they did not find the iron rods worth of Rs.40,000/-.

18. Shanmugam (PW1) and Vasantha Devi (PW2) have no motive to implicate the accused in this case. The trial Court has seen the demeanour of these witnesses and has believed their testimony that they had indeed purchased iron rods for Rs.40,000/- and kept them in their construction site. It is common knowledge that for construction work, iron rods are essential. Therefore, this Court has no good reason to disbelieve their testimony.

19. With regard to the recovery, the accused were intercepted by Senthil Kumar (PW9), Sub-Inspector of Police, Kodumudi Police Station, on 14.11.2009 and only thereafter, the involvement of the accused in this case came to light. Therefore, Chelladurai (PW11), Inspector of Police, Malayampalayam Police Station, took custody of the accused in this case, recorded their confession statements and effected recovery of the iron rods (M.O.1) from the shop of Palanisamy (PW8).

20. Palanisamy (PW8), in his evidence, has stated that three years prior to giving evidence, four persons came to his shop and sold iron rods for scrap and he did not know that they were stolen.

21. The evidence of Chelladurai (PW11), Investigating Officer, that the recovery of iron rods (M.O.1) was effected from the shop of Palanisamy (PW8) cannot be disbelieved in the absence of adequate reasons thereof.

22. In such perspective of the matter, this Court does not

find any infirmity in the judgments and orders passed by the Courts below, warranting interference.

23. The learned counsel for the accused pleaded for leniency in the sentence. Accepting her submission, the substantive sentence of six months rigorous imprisonment for the offence under Section 379 IPC is reduced to four months rigorous imprisonment. However, the conviction of the accused of the said offence is confirmed.

In the result, this criminal revision is partly allowed. The period of sentence already undergone by the accused is set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused and commit them to prison to serve out the remaining period of sentence, if any. The sentence in this case shall run concurrently with the sentence in Kodumudi Police Station Crime No.296 of 2009.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The District Munsif-cum
-Judicial Magistrate, Kodumudi.

2. The Principal Sessions Judge,
Erode.

3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

with a direction to return the
original records to the Courts
below concerned

4. Do thro the Chief Judicial Magistrate, Erode.

5. The Sub-Inspector of Police,
Malayampalayam Police Station,
Erode District.

6. The Public Prosecutor, High Court, Madras - 104.

+1cc to Mr.M.Guruprasad , Advocate SR.No. 16306

Crl.R.C.No.1451 of 2013

A.SK(07/08/2020)