

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 CrI.R.C.No.1452 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

CrI.R.C.No.1452 of 2013

1.V.Krishnan

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

Vs.

State represented by
The Sub-Inspector of Police,
Kodumudi Police Station,
Erode District.
(Crime No.294 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.42 of 2013 on the file of the Prinicipal sessions Judge,
Erode, partly allowed the conviction imposed in judgment dated
04.06.2013 made in C.C.No.32 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 (CrI.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.32 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.42 of 2013 on the file of the Principal Sessions Court, Erode.

2. Swaminathan (PW1) was running a shop in Kodumudi bypass road, in which, he was selling construction materials including iron rods. On 07.11.2009 (Saturday), he closed the shop and went home in the night. On 08.11.2009 (Sunday), when he came to the shop in the afternoon and found that the door was broken open and iron rods worth Rs.34,000/- was missing.

3. On the written complaint (Ex-P1), given by Swaminathan (PW1), Senthil Kumar (PW7), Sub-Inspector of Police, registered a case in Kodumudi Police Station Crime No.294 of 2009 for the offences under Sections 457 and 380 IPC against unknown accused and took up investigation of the case.

4. On 14.11.2009, Senthil Kumar (PW7), 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. The accused were arrested and their confession statements were recorded, based on which, the police seized iron rods involved in this case from the shop of Selvaraj (PW6) in the presence of witnesses Muthusamy (PW4) and Gunasekaran (PW5).

5. After examining witnesses, Senthil Kumar (PW7), Sub-Inspector of Police, completed the investigation and filed a final report in C.C.No.32 of 2010 before the District Munsif-cum-Judicial Magistrate Court, Kodumudi, for the offences under Sections 457 and 380 IPC against Mani (A1), Krishnan (A2), Selvam (A3) and Dhandapani (A4).

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

7. To prove the case, the prosecution examined seven witnesses and marked ten exhibits and two material objects (iron rod series - M.O.1 and lorry - M.O.2).

8. 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.

9. 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.32 of 2010, convicted and sentenced the accused as follows:

Accused	Provision under which convicted	Sentence
Mani (A1) Krishnan (A2) Dhandapani (A4)	Section 457 (2) IPC	One year rigorous imprisonment and fine of Rs.500/-, in default to undergo one month rigorous imprisonment.
	Section 380 IPC	One year rigorous imprisonment and fine of Rs.500/-, in default to undergo one month rigorous imprisonment.
Selvam (A3)	Section 457 (2) IPC	One year rigorous imprisonment.
	Section 380 IPC	One year rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

10. Challenging the above conviction and sentences, accused 1, 2 and 4 filed an appeal in C.A.No.42 of 2013 before the Principal Sessions Court, Erode, in which, the learned Principal Sessions Judge, Erode, by judgment and order dated 20.09.2013, confirmed the conviction, sentence of fine and default sentence, but, reduced the substantive sentence of imprisonment from one year rigorous imprisonment to six months rigorous imprisonment.

11. 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.

12. 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.

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

14. The learned counsel for the accused submitted that the prosecution had failed to prove that the iron rods were indeed purchased by Swaminathan (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 Selvaraj (PW6).

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

16. Swaminathan (PW1) and his wife Rama Shankari (PW2), in their evidence, have stated that they were running a shop in Kodumudi bypass road; on 07.11.2009, after business hours, the shop was closed in the night; on 08.11.2009, around 12.00 noon, when Swaminathan (PW1) went to the shop, he found that the door was broke open and 2 ¼ tons of iron rods worth of Rs.34,000/- was missing; therefore, he (PW1) gave a complaint to the police.

17. Swaminathan (PW1) and his wife Rama Shankari (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.34,000/- and kept them in their shop. It is common knowledge that for construction work, iron rods are essential. Therefore,

1(2004) 7 SCC 659

2(2019) 4 SCC 197

this Court has no good reason to disbelieve their testimony.

18. The learned counsel for the accused took this Court through the evidence of Selvaraj (PW6) and submitted that he has stated that the iron rods were sold to him by Dhandapani (A4). However, a reading of his (PW6) evidence shows that, apart from Dhandapani (A4), he also refers to the other accused in this case. Be that as it may, the incident had taken place in the year 2009 and the witnesses have been examined in the year 2011.

19. The evidence of Senthil Kumar (PW7), Sub-Inspector of Police, Kodumudi Police Station, who arrested the accused on 14.11.2009 and effected the recovery of the iron rods from the scrap iron shop of Selvaraj (PW6), thus inspire the confidence of this Court.

20. 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.

21. The learned counsel for the accused pleaded for leniency in the sentence. Accepting her submission, the substantive sentence of six months rigorous imprisonment each for the offences under Sections 457 (2) and 380 IPC is reduced to four months rigorous imprisonment each. However, the conviction of the accused of the said offences 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 imposed by this Court 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,
Kodumudi Police Station,
Erode District.

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

+1cc to Mr.M.Guruprasad , Advocate SR.No. 1451

Crl.R.C.No.1452 of 2013

A.SK(07/08/2020)