

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.1453 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.1453 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.296 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.41 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.33 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.33 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.41 of 2013 on the file of the Principal Sessions Court, Erode.

2. Mani (PW1) was residing in Kodumudi and was running a tea shop in the old bus stand in Kodumudi. He had purchased iron rods for constructing a shop in front of his house and had kept them in the construction site. On 07.11.2009, he locked the gate and was inside his house. It was raining heavily. On 08.11.2009, he was shocked to find that the gate open and the iron rod worth of Rs.30,000/- was missing.

3. On the written complaint (Ex-P1) given by Mani (PW1), Senthil Kumar (PW9), Sub-Inspector of Police, registered a case in Kodumudi Police Station Crime No.296 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 (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 house of Mani (PW1). Senthil Kumar (PW9), Sub-Inspector of Police, recovered the iron rods from the scrap iron shop of Selvaraj (PW7) under mahazar (Ex-P3) in the presence of witnesses Muthusamy (PW4) and Gunasekaran (PW5).

6. After examining witnesses, Senthil Kumar (PW9), Sub-Inspector of Police, completed the investigation and filed a final report in C.C.No.33 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).

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 nine witnesses and marked eight 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.33 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 Section 380 IPC	One year rigorous imprisonment and fine of Rs.750/-, in default to undergo one month rigorous imprisonment. One year rigorous imprisonment and fine of Rs.750/-, in default to undergo one month rigorous imprisonment.
Selvam (A3)	Section 457 (2) IPC Section 380 IPC	One year rigorous imprisonment. One year rigorous imprisonment.

The aforesaid sentences were ordered to run concurrently.

11. Challenging the above conviction and sentence, accused 1,2 and 4 filed an appeal in C.A.No.41 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 of the offences under Sections 457 (2) and 380 IPC, sentence of fine and default sentence, but, reduced the substantive sentence of imprisonment from one year rigorous imprisonment each to six months rigorous imprisonment each.

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 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 Mani (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 (PW7).

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

17. The learned counsel for the accused took this Court through the evidence of Selvaraj (PW7) and submitted that he has stated that the iron rods were sold to him by Dhandapani (A4). However, a reading of his (PW7) 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.

18. The evidence of Senthil Kumar (PW9), 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

1(2004) 7 SCC 659

2(2019) 4 SCC 197

scrap iron shop of Selvaraj (PW7), does inspire the confidence of this Court.

19. 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.

20. 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 CrI.R.C.Nos.1451 & 1452 of 2013.

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,
(CrI.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

CrI.R.C.No.1453 of 2013

A.SK(07/08/2020)