



Bail Slip

The Petitioner herein/accused Viz Swetha @ Deepa, Female, aged 25 years, D/o.Subramani, was released on bail, vide order of this court in MP.1/2015 in CrI.RC.No. 251/2015, dated:25.03.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.04.2021

PRONOUNCED ON : 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.251 of 2015

Swetha @ Deepa

... Petitioner/Accused

Vs.

The State represented by,
The Inspector of Police,
R-9, Valasaravakkam Police Station,
Chennai.
(Crime No.690 of 2009)

... Respondent/Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against the judgment of conviction and sentenced passed by the learned Principal District Sessions Judge, Tiruvallur, in its Judgment dated 19.03.2015 in C.A.NO.110 of 2010 for an offence under Section 380 of IPC and sentenced to under to Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for two months as confirmed the judgment passed by the Judicial Magistrate No.I, Poonamallee dated 27.11.2003 made in C.C.NO.349 of 2010.

For Petitioner : Mr.N.Rajan
for Mr.K.Pasupathy

For Respondent : Mr.R.Surya Prakash
Government Advocate

JUDGMENT

(The case has been heard through Video Conference)

The convicted sole accused is the revision petitioner herein.



2.This Criminal Revision Case has been filed against the judgment of conviction and sentenced passed by the learned Principal District Sessions Judge, Tiruvallur, dated 19.03.2015 in C.A.No.110 of 2010 for an offence under Section 380 of IPC and sentenced the accused to under to Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for two months as confirmed the judgment passed in C.C.No.349 of 2010, by the Judicial Magistrate No.I, Poonamallee, dated 27.11.2003.

3.The case of the prosecution is that on 27.11.2009, the revision petitioner/accused was caught red handed by the hostel inmates and warden of S.R.M. Engineering and Dental College, while she was intruding into Room No.88 of Om Vinayaga Hostel. Before this occurrence there was spate of theft in the hostel, hence, the college has formed a team to have a vigil over the movements of strangers. As a result, on that day, when two hostel inmates, namely Abinaya and Saranya were having watch over the strangers, they found that the accused/revision petitioner herein moving in a suspicious manner and going into Room No.88 of Om Vinayaga Hostel. Immediately, they have locked the room from outside and called the hostel warden and others and handed over the accused to the police. Based on the confession given by the accused, the stolen articles were recovered. The police after investigation has laid the charge sheet against the accused for the offence under Section 380 of IPC.

4.Before the Trial Court, on behalf of the prosecution ten witness have been examined as PW1 to PW10 and marked Exs.P1 to P8 & 13 material objectives. After the Trial, the learned Judicial Magistrate No.I, Poonamallee, has convicted the accused for the offence under Section 380 of IPC and sentenced as stated supra. Aggrieved against the said order of conviction and sentence, the convicted accused has filed an appeal in CrI.A.No.110 of 2010 before the learned Principal District and Sessions Judge, Tiruvallur and on re-appreciation of the evidence, the appeal was dismissed. Hence, the accused has preferred the present Criminal Revision Case before this Court.

5.Heard the learned counsel appearing for the revision petitioner and learned Government Advocate (CrI.Side) appearing for the State and perused the materials placed on record.

6.The sum and substance of the contentions of the revision petition is that

(i) The alterations and corrections made in the complaint/Ex.A1 and contradiction found in FIR and complaint regarding the date and time makes the prosecution case suspectable.



(ii) The eye witnesses Abinaya and Saranya were not examined.

(iii) The prosecution has failed to prove confession leading to recovery since the attesting witnesses have turned hostile.

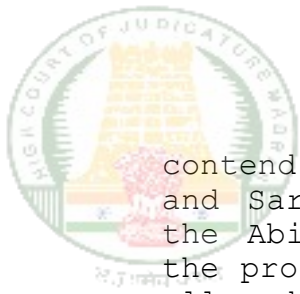
(iv) There is a delay in sending the documents and material objects to the Court. The delay of four months in forwarding the seizure mahazar along with material objects not explained.

7(a).On a perusal of the records, it is seen that prosecution examined ten witnesses as PW1 to PW10; PW1 is the warden, who lodged the complaint; PW2 is the lecturer, stayed near to the occurrence hostel by name Chellammal hostel; PW3 is the student stayed near by hostel called Chellammal Hostel. PW4 to PW6 are mahazer, observation, confession mahazer witnesses, they turned hostile. PW7 is the student stayed in the neighboring hostel by name Sivasakthi hostel; PW8 is the only student stayed in Om Vinayaga Hostel on the alleged date of occurrence; PW9 is the student staying in Om Vinyaga Hostel but she deposed on the date of occurrence, she was not stayed in the hostel; PW10 is the investigation office.

7(b).The recovered material objects viz., cash, gold ring, chain, kammal, another kammal, gold jewels, Nokia cell phone, laptop, scooty, scooty key, another key, purse and Sony cell phone were marked as MO-1 to MO-13.

8.Admittedly, the attesters of the Mahazar viz., PW4 to PW6 have turned hostile. On a perusal of Ex.P1/complaint, alteration was found in the complaint and it is a computer print out and this Court find that corrections in respect of date and time are made in pen and counter signed by the defacto complainant. The date of the complaint is corrected from 26 to 27; the time is corrected from 10.05 a.m., as 10.15 p.m.,. However, in the printed FIR prepared contemporaneously the date and time of complaint is shown as 27.11.2009 18.15 hrs. and the time of occurrence as 27.11.2009 10.15 a.m. Both the complaint and FIR has reached the Court on 28.11.2009. The learned Magistrate has affixed the signature and date on those two documents. No doubt there is alteration in Ex.A1 which indicates different time and date of occurrence. Since FIR prepared contemporaneously carries the uncorrected version of the complaint and the other witnesses have also deposed the date of occurrence as 27.11.2009, the discrepancy is not in isolation fatal to the prosecution. Accordingly, the first submission made by the revision petitioner deserves no consideration and the same is rejected.

9.The learned counsel for the revision petitioner would



contend that non examination of alleged eye witnesses Abinaya and Saranya is fatal to the prosecution, to determine whether the Abinaya and Saranya are as material witnesses and whether the prosecution has proved the involvement of the accused in the alleged crime. The entirety of the prosecution theory has to be taken into consideration and evidence of PW1, PW2, PW8 & PW9 will serve the purpose.

10.The analysis of evidence collected and laid before the Court by the prosecution (the learned Principal Sessions Judge of Tiruvallur), found that PW1/Johnson, who was the senior residential warden of SRM College is the defacto complainant in this case. He, in his deposition has narrated the circumstances under which the accused was caught by the inmates of the hostel when the accused lurked into room No.88 of Om Vinayaga Hostel. He has stated that there was a spate of theft complaints during the year 2009 and the hostel girls used to give complaint about that to him. He has not preferred any complaint to the police due to fear that it will cause damage to the college reputation. However, in order to prevent theft in the hostel he has formed teams to cause surveillance. As a result of the surveillance on two girl students namely Abinaya and Saranya along with their friends have notice the accused, who is not an inmate or a student of the hostel lurking into Room No.88, they have locked the room from outside when the accused gone inside the room and had alerted others. One of the inmate of the hostel PW-8, who was present at that time of apprehending the accused has corroborated the version of PW-1 about the detention of the accused inside the hostel room while she lurked into it.

11.It is pertinent to note that the crime of theft has occurred in the rooms of ladies hostel, where students from various parts of the Country have come and stayed. After completion of the course they have vacated the hostel and has settled else where. From the records it could be found that the prosecution has made attempts to bring those persons who were listed as witnesses but could not get them and the summons sent to them through post have returned unserved. The college has also informed the prosecution that they are not in the position to trace those students listed as witnesses due to their change of address and efflux of time. Therefore, this court does not find any force in the submission of the learned counsel for accused that non examination of Abinaya and Saranays is fatal to the prosecution.

12.In any event, PW8 who is one of the eye witness has been examined, she has subjected herself for cross-examination and her evidence has stood unimpeached. Further, in this aspect the evidence of PW1 and PW8 are more natural and acceptable. They have no axe to grind against the accused who is a total



stranger. They have clearly deposed that the accused was found inside the hostel campus and was caught red handed. All the inmates who were examined as prosecution witnesses have invariably deposed that there was spate of incidents of theft from the hostel room and reported to the warden. In the light of the said fact, the accused inside the hostel room gains significance. The accused alone could give a plausible explanation for her presence at SRM Campus, Room No.88, Om Shathi Hostel on 27.11.2007 at 08.15 p.m,.

13.Thus, this finds that on a combined reading of version of PW1 & PW2 coupled with evidence of PW8 & PW9, the presence of the accused inside room of the ladies hostel as established by the prosecution is beyond the reasonable doubt. In fact as extracted supra, the accused was caught red handed and locked inside the room by the collage girl students and on arrival of the police, the accused was handed over to the police by students and warden through security officer, as could be seen from the prosecution witnesses, clearly established nexus of the accused with the crime. Some of the victims of the crime have vacated the hostel after completion of the course and there whereabouts were not traceable even the efforts taken by the college management to trace them. As could be seen from the Trial Court order summons were served on the listed witnessed and it was returned as the victims who are college girls staying in the hostel have vacated the place and after employment moved over to some other place. Merely because there is no claim for some of the jewels recovered from the accused at no stretch of imagination it could be presumed that the jewels are owned by the accused especially when PW8 and PW9 have identified the most of the jewels and ornaments. The collections of the used ornaments and cell phone were recovered and some of them were identified as their own by the witnesses viz., PW2, PW3 and PW9, during the trial.

14.As stated supra, the attester of the mahazar viz., PW4 to PW6 have turned hostile. However, some seized materials were duly identified as their own by the witnesses viz., PW2, PW3 and PW9 and some of the victims of the crime have vacated the hostel and as discussed in supra their address could not be traced out. In view of the fact that many of the articles have been identified by the respective witnesses viz., PW2, PW3 & PW9, this Court finds that the hostile nature of the attesters, will not effect prosecution theory on the facts and circumstances of the case as discussed in the preceding paragraphs.

15.Yet another issue that was raised by the learned counsel for the revision petitioner herein/accused is that there is a delay of four months in forwarding seizure mahazar along with the material objectives and the same was not explained.

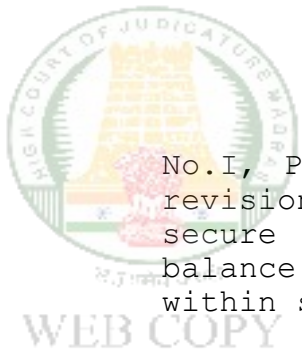


16.It is seen from the records that seizure mahazars containing the list of articles seized from the accused was not received by the Court immediately after the seizure namely on 28.11.2009 and those mahazars have been marked as Exs.P7 & P8. Therefore, it could not be contend that the seizure is not proved in the manner known to law. In view of the discussions in the preceding paragraphs with regard to identification of the recovered goods that were stolen from the SRM ladies hostel (Om Vinayaga Hostel), SRM campus by PW2, PW3 & PW4 and the seizure mahazars have reached the Court on 28.11.2009 and FIR also reached the Court on 28.11.2009 as could seen from the seal and signature affixed thereto. Hence, all the contentions raised by the learned counsel for the revision petitioner herein/accused, on appreciation of evidence stands rejected. Both the courts below have concurrently held that charges under Section 380 of IPC is proved against the accused.

17.Based upon the prosecution witnesses, the Trial Court has taken into consideration the plea of the accused that since, the very same revision petitioner has facing trial for the very same nature of the offence, at the relevant point of time, it remains undisputed by the accused and the Trial Court has rightly awarded the sentence as stated supra. Taking note of the habitual nature of the revision petitioner, she being a habitual offender, sentence has been passed and hence, this Court finds that the quantum of the sentence awarded by both the Courts below cannot be treated as excessive.

18.In fine, the complaint/Ex.P1, lodged by the senior residential warden and presence of the accused inside the ladies hostel exclusively meant of engineering and dental college students as established from the version of PW8 and PW9, the accused was caught red handed and locked inside the room and handed over to the police by the students and the warden through security officer, this Court finds that what is the job of the accused to go inside the room in ladies hostel where the entry is restricted only to the inmates and the college teaching staff. As to the place of arrest no suggestion was made to PW8, PW9 PW10 also assumes significance. Even during the cross-examination of the prosecution witnesses, neither any doubt nor any claim is made that the accused is a staff of present or past of the college hostel assumes significance. And thus, this Court finds that the order passed by both the courts below is just and proper, does not suffer from any irregularity or illegality warranting interference.

19.It is seen from the records that during the pendency of the revision petition, the revision petitioner/accused was enlarged on bail and hence, the learned Judicial Magistrate



No.I, Poonamallee, is hereby directed to issue NBW against the revision petitioner with direction to the respondent police to secure convicted revision petitioner/sole accused to undergo balance period of sentence and such exercise has to be completed within six weeks.

20.With the above direction, this Criminal Revision Case stands dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Principal District Sessions Judge, Tiruvallur.
- 2.The Chief Judicial Magistrate
Tiruvallur(For Information)
3. Judicial Magistrate No.I, Poonamallee.
- 4.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 5.The Inspector of Police,
R-9, Valasaravakkam Police Station, Chennai.
- 6.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.251 of 2015

SSV(CO)
SB(10/08/2021)