



BAIL SLIP

The Petitioner/Accused K. Karthick Male S/o Karupusamy was directed to be released on Bail vide order dated 20/10/2016 in CRL MP 09/09/2016 in CRL RC No.1221/2016 on the file of this.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.12.2021

CORAM :

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.1221 of 2016

K.Karthick .. Petitioner/2nd Accused
Vs.

State rep.by
Inspector of Police,
Gobi Police Station
Erode District
Crime No.592/2013

.. Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment and conviction dated 12.09.2016 made in C.A.No.46/2016 on the file of III Additional District cum Sessions Judge, Gobichettipalayam confirming the judgment dated 24.02.2016 made in C.C.No.161/2013 on the file of Judicial Magistrate No.I, Gobichettipalayam.

For Petitioner : Mrs.S.Vasavi Sridevi (Legal aid)

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

O R D E R

This Criminal Revision Case has been preferred challenging the judgment of the learned III Additional District and Sessions Judge, Gopichettipalayam, dated 12.09.2016 passed in C.A.No.46 of 2016.

2. The case of the prosecution is that on 31.07.2013, at about 3.00 p.m., the defacto complainant / Subbayal [PW.1] was walking towards West near Gopi Pachaimalai Road, Mayura Nagar, the 2nd accused drove the Yamaha motorcycle bearing registration No.TN 39 BY 8322, in which, the 1st accused



travelled as a pillion rider. When they came near the defacto complainant/PW.1, the 1st accused snatched her gold chain of weighing about 3 sovereigns from her neck and escaped from the scene of occurrence. On the complaint given by the defacto complainant, a case has been registered by the Gopichettipalayam police station in Crime No.592 of 2013 for an offence under Section 392 IPC.

3. The case was registered by the Sub Inspector of Police [PW.8] in Crime No.592 of 2013 for an offence under Section 392 IPC and FIR was prepared [Ex.P6]. The Inspector of police [PW.9] took up the case for investigation, went to the place of occurrence, prepared the rough sketch and the Observation Mahazar in the presence of PW.1 to PW.6. He also examined some of the witnesses and recorded their statement. On 15.08.2013, at about 5.00 p.m., when he was involved in vehicle check up at Gopichettipalayam-Kunnathur Road, Vadugapalayam junction, the accused came in a red colour Yamaha motorcycle bearing registration No. TN 39 BY 8322. On seeing the police in the check up point, the accused were trying to escape from the spot, but the police caught hold of them and enquired them. Thereafter, they confessed that they had snatched the golden chain of the victim in this case; thereafter police have arrested the accused and recorded their confession statement in the presence of witnesses PW.7-Manikandan and Premkumar. In the confession statement, the accused had spoken about the stolen property. On the basis of the confession, stolen property involved in this case was recovered under the Seizure Mahazar in the presence of witnesses Manikandan and Premkumar. Thereafter, the accused was remanded to judicial custody. The stolen property viz. Gold chain was marked as MO.1. After completion of the investigation, the charge sheet was filed against the accused for the offence under Section 392 IPC.

4. On taking the case on file and on being satisfied with the prima facie materials available on record, the learned trial Judge framed the charges against the accused for the offence under Section 392 IPC and questioned. Since the accused pleaded innocence and claimed to be tried, trial was conducted.

5. On the side of the prosecution, nine (9) witnesses have been examined as PW.1 to PW.9 and eight (8) documents were marked as Ex.P1 to Ex.P8 and two material objects were marked as M.O.1 and M.O.2. The incriminating materials that appear before the evidence on the prosecution were put to the accused under Section 313 Cr.P.C., the accused was questioned, he denied the same. On the side of the accused no witness has been examined and two (2) documents were marked as Ex.D1 and Ex.D2.

6. After the conclusion of the trial and after



considering the materials available on record, the learned trial Judge, found both the accused guilty for the lesser offence under Section 379 and 356 IPC and convicted them as follows:

Rank of the accused	Charges	Findings of the trial Court	Punishment
1 st accused	U/s.356 IPC	Found guilty	Convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.
	U/s.379 IPC	Found guilty	To undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.
2 nd accused	U/s.356 IPC	Found guilty	Convicted and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.
	U/s.379 IPC	Found guilty	To undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.

7. Aggrieved over the said judgment, an appeal was preferred by the 2nd accused in C.A.No.46 of 2016 and that the appeal was also dismissed by the III Additional District and Sessions Judge, Gopichettipalayam and found the accused guilty for an offence under Section 392 IPC and convicted and sentenced as below:

Rank of the accused	Charges	Findings of the appellate Court	Punishment
2 nd accused	U/s.392 IPC	Found guilty	Convicted and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month Simple Imprisonment.



Challenging the same, the 2nd accused preferred the present criminal revision case.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the State.

9. The learned counsel for the revision petitioner submitted that the 2nd accused was convicted on the basis of his confession, which is not legal; the defacto complainant had identified the accused for the first time before the Court; and hence her evidence before this Court cannot be relied on; since the name of the 2nd accused was not mentioned in the F.I.R and the name of the accused was also not mentioned during the enquiry made by the police, the investigating officer ought to have given a request for conducting test identification parade; the learned counsel has also relied on the decision of the Hon'ble Supreme Court rendered in Dana Yadav @ Dahu & Ors Vs. State of Bihar reported in 2002 Supp(2) SCR 363 in support of the above contention. In the said judgment, it is held as under:

"(g) Ordinarily, if an accused is not named in the First Information Report, his identification by witnesses in Court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

10. The learned Government Advocate (Crl. side) submitted that both the accused have been arrested one and the same time and their confession have also been recorded at the same time; since both the accused have stated about the stolen object, the recovery was made; just because the recovery of the article was made on the basis of the confession statement of either of the accused, that will not absolve the other from the criminal liability; the judgment of the Courts below does not require any interference.

11. Points for consideration:

Whether the sentence and judgment of the lower Appellate Court confirming the judgment of the learned trial Judge is unfair, improper or not legal?

12. On a perusal of the complaint given by PW.1, it is seen that she had mentioned about two persons, who were coming in the bike. Her evidence would reveal that one person was riding the bike and other person was sitting behind the rider. PW.1 has not stated in her complaint that she had not seen the face of the accused clearly and that it is possible for her to identify him in case he was arrested by the police. Even during



the cross-examination, PW.1 has stated that she had seen this accused only from a side view and hence she could not have noticed his face fully. When such being the evidence on record, it is unreasonable to state that the identification parade ought to have been conducted prior to the trial. After recovering the stolen jewel from the accused, P.W1 was told by the police that he was the accused who had stolen her jewel. So it is possible for her to take notice of the accused only at that point of time and thereafter she identified him at the time of trial. So this case does not deserve any identification parade. It is for the simple reason that PW.1 never claimed any time during the investigation that she had registered the identity of the accused in her mind at the time of occurrence and she could identify him, if any identification parade was conducted.

13. Both the accused were arrested together and they have jointly given the confession and shown the place where exactly the stolen jewels were concealed. In fact on the basis of the same confession, the police could recover some other stolen properties involved in some other cases as well.

14. It is submitted by the learned counsel for the petitioner that once the recovery was made based on the confession of the 1st accused, the statement of the 2nd accused in connection with the recovery of the article cannot be held as incriminating material against the 2nd accused. It is to be noted that both the accused have been arrested in one and the same time and the recovery was made in the presence of both the accused in the presence of witnesses. Both the accused were travelling in the bike which was also a stolen one. So the involvement of the 2nd accused cannot be overlooked for any super technical reason.

15. The evidence of PW.1 to PW.6 would show that PW.1 has lost her jewels as it was snatched by two persons came in the bike. After recovery of the jewels on the confession of the accused, it was identified by PW.1. Thus the connection between the stolen articles and the accused was established in this case. The custody of the stolen articles with the accused would no doubt draw an advance presumption under Section 114 of Evidence Act and that alone is sufficient to prove their involvement in the offence. The learned trial Judge and the first appellate Judge have rightly appreciated the evidence on record and convicted both the accused by recording a finding about their guilt for the offence under Sections 379 and 356 IPC.

16. It seems that the appellate Court has modified the sentence and convicted the accused for the offence under Section 392 IPC. This is a simple case of theft. It is not the case of the prosecution that the accused had threatened the defacto



complainant to part away with her property. So it is wrong on the part of the appellate Court to convict the accused under Section 392 IPC. Such a finding cannot be given by the appellate Court in an appeal filed by the accused and not by the prosecution. So I feel that the judgment of the first appellate Court should be modified by confirming the judgment of the Judicial Magistrate No.I, Gobichettipalayam, dated 24.02.2016 passed in C.C.No.161/2013.

17. However, this Criminal Revision Case is disposed of and the judgment of the appellate Court made in C.A.No.46 of 2016, dated 12.09.2016 is modified to the effect of confirming the judgment of the trial Court in C.C.No.161 of 2013 that the accused is found guilty for the offence under Section 379 IPC. The accused is convicted and sentenced to undergo two years R.I and to pay a fine of Rs.1,000/-, in default to undergo one month S.I. The period of incarceration undergone by the accused can be set off under Section 428 Cr.P.C.

18. The trial Court is directed to issue NBW to secure the petitioner/accused and commit him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District cum Sessions Judge,
Gobichettipalayam.
2. The Judicial Magistrate No.I, Gobichettipalayam.
3. The Inspector of Police,
Gobi Police Station
Erode District
4. The Chief Judicial Magistrate
Erode(for Information)
- 5.The Judicial Magistrate No.I, Avinashi.



6. The Superintendent
Central Prison, Coimbatore.

7. The Public Prosecutor,
High Court, Madras.

WEB COPY

Copy to :-

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mrs.S.Vasavi Sridevi, Advocate, S.R.No.69292

Crl.R.C.No.1221 of 2016

MT(CO)
CT/23/02/2021