



BAIL SLIP

The Petitioner/ Accused No.2, Namely Praveen Kumar S/o Dhandapani was released on bail as per order of this Court dated 23/05/2019 made in CRL.MP.6678/2019 in CRL.R.C.No.455/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.09.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.584 of 2019
and
Crl.M.P.Nos.7878 & 7879 of 2019
and
Crl.R.C.No.455 of 2019

Mahalingam ... Petitioner/Accused 1
(in Crl.RC.584/2019)

Praveen Kumar ... Petitioner/Accused 2
(in Crl.RC.455/2019)

Versus

The State Rep.by
The Inspector of Police,
B-6, Peelamedu Police Station,
Coimbatore. ... Respondent/Complainant
(Crime No.1176 of 2013) (in both Crl.RCs)

Common Prayer: Criminal Revision Case filed under Sections 397 read with Section 401 of Criminal Procedure Code, to set aside the Judgment dated 15.04.2019 in Crl.A.No.543 of 2018, on the file of the I Additional District and Session Court, Coimbatore, in confirming the Judgment dated 29.11.2018 in C.C. No.322 of 2014, on the file of the Judicial Magistrate VI, Coimbatore.

For Petitioners : Mr.A.Saravanan

For Respondent : Mr.S.Sugendran,
Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Revision Cases have been filed against Judgment of conviction and sentence dated 15.04.2019 in



Crl.A.No.543 of 2018, passed by the I Additional District and Session Court, Coimbatore, by confirming the Judgment dated 29.11.2018 in C.C.322 of 2014, passed by the Judicial Magistrate VI, Coimbatore.

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2.The respondent/police registered a case in Crime No.1176 of 2013, for the offence under Section 380 IPC against the petitioners. After investigation, charge sheet was filed before the learned Judicial Magistrate No.VI, Coimbatore. The charge sheet was taken cognizance of and taken on file in C.C.No.322 of 2014 and charges were framed. After completion of trial, the trial court convicted the petitioners for the offence punishable under Section 380 of IPC., and sentenced to undergo three years rigorous imprisonment, and to pay a fine of Rs.5,000/- in default to undergo further 30 days rigorous imprisonment, to each of them.

3.Challenging the said Judgment of conviction and sentence, both accused filed an appeal in Crl.A.No.543 of 2018, before the learned I-Additional District & Sessions Judge, Coimbatore. After hearing arguments and appreciation of evidence, the Appellate Court, dismissed the appeal and confirmed the conviction and sentence passed by the Trial Court.

4.Challenging the above said Judgment, the first accused/A1 has filed a revision in Crl.R.C.No.584 of 2019 and the second Accused/A2 has filed a revision in Crl.R.C.No.455 of 2019, before this Court.

5.Learned counsel for the petitioners would submit that the trial court failed to appreciate the fact that P.W.1 to P.W.3 were said to be medical students and they were roommates. The petitioners/A1 & A2, have allegedly stolen the mobile phones from the de-facto complainants room. Admittedly, there are no independent witnesses. P.W.1 to P.W.3 are interested witnesses. The trial Court failed to appreciate that no finger prints have been taken from the lock or door. Further, hostel warden, watchmen and security guard were not examined. Therefore, the non-examination of these witnesses is fatal to the case of the prosecution. The Trial Court as well as Appellate Court failed to appreciate the evidence and wrongly convicted the petitioners. Since there is perversity in appreciation of evidence, Judgment of Courts below are liable to be set aside.

6.The learned Government Advocate (crl.side) for the respondent submits that P.W.1 to P.W.3 are medical students in Coimbatore Medical College. They kept their cell phones in the room and left the hostel. When they came back, they found the accused running out of the room and they caught them with cell phones and handed over to police. The respondent/ police



registered the case in Crime No.1176 of 2013, for the offence under Section 380 of IPC. The respondent/police recovered the cell phones from the accused/petitioners herein and recorded their statements. The prosecution has proved its case from the evidence of PW.1 to PW.3, who have categorically stated before the both Courts below about the involvement of the petitioners, and hence, based on their evidence, the Courts below rightly convicted the petitioners. There is no perversity in the order passed by the Courts below and the Criminal Revision Cases are liable to be dismissed.

7. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

8. This Court, while exercising revisional jurisdiction, cannot exercise power of the Appellate Court and this Court, being a revisional Court, cannot sit in the arm chair of appellate Court and it has no power to re-assess the evidence and substitute its views on findings of fact.

9. The charges against the appellants framed by the trial court are as stated above.

10. Admittedly P.W.1 to P.W.3 are complainants. The other students studying with them were not examined in this case. Even hostel warden, watchman, security were not examined. There is no independent witness examined on the side of the prosecution. Learned counsel for the petitioners would submit that all witnesses are interested witnesses. In this case, the allegation of P.W.1 to P.W.3 is that they kept their cell phones in the locked room and it was admitted during their cross examination. It is alleged that the lock was opened and P.W.1 to P.W.3 found the accused/petitioners coming out from the room at the time of occurrence and they caught them and handed over them to the police and hence, no other students were examined. In a case of this nature, the above witnesses hostel warden, watchmen, security are vital to the case of the prosecution, especially, when the locked room were opened by the alleged accused. Such an allegation must be proved by finger prints expert's opinion, but it was not done. Therefore, the prosecution has miserably failed to prove the case beyond reasonable doubt.

11. On a reading of entire materials, this court finds that there is perversity in appreciation of evidence. Normally this court will not interfere with the factual finding, however, if it finds any perversity, it can always interfere with the decision of the courts below. Both the Courts below failed to note that prosecution failed to prove its case beyond reasonable doubt, therefore, the revisions are allowed, and the Judgment of



conviction and sentence passed by the Courts below are set aside. Fine amount, if any paid by them are ordered to be refunded forthwith. Consequently, the connected miscellaneous petitions are closed.

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12. In the result, the Criminal Revision Cases are allowed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

klt/pbl

To

1. Additional District and Session Court, Coimbatore.

2. The Inspector of Police,
B-6 Peelamedu Police Station,
Coimbatore.

3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.S. Marshak, Advocate, S.R.No.49962

Crl.RC.No.584 of 2019 and
Crl.M.P.Nos.7878 & 7879 of 2019 and
Crl.RC.No.455 of 2019

SR(CO)
CT 23/03/2022