



BAIL SLIP

The Petitioners namely 1). Babu, S/o. Krishna Reddy, 2).Nagaraj @ Naga, S/o.Panchat Charan in Crl.R.C.No.728 of 2014 (Appellants in Crl.A.No.55 of 2014 on the file of Principal Sessions Judge, Tiruvallur) were released on bail vide order of this Court, dated 24.07.2014 and made in Crl.M.P.No.1 of 2014 in Crl.R.C.No.728 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.12.2021

Judgment Pronounced on : 10.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.728 of 2014

1.Babu

2.Nagaraj @ Naga

.. Petitioners

Versus

State rep. by
The Inspector of Police,
Sevapet Police Station,
Thiruvallur District.
(Crime No.23 of 2012)

.. Respondent

Prayer : Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the judgment dated 05.07.2014 made in C.A.No.55 of 2014 on the file of the learned Principal Sessions Court, Thiruvallur, confirming conviction and sentence passed on them by the learned Judicial Magistrate No.II, Thiruvallur in C.C.No.339 of 2012 dated 25.04.2014 and set aside the same.

For Petitioners : Mr.R.Sasikumar

For Respondent : Mr.L.Baskaran
Government Advocate
(Criminal Side)



ORDER

This Criminal Revision is filed by the petitioners/accused 1 and 2 aggrieved by the judgment dated 25.04.2014 of the learned Judicial Magistrate No.II, Thiruvallur in C.C.No.339 of 2012, thereby, finding the petitioners/accused guilty for the offence under Section 379 of Indian Penal Code and imposing sentence of six months imprisonment on each of them and imposing a fine of Rs.2,000/- on each of them, in default to undergo two weeks Simple Imprisonment and the judgment of the learned Principal Sessions Judge, Thiruvallur dated 05.07.2014 in CrI.A.No.55 of 2014, thereby, confirming the conviction and sentence imposed by the Trial Court.

2. The petitioners/accused 1 and 2 stood trial for a charge that on 11.01.2012 at about 2.00 P.M near Selliamman Nagar, Aranvoyal village, within the limits of Sevvapettai Police Station, when one Sulakshana, wife of P.W.1, Munuswamy, was returning to her home, after giving lunch to her husband, at that time, the petitioners/accused, who came in a Hero Honda Passion Pro Motorcycle bearing registration No.TN 20 F 2124, snatched the Thali chain weighing about 3 ½ sovereigns and thereby, committed the offence punishable under Section 379 of Indian Penal Code. To press home the charges, the prosecution examined the said Munuswamy as P.W.1; one Sulakshana as P.W.2; one Rani as P.W.3; one Jayashankar as P.W.4; one Raghu as P.W.5; another Tamilselvan as P.W.6 and investigating officer, Gangadharan as P.W.7. The prosecution marked the complaint as Ex.P1; observation mahazar as Ex.P2; admissible portion of the confession statement of the first accused as Ex.P3; admissible portion of the confession statement of the second accused as Ex.P4; the mahazar as Ex.P5; another mahazar as Ex.P6; the First Information Report as Ex.P7 and the rough sketch as Ex.P8. The prosecution also produced gold ingot weighing 3 ½ sovereigns as M.O.1.

3. Upon being questioned under Section 313 of Cr.P.C., the accused denied the evidence as false. No oral evidence was let in on behalf of the defence and no documents were marked. The Trial Court, therefore, proceeded to hear the learned Assistant Public Prosecutor on behalf of the prosecution and the learned Counsel for the accused. The Trial Court found that P.W.1, the victim had deposed about the occurrence and also identified the accused Nos.1 and 2. This apart, the admissible portion of the confession leading to the recovery of gold ingot was held to be sufficient to conclusively prove the offence and therefore, convicted the petitioners and sentenced them as aforesaid.

4. Aggrieved by the same, the petitioners/accused 1 and 2



filed appeal in CrI.A.No.55 of 2014 on the file of the learned Principal Sessions Judge, Thiruvallur. The learned Appellate Court again independently appraised the evidence and considering the fact that P.W.1 had spoken about the incident and that she identified the accused in Court, coupled with the facts that the gold ingot was recovered, relied upon the evidence of the investigating officer and came to the conclusion that the finding of the Trial Court, as to the guilt of the petitioners/accused, as correct and dismissed the appeal, confirming the conviction and sentence. Aggrieved by the same, now the present case is laid before this Court.

5. Mr.R.Sasi Kumar, learned Counsel for the petitioners, submitted before this Court that there is a delay of two days in lodging the complaint and that test identification parade was not conducted to identify the accused, the investigating officer, in order to close the pending cases, foisted this case against the petitioners. He would rely upon the judgment of this Court in CrI.Appeal (MD).No.424 of 2016 to press home the point that in these type of cases, delay in lodging the complaint should be held as fatal.

6. He further relied on judgment in Chunthuram Vs. State of Chattisgarh¹, for the proposition that the test identification parade would be a proper course to establish the identity of the accused.

7. He relied upon a judgment of this Court in CrI.Appeal No.584 of 2009, to contend that these are stereotypical F.I.R and chargesheets filed without any proper investigation.

8. However, after some arguments, when this Court expressed its opinion that when the Trial Court and the lower Appellate Court had rendered their findings, based on the evidence on record and that the scope of the revisional jurisdiction to reappraise the evidence is limited, the learned Counsel for the petitioner made submissions on the quantum of sentence. He filed affidavits of the first and second petitioners stating that they are leading a law abiding life and have not involved in any other criminal activities and the first petitioner is doing loading and unloading of firewood and earning daily wages and the second petitioner is owning an Auto and driving his auto.

9. He would further submit that considering the fact that both the petitioners were already in jail i.e., for a period of 16 days from 22.08.2012 to 07.09.2012 and for another period of 20 days i.e., from 05.07.2014 to 24.07.2014 in all totalling to 36 days, he would request this Court to impose a proper

¹ (2020) 10 SCC 733



sentence, since, they are presently leading a law abiding life. To this, the learned Government Advocate (Criminal Side), upon instructions, submitted that the statement, as far as the first accused Babu is concerned, the statment is correct. But, however, second accused, Nagaraj @ Naga, also had two other cases of similar in nature. But, however, the learned Counsel for the petitioner submitted a copies of the judgment in C.C.No.153 of 2016 and the extract from the e-courts website in C.C.No.152 of 2016, whereby, the Trial Court has acquitted the accused.

10. On perusal of the judgment, it is seen that neither the witnesses identified the accused nor recovery was of the exact jewel which was stolen and finding that there is totally no evidence against the accused, the said accused has been acquitted.

11. Therefore, considering of the above circumstances and considering the affidavits filed by the petitioners that they are leading a law abiding life and the undertakings given by them that they will not, in any, manner involved in any criminal activity whatsoever, I am inclined to modify the sentence imposed by the Trial Court and the first Appellate Court from six months Rigorous Imprisonment to that of the period of 36 days already undergone by them. The fine amount shall remain the same.

12. Therefore, the Criminal Revision is partly allowed as stated above.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Principal Sessions Judge,
Thiruvallur.
2. The Judicial Magistrate No.II,
Thiruvallur.
3. The Chief Judicial Magistrate,
Thiruvallur.



4. The Superintendent,
Central Prison,
Puzhal, Chennai.

5. The Inspector of Police,
Sevapet Police Station,
Thiruvallur District.

6. The District Collector,
Chennai.

7. The Director General of Police,
Mylapore, Chennai.

8. The Public Prosecutor,
High Court of Madras.

Copy to:

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

+1cc to Mr.R.Sasi Kumar, Advocate, S.R.No.65879

Cr1.R.C.No.729 of 2014

GJ(CO)
SU(22/12/2021)