



BAIL SLIP

CRL.RC.NO.832/2014

That the Appellant/Accused namely Nagaraj S/o.Chikkanna was released on bail dated 11.09.2014 as per order of this court made in Crl.Mp.No.1/2014 in Crl.Rc.No.832/2014.

CRL.RC.NO.833/2014

That the Appellants/Accused Nos. 3 & 4 namely Nagarathinaiah @ Abbaiah S/o.Naraimaiah and Sowdappa @ Sowdareddy S/o.Krishnappa were released on bail dated 11.09.2014 as per order of this court made in Crl.Mp.No.1/2014 in Crl.Rc.No.833/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 08.12.2021

ORDERS PRONOUNCED ON : 23.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NOS.832 AND 833 OF 2014

Nagaraj

.. Petitioner/
Accused
(in Crl.R.C.No.832 of 2014)

1.Nagarathinaiah @ Abbaiah

2.Sowdappa @ Sowdareddy

.. Petitioners/
Accused 3 & 4
(in Crl.R.C.No.833 of 2014)

Versus

The Inspector of Police,
Shoolagiri Police Station,
Shoolagiri,
Krishnagiri District.

.. Respondent/
Complainant
(in both Crl.R.Cs)



Prayer in Crl.R.C.No.832 of 2014 :

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order passed by the learned Principal Sessions Judge, Krishnagiri in Crl.A.No.35 of 2008, dated 22.03.2013 confirming the conviction and sentence passed by the learned Assistant Sessions Judge, Hosur in S.C.No.17 of 2007, dated 27.03.2008.

Prayer in Crl.R.C.No.833 of 2014 :

Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records and set aside the order passed by the learned Principal Sessions Judge, Krishnagiri in Crl.A.No.30 of 2008, dated 22.03.2013 confirming the conviction and sentence passed by the learned Assistant Sessions Judge, Hosur in S.C.No.17 of 2007, dated 27.03.2008.

For Petitioners : Mr.C.S.Malarvannan
(In both Crl.R.Cs)

For Respondent : Mr.L.Baskaran
(In both Crl.R.Cs) Government Advocate
(Criminal Side)

COMMON ORDER

These two Revision Cases in Crl.R.C.Nos.832 and 833 of 2014 arise out of the common judgment and therefore, are taken up and disposed of together.

2. The petitioner in Crl.R.C.No.832 of 2014 namely Nagaraj was accused No.1 and the petitioners in Crl.R.C.No.833 of 2014 are accused Nos.3 and 4 in the case. These three petitioners along with one Nagappa, the second accused in the case faced the charges under Section 392 read with 397 of I.P.C. The Trial Court, namely the learned Assistant Sessions Judge, Hosur, by a judgment, dated 27.03.2008 in S.C.No.17 of 2007, convicted all the four accused for the offence under Section 392 of Indian Penal Code and imposed a sentence of forty months Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months Rigorous Imprisonment and for the offence under Section 392 read with 397 of I.P.C, forty months Rigorous Imprisonment. The second accused in the case, namely Nagappa, did not file any appeal and he has served out the sentence. The first accused, namely, Nagaraj filed Crl.A.No.30 of 2008. The accused No. 3 and 4, namely, Nagarathinaiah @ Abbaiah and Sowdappa @ Sowdareddy filed Crl.A. No. 17 of 2007 and both the appeals were taken up together and by a judgment, dated



3. The case of the prosecution is that P.W.1, namely Shanmugam, came to Shoolagiri Police Station on 14.04.2006 and lodged a complaint stating that he was acquainted with the first accused for about a period of one year. A week before, on Saturday, the first accused came to his house and handed him over two silver coins and represented to him that he has come into the possession of treasure of thirty such coins and canvassed him to buy the same. When he represented that he had no money, he stated that the opportunity will not come again and pressurised PW-1 to buy the same. When he presented the coins to the Gold Smith, he tested that the silver is of good quality. On 13.04.2006, he went with Rs.1,00,000/- in cash in bag and met the first accused in a place called Jujuvadi. The second accused was also with him at that time. Immediately, thereafter, the first accused, after checking that P.W.1 came with the money, represented to P.W.1 that the silver coins are with two other persons near a place called Kaamanthotti Perumal Kovil and therefore, upon his direction, P.W.1 also proceeded along with him to the said place. At about 6.00 P.M, two more persons were there in the said place and all the four persons rounded him off and threatened him on knife point and robbed the cash and ran away from the place. After searching for the first accused along with his uncle, he gave the complaint.

5. Upon being committed by the learned Judicial Magistrate No.I, Hosur, the case was taken on file as S.C.No.17 of 2016 and the Trial Court framed the charges under Sections 392 and 392 read with 397 of I.P.C. The accused denied the charges and stood trial.

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9. As mentioned supra, aggrieved by the said judgment, A1, A3 and A4 preferred two separate appeals. The said appeals were taken up together and by a judgment, dated 22.03.2015 that the ground raised by the accused that there is a delay in lodging the complaint as without any merits on the ground that PW-1 had explained the delay that he has informed his uncle and thereafter, they have gone to the house of Nagaraj and after searching for him and thereafter only lodged the complaint. P.W.2, Veerappan, has also corroborated the evidence of P.W.1 There is no flaw in the registration of the case and thereafter, in the investigation of P.W.8, who had taken up the



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investigation and apprehended the accused and recorded their confession statements and recovered the money as well as the gold purchased out the crime. The witnesses to the admissible portion of the confession and the observation mahazar, have spoken about the same. The Trial Court had rightly directed the returning of the gold jewels to P.W.1. P.W.1 has categorically identified the accused and therefore, upon appreciation of evidence, it is clear that in this case that the accused had lured the complainant and thereafter, robbed him of the cash. The other defence that there was motive for P.W.1 to lodge a false complaint because the accused had complained about P.W.1 that he is bogus medical practitioner, is without any merit because the accused had not produced any such complaint given by them so as to impute motive on P.W.1. Therefore, considering all the evidences, the Trial Court came to the conclusion that it is very clear that after luring P.W.1 to scene of occurrence, on the knife point, P.W.1 was robbed of his cash of Rs.1,00,000/- and therefore, confirmed the conviction and sentenced imposed on the accused.

10. Heard Mr.C.S.Malarvannan, learned Counsel for the petitioners and Mr.L.Baskaran, learned Government Advocate (Criminal Side) on behalf of the prosecution.

11. The learned Counsel for the petitioners contended that there is material contradiction in P.W.1's statement and therefore, his statement should not be believed. He submitted that the recovery is not at all proved in the manner known to law. He further submitted that the evidence of the friend from Bangalore, namely Muniraj is not at all clear. He did not depose that he gave Rs.1,00,000/-. Two other persons, from whom recovery was made, were not examined. The recovery was shown only as Rs. 500/- notes while the PW-1 also gave Rs. 100/- notes. No test identification parade was conducted to identify the accused Nos.3 and 4. Even on the available material, the second charge under Section 392 r/w 397 was not proved and under these circumstances, the Courts below erred in returning the finding of guilt and imposing sentence on the petitioners.

12. In support of his contentions, the learned Counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in Hari Om Vs. State of U.P¹, by placing reliance on paragraph No.35 of the said judgment, it is submitted that in the absence of the test identification parade, it is not safe to convict the accused Nos.3 and 4. The learned Counsel also relied upon the judgment in Dana Yadav and Ors. Vs. State of Bihar², for the same proposition that the test identification parade was essential in this case, since the accused Nos.3 and 4

1 MANU/SC/0003/2021

2 MANU/SC/0763/2002



were not known persons to P.W.1 and therefore, in the absence of the same, it cannot be said that the investigation is proceeded on the right lines.

13. Opposing the said submissions, Mr.L.Baskaran, learned Government Advocate (Criminal Side) appearing on behalf of the prosecution would submit that in this case, the prosecution has mustered all the relevant evidences that it can. The evidence of P.W.1 coupled with the recoveries made including silver coins, the knife, gold jewel bought out of the proceeds of the crime, would establish the guilt of the accused conclusively. He would submit that when P.W.1 had identified A3 and A4 in the Court, the absence of test identification parade will not alter situation. Therefore, he would submit that the revision is without any merits and prayed for dismissal of the same.

14. I have considered the rival submissions made on behalf of either side and the material evidence on record and the findings of the Trial Court and that of the first Appellate Court. From the evidence of P.W.1, it is clear that he was having one bundle of 500 rupee notes totally amounting Rs.50,000/- and five bundles of 100 rupee notes for another Rs.50,000/-. However, all the recovery made were only 500 rupee notes and therefore, the learned counsel would contend that the recovery is not believable. The said submission of the learned Counsel can be countenanced if the recovery of 500 rupee notes had exceeded a sum of Rs.50,000/- which is not the case. Therefore, so long as the recovered sum is less than Rs.50,000/-, the said argument is rejected. Further more, the Trial Court as well as the lower Appellate Court considered the statements of the witnesses, who witnessed the accused making confession statement and leading the investigating officer to recover M.Os. The statements of the said witnesses and that of the investigating officer categorically prove the recovery and therefore, the submissions to the contrary is without any merits.

15. The evidence of P.W.2 proceeds that he is residing in Bangalore and that one year before when he was in his house, P.W.1 asked for money. Thereafter, P.W.1 told him what happened and that he narrated to him that the money of Rs.1,00,000/- was snatched away from him and that he accompanied him to the Police Station. Therefore, mere absence of an express statement that he had actually given the money of Rs.1,00,000/- will not make any difference.

16. As regards non-conduct of test identification parade, even as per the judgment of the Hon'ble Supreme Court of India, relied upon by the learned Counsel for the petitioners, the Hon'ble Supreme Court, as in paragraph No.37(e) of the judgment



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in Dana Yadav and Ors. Vs. State of Bihar³, held as follows:-

"37 (e). Failure to hold test identification parade does not make the evidence of identification in court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law."

Therefore, it is clear that it is a rule of prudence that when test identification parade is not conducted, the conviction cannot be solely based on the identification of the accused in Court. But, in this case, the corroboratory evidence i.e., Exs.P4 and P5, namely the admissible portion of the confession statements of A3 and A4, is leading to recovery; as far as the A3 is concerned, a recovery of Rs.10,000/- from himself; another sum of Rs.5,000/- from P.W.5, Pandurangan, to whom he has given Rs.5,000/-; Similarly, the sum of Rs.10,000/- was also recovered from A4; another sum of Rs.5,000/-, which he had given to one Chinnappa is recovered. Therefore, the recoveries made clinchingly prove the involvement of A3 and A4 and therefore, the probative value of the identification of the accused by P.W.1 before the Court can be taken into account along with the other evidence on record to convict the accused and therefore, I reject the submissions of the learned Counsel for the petitioners that the findings of the Trial Court and the first Appellate Court are perverse for want of test identification parade. I therefore, see no merits in the submissions made by the learned Counsel for the petitioners and I confirm the conviction of the petitioners for the offense punishable under Section 392 of Indian Penal Code.

17. However, the submission of the Learned Counsel for the Petitioners regarding the second charge of punishable under Section 397 merits acceptance. It may be seen that the alleged knife which was not properly identified by PW-1 and he has stated that it resembles the one shown to him and accordingly marked with objection. Therefore, the use of the deadly weapon is doubtful. There was no evidence that there was any grievous

³ Refer foot note No.2



hurt was caused or attempt to cause death or grievous hurt. Therefore, as rightly contended by the Learned Counsel for the petitioners, the Trial Court and the Lower Appellate court did not consider this aspect of the matter and as such, I find that the second charge, namely, 392 read with 397 IPC as not proved beyond doubt.

18. Finally the learned Counsel for the petitioners submitted that each of them had undergone imprisonment, pending trial and after the dismissal of their appeal. It is submitted that on a deeper appreciation of fact, it can be seen that instant case was an attempt to cheat the accused, by coning P.W.1 of treasure. He would submit that P.W.1 had gone ahead with the money, with an illegal motive of appropriating treasure to himself in violation of the Treasure Trove Act, 1954 and the offence is predominantly of luring and cheating money, even though the prosecution had alleged the use of force by knife point. He would further submit that there are no other bad antecedents for the accused. The learned Government Advocate (Crl. Side) also confirmed that there is no other case against the accused persons.

19. Considering the nature of the offence, efflux of the time and the socio-economic conditions of the petitioners, I am inclined to reduce the sentence of punishment imposed by the Trial Court for the offences under Sections 392 of Indian Penal Code from Rigorous Imprisonment for a period of forty months to that of Rigorous Imprisonment for a period of one year.

20. These Criminal Revision cases are partly allowed on the following terms :

- (i) The conviction of the petitioners for the offense under Section 392 is confirmed;
- (ii) The sentence of imprisonment imposed by the trial court and the appellate Court is reduced from the period of 40 months to a period of one year;
- (iii) The accused shall be entitled to set off the period already there were in custody in this case;
- (iv) The fine amount remains the same;
- (v) The petitioners are acquitted of the second charge of the offense under Section 392 r/w 397 of Indian Penal Code.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

grs



To

1. The Principal Sessions Judge, Krishnagiri.
2. The Assistant Sessions Judge, Hosur.
3. The Judicial Magistrate No.1,
Hosur.
4. Do thro- Chief Judicial Magistrate,
Krishnagiri.
5. The Superitendent,
Central Prison,
Vellore.
6. The Inspector of Police,
Shoolagiri Police Station,
Shoolagiri,
Krishnagiri District.
7. The Public Prosecutor,
High Court of Madras.

+2cc to Mr.N.Mohideen Basha, Advocate, S.R.No.91,92 [28/04/2022]

Cr1.R.C.Nos.832 and 833 of 2014

MG(CO)
PM/06/01/2022