

BAIL SLIP

The Petitioners/Accused viz A1 Karthick @ Karthikeyan, M/29 years, S/O. Narayanasamy, A2 Raja @ Anthoni raja, M/28 years, S.O. Madhavan were released on bail as per order of this court dated 04/11/2016 in CRL MP NO.10882 of 2016 in CRL RC NO.1209 of 2016 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2022
PRONOUNCED ON : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.R.C.NO.1209 OF 2016

1.Karthick @ Karthikeyan

2.Raja @ Anthoni Raja

Vs.

... Petitioners

State rep by,
The Inspector of Police,
B6, Peelamedu Police Station,
Coimbatore,
Crime No.669/2008.

... Respondent

PRAYER:

Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to allow the above Crl.R.C. by setting aside the judgment dated 26.07.2016 passed in C.A.No.45/2014 on the file of the I Additional District and Sessions Court, Coimbatore, confirming judgment dated 05.03.2014 passed in S.C.No.214/2010 on the file of the II Additional Assistant Sessions Court, Coimbatore.

For Petitioners : Mr.S.Sriram for
Mr.K.Govi Ganesan

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The conviction and sentence passed against the petitioners in S.C.No.214 of 2010, dated 05.03.2014 by the learned II Additional Assistant Sessions Judge, Coimbatore/trial Court are as follows:-

- For offence under Section 451 of IPC, the 1st petitioner to undergo three months Imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week Simple Imprisonment.
- For offence under Section 392 of IPC, the 1st petitioner to undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week Simple Imprisonment.
- For offence under Section 392 r/w 34 of IPC, the 2nd petitioner to undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default, to undergo one week Simple Imprisonment.

2.As against the judgment of trial Court, dated 05.03.2014, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Coimbatore/lower appellate Court in C.A.No.45 of 2014. The lower appellate Court, by judgment, dated 26.07.2016 confirmed the judgment of the trial Court and dismissed the appeal, against which, the present Criminal Revision case.

3.The gist of the case is that on 30.06.2008, at about 12.30 p.m., when the defacto complainant/PW1 in her house, the petitioners went to her house, asked for water to drink. PW1 went inside the house for fetching water, at that time, the 1st petitioner followed her, when she questioned the same, the 1st petitioner poured chilly powder on her face, but she evaded the same, thereafter, by showing blade, the 1st petitioner attempted to inflict injury, which was also evaded by her. Thereafter, the 1st petitioner snatched her Thali/MO4 and ran out, where the 2nd petitioner was ready with the bike, keeping watch over the area and facilitating escape of 1st petitioner. PW1 raised alarm, on hearing the same, PW2 and one Krishna chased the petitioners. When the petitioners attempted to flee away from the scene, they skidded and fell down from the bike. Thereafter, they were caught hold and handed over to the respondent Police along with the snatched Thali/MO4, chilly

powder and motor bike. PW5, the Sub Inspector of Police received the complaint/Ex.P1, registered FIR/Ex.P4 and handed over the same to PW6. PW6, the Inspector of Police visited the scene of occurrence, drawn Observation Mahazar/Ex.P3, Rough Sketch/Ex.P5, recorded the statement of the witnesses present in the scene of occurrence, seized the material objects through Form-95 and arrested the petitioners and produced them before the concerned Magistrate for remand, on conclusion of investigation, filed the charge before the trial Court.

4. During trial, on the side of the prosecution, six witnesses were examined as PW1 to PW6 and six documents were marked as Exs.P1 to P6 and five material objects were marked as MO1 to MO4. On the side of the defence, no witness was examined and no document was marked. On conclusion of trial, the trial Court convicted the petitioners as stated above and the same was confirmed by the lower appellate Court, vide judgment, dated 26.07.2016 in C.A.No.45 of 2014.

5. The learned counsel for the petitioners submitted that the petitioners are falsely implicated in this case. Prior to the occurrence, an attempt was made for snatching Thali/MO4 of PW1 by two unknown persons wearing helmets and the complaint was kept pending. Since unable to find out the real accused in that case, the respondent Police detained the petitioners during a vehicle check when they were proceeding in a motor bike to visit the 1st petitioner's sister, who had recently given birth to a baby. He further submitted that there are contradictions in the evidence of eye witnesses viz., PW1 to PW3. PW1 stated that the respondent Police came to the scene of occurrence, she identified chilly powder and blade used by the petitioners and the Police seized the same. On the contrary, the evidence of PW5/Sub Inspector of Police is that PW1, PW2 and one Krishna came to the Police Station produced the petitioners along with Thali/MO4, motor bike and lodged the complaint/Ex.P1. The alleged occurrence is said to have taken place in the afternoon at about 12.30 p.m., PW1 to PW3 along with Thali/MO4 went to the Police Station at about 01.30 p.m., the Form-95/Ex.P6 was prepared at about 05.30 p.m. PW2 admitted that he had not chased the petitioners, they got skidded, fell down from the bike, thereafter, they were taken to the Police Station. PW3 stated that he did not see the petitioners in the scene of occurrence at the time of alleged incident. Further, PW1 gives contradictory version with regard to the materials objects/MO1 to MO4.

6.He further submitted that in this case, the chilly powder and blade used by the petitioners while snatching Thali/MO1, were not seized by the Police and not marked as material object. The Observation Mahazar/Ex.P3 witness stated that he only signed the mahazar and he does not know the contents of it. It is strange to see that no Test Identification Parade conducted with regard to identification of the petitioners. The witnesses appeared before the trial Court after five years of the alleged occurrence and during trial, they identified the petitioners. He further submitted that in this case, the motor bike, which was used by the petitioners while escaping from the scene, not produced. The trial Court brushed aside the above latches and contradictions and gave a finding that these contradictions would not affect the case of the prosecution. The lower appellate Court without analysing the evidence and materials, merely confirmed the judgment of the trial Court. Hence, he prayed for setting aside the judgments of the Courts below.

7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, PW1 identified the petitioners immediately after the occurrence and during trial. Prior to the occurrence, PW1 knows the 1st petitioner who was working in nearby workshop. The petitioners were apprehended by PW1 to PW3. After the apprehension of petitioners, they were produced before PW5 along with snatched Thali/MO4 and motor bike. In view of the same, the Test Identification Parade is not necessary in this case. There is nothing to show that PW1 had grudge against the petitioners to falsely implicate them in this case. On receipt of the complaint/Ex.P1, immediately FIR/Ex.P5 registered. He further submitted that the Investigating Officer/PW6 visited the scene of occurrence, drawn Observation Mahazar/Ex.P3, Rough Sketch/Ex.P5, recorded the statement of the witnesses present in the scene of occurrence, seized the material objects through Form-95 and arrested the petitioners and produced them before the concerned Magistrate for remand, on conclusion of investigation, filed the charge before the trial Court.

8.He further submitted that the evidence of PW1 is in conformity to the case of the prosecution. The trial Court finding that the petitioners apprehended from the scene of occurrence, recovery of material objects were made immediately from the accused and also finding that the evidence and materials are in conformity to the case of the prosecution, had convicted the petitioners. The lower appellate Court on independent assessment of evidence and materials, confirmed the

judgment of the trial Court. Hence, he prayed for dismissal of this Criminal Revision case.

9.This Court considered the rival submissions and perused the materials available on record.

10.PW1 is the victim in this case. The 1st petitioner is a known person to her, who was working in the nearby workshop. On the fateful day, the 1st petitioner went to the house of PW1 and asked water. Taking advantage of her loneliness, the 1st petitioner poured chilly powder, attempted to inflict cut injury using blade and snatched Thali/MO4. The 2nd petitioner was ready with the bike outside, both the petitioners sped away from the place, but the motor bike skidded and they fell down. Thereafter, they were caught and produced before PW5 along with the material objects. PW5 received the complaint/Ex.P1 from PW1, registered FIR/Ex.P8 and handed over the investigation to PW6. PW6 took up investigation, examined the witnesses in the scene of occurrence, prepared Observation Mahazar/Ex.P3, Rough Sketch/Ex.P5, seized the material objects/MO1 to MO4 through Form-95 and produced the petitioners before concerned Magistrate for remand without any delay.

11.There is some contradictions with regard to the presence of the Police in the scene of occurrence. PW5 stated that PW1, PW2 along with one Krishna had come to the Police Station, handed over the petitioners and lodged the complaint/Ex.P1. PW1 stated that the Police had come to the scene of occurrence and arrested the petitioners. PW2 stated that he heard the cry of PW1 and saw the petitioners skidded and fell down from the bike and they were apprehended. PW2 further stated that he went to the Police Station along with PW1 to lodge the complaint. In this case, the chilly power and blade used by the 1st petitioner while snatching Thali/MO4 of PW1 were not seized and not recorded the same in the Observation Mahazar/Ex.P3. Further, the bike used by the petitioners while escaping from the scene of occurrence was not produced. The above infirmities in the prosecution case were raised before the trial Court as well as the lower appellate Court and the same are answered. This Court finds no reason to interfere with the findings of the Courts below and the same are confirmed.

12.It is seen that both the petitioners are youngsters and both of them during the questioning under Section 313 Cr.P.C.,

pleaded that this is the first case against them, they hail from poor family and pleaded leniency.

13.Considering that the petitioners not involved in similar kind of offences, they are of young age and the petitioners already undergone incarceration, this Court is inclined to reduce the sentence imposed by the trial Court against the petitioners from three years Rigorous Imprisonment to that of the period of incarceration already undergone by them. Accordingly, this Criminal Revision Case is partly allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2

To

- 1.The I Additional District and Sessions Court,
Coimbatore.
- 2.The II Additional Assistant Sessions Court,
Coimbatore.
- 3.The Inspector of Police,
B6, Peelamedu Police Station,
Coimbatore,
- 4.The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.1209 of 2016

SKM(CO)
AJ(06/06/2022)