



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.09.2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.890 of 2022

and

Cr.MP(MD)No.11096 of 2022

Mr.Sornapandi

.. Petitioner/ Appellant/Accused No.1

Vs.

The State represented by its
The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
Crime No.960 of 2005.

.. Respondent/Respondent/
Complainant

Prayer:- Criminal Revision petition is filed under Section 397 r/w 401 Cr.P.C, to call for the records and set aside the conviction imposed by the learned III Additional Sessions Judge, Tirunelveli in Crl.A.No.58 of 2017 by the judgment dated 04.12.2018, by confirming the conviction and sentence imposed by the learned Principal Assistant Sessions Court, Tirunelveli in S.C.No.317 of 2008 by the judgment dated 24.08.2017.

For Petitioner : Mr.R.J.Karthick

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

**ORDER**

WEB COPY This Criminal Revision case has been preferred against the order that has been passed by the learned III Additional Sessions Judge, Tirunelveli in CrI.A.No.58 of 2017, judgment dated 04.12.2018, by confirming the conviction and sentence imposed by the learned Principal Assistant Sessions Court, Tirunelveli, in S.C.No.317 of 2008, judgment dated 24.08.2017.

2. The case of the prosecution in brief:-

The accused persons were facing charges under Section 448, 397, 394 r/w 34 of IPC. On 23.09.2005, at about 12.00 noon, the petitioner along with other accused with an intention to commit robbery, trespassed into the house of the defacto complainant. By showing the knife, they robbed the gold ornaments and also caused injuries. Based upon the complaint given by the defacto complainant, case was registered.

3. On the side of the prosecution, 13 witnesses have been examined. 14 documents marked, apart from, 5 material object.

4. At the conclusion of the trial, the Trial Court found that the the petitioner and A2 committed the above said offence and accordingly,



convicted them for the offence under Section 448 of IPC and sentenced them to undergo Simple Imprisonment for a period of one month each and convicted them for the offence under Section 394 of IPC and sentenced them to undergo Rigorous Imprisonment for a period of 5 years each and to pay a fine of Rs.1000/- each in default to undergo Rigorous Imprisonment for a period of 3 months each. The above sentences were ordered to be run concurrently.

5. Challenging the above said conviction and sentence, the accused persons, namely, Sornapandi and Sivapandi filed an appeal in CrI.A.No. 58 of 2017 before the 3rd Additional Sessions Judge, Tirunelveli. That was also dismissed and further directed the Trial Court to issue warrant against the accused persons for securing them to undergo remaining part of sentence. Against which, this revision has been preferred by the petitioner.

6. The learned counsel for the petitioner would submit that in pursuance of the above said Appellate Court order he was secured on 20.03.2022. Ever since, he is in custody.



7. At the time of argument, the learned counsel for the petitioner made out only one point namely, the manner of disposal of the appeal.

8. The appellate Court decided the matter in the absence of the learned counsel for the appellant. Even though, by perusing the records, the above said appeal has been dismissed by confirming the conviction and sentence, according to the learned counsel for the revision petitioner, it is against law. He would rely upon the judgment of the Hon'ble Supreme Court in **Dhananjay Rai @ Guddu Rai Vs. State of Bihar** reported in **2022 SCC online SC 880**. The Hon'ble Supreme Court reproducing the Sections 385 and 386 stated that the combined reading of these two provisions does not contemplate the dismissal of appeal for non-prosecution. The appeal must be disposed of on merits by perusing the records. But, the word of caution has also been expressed by the Hon'ble Supreme Court. If the appellants were absconding, then the Court may appoint a Pleader to represent the appeal on its own.

9. Here, after getting the order of suspension of sentence from the Appellate Court it appears that the revision petitioner went missing and did not attend the Court. While moving the delay condonation application in CrI.MP(MD)No.8468 of 2022, it was contended that the



result of the appeal was not informed to them by their counsel on record.

So, this fact will clearly shows that the appellant were not properly represented by the counsel on record. So, the Appellate Court ought to have appointed *amicus curiae* to assist the Court. But, that was not done. So, it appears that disposal of the appeal by the Appellate Court, which involves grievous offence, in the considered view of this Court, it is not proper.

10.The learned counsel for the petitioner would submit that the matter can be remanded back to the Appellate Court for fresh hearing, so that, the revision petitioner can be represented by an Advocate. So, this seems to be a genuine and acceptable grievance.

11.In view of the above reason, the revision is **allowed** and the judgment of the Appellate Court/III Additional Sessions Judge, Tirunelveli in Crl.A.No.58 of 2017 by the judgment dated 04.12.2018, is hereby set aside and the **appeal is remanded back to the Appellate Court**. Consequently, connected miscellaneous petition is closed.

12.The Appellate Court may dispose the case by giving opportunity to the revision petitioner to argue the matter. Since the



revision petitioner is in Prison let to be produced him before the Appellate Court on receipt of intimation. But, the petitioner shall remain in custody till the disposal of the appeal. He must engage an Advocate of his choice. If he fails to engage an Advocate of his choice, the Appellate Court may appoint *amicus curiae* from the Legal Aid Panel to represent the case of the revision petitioner. The appeal shall be disposed of within two months from the date of receipt of cash bundle received from this Court.

13.The Appellate Court is directed to send communication to the Prison Authorities to produce the revision petitioner before that Court for verifying whether he has engaged Advocate or not.

27.09.2022

Internet : Yes/No
Internet : Yes/No

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To

- 1.The Principal Assistant Sessions Court,
Tirunelveli.
2. III Additional Sessions Judge,
Tirunelveli.
- 3.The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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