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Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2024
PRONOUNCED ON : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022
& Crl.M.P.Nos.10561/2023 & 3830/2024

Karuppasamy @ Muthu

... Petitioner in
Crl.RC.No.646/2023

Muruga Surya @ Murukku

... Petitioner in
Crl.RC.No.405/2023

Raj @ Surendar

... Petitioner in
Crl.RC.No.1685/2022

Vs.

State through
The Sub-Inspector of Police,
Paramathi Police Station,
Namakkal District.
Crime No.157/2021

... Respondent in
all Crl.RCs.

PRAYER in Crl.RC.No.646 of 2023: Criminal Revision Petition filed under
Sections 397 and 401 of Criminal Procedure Code, to set aside the judgment



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

in C.A.No.113 of 2021 dated 18.07.2022 by the Special Court for Trial of Cases registered under SC/ST(POA) Act, Namakkal confirmed by the Judicial Magistrate Court, Paramathi in C.C.No.8 of 2021 dated 31.03.2021 and call for the records and acquit the petitioner from all the charges.

PRAYER in Crl.RC.No.405 of 2023: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed in C.A.No.87 of 2021 dated 18.07.2022 on the file of the Special Court for Trial of Cases registered under SC/ST(POA) Act, Namakkal in C.C.No.8 of 2021 dated 31.03.2021 on the file of the Judicial Magistrate Court, Paramathi.

PRAYER in Crl.RC.No.1685 of 2022: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the judgment in C.A.No.113 of 2021 dated 18.07.2022 by the Special Court for Trial of Cases registered under SC/ST(POA) Act, Namakkal confirmed by the Judicial Magistrate Court, Paramathi in C.C.No.8 of 2021 dated 31.03.2021 and call for the records and acquit the petitioner from all the charges.

For Petitioner : Mr.N.Saravanan
in all Crl.RCs.

For Respondent : Mr.S.Raja Kumar
in all Crl.RCs. Additional Public Prosecutor



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Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

COMMON ORDER

The petitioner in Crl.RC.No.646 of 2023 is arrayed as A3, the petitioner in Crl.RC.No.405 of 2023 is arrayed as A1 and the petitioner in Crl.RC.No.1685 of 2022 is arrayed as A2.

2.These criminal revision petitions are filed by the petitioners/A1 to A3 challenging the conviction and sentence passed by the Trial Court in C.C.No.8 of 2021 by judgment dated 31.03.2021 wherein A1 was convicted for offence under Section 458 IPC and sentenced to undergo three years rigorous imprisonment, for offence under Section 342 IPC to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment, for offence under Section 380 IPC to undergo three years rigorous imprisonment and the sentence to run consecutively, A2 was convicted for offence under Section 458 IPC and sentenced to undergo three years rigorous imprisonment, for offence under Section 342 IPC to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment, for offence under Section 380 r/w. 34 IPC to undergo three years rigorous



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

imprisonment and the sentences to run consecutively, A3 was convicted for offence under Section 458 IPC and sentenced to undergo three years rigorous imprisonment, for offence under Section 342 IPC to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment, for offence under Section 380 IPC to undergo three years rigorous imprisonment and the sentences to run consecutively.

3. Aggrieved against the conviction and sentence passed by the Trial Court, A1 preferred an appeal in C.A.No.87 of 2021, A2 and A3 preferred an appeal in C.A.No.113 of 2021 before the Special Court for Trial of Case registered under SC/ST(POA) Act, Namakkal. The learned Sessions Judge by judgment dated 18.07.2022 dismissed the appeals confirming the conviction and sentence imposed by the Trial Court. Against which, the present criminal revision petitions filed.

4. For the sake of convenience, the petitioners are referred to as per their rankings in the Trial Court.



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5.The gist of the case is that on 26.02.2021 at about 4.15 a.m., the petitioners/A1 to A3 with an intention to commit theft trespassed into Sethukkal Mariamman Kovil, Paramathi, Namakkal District, assaulted the watchman/PW1, illegally detained him and kept him locked in a room. A2 was standing as guard to PW1. A1 and A3 broke opened the lock of the temple shrine and stolen the silver crown/MO1 and ½ sovereign Thali Potu/MO2, thereby committed the offence under Sections 458, 342, 380 and 380 r/w. 34 IPC. PW1 through his mobile informed PW5/trustee of the temple about the incident. PW5 called PW3/another trustee and informed PW4/hereditary poojari about the incident. All three reached the temple found the watchman locked inside the room, opened the door and PW1 narrated the incident. Thereafter, they lodged a complaint with PW7/Sub-Inspector of Police. Since PW1 was not conversant to write, PW4 wrote the complaint. PW7 registered FIR, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses, recorded their statements and handed over the investigation to PW8/Inspector of Police. On the same day at about 3.00 p.m., PW8 found the accused in a



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

suspicious manner with a bike near Karupannar temple. When they were questioned, they gave contradictory statements and thereafter they were arrested, gave confession, A1 produced MO1 and MO2 from the bike and all the accused produced before the Magistrate for remand and the properties were sent to the Court. On completion of investigation, charge sheet filed.

6.During trial, on the side of prosecution PW1 to PW8 examined, Ex.P1 to Ex.P9, MO1 and MO2 marked. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioners as stated above.

7.The contention of the learned counsel for the petitioners is that the Trial Court as well as the Lower Appellate Court failed to consider the major contradictions between the witnesses and the manner by which the petitioners falsely implicated in the above case. The Trial court based the conviction on wrongful assumption and presumption and not according to law. PW1/defacto complainant admits that he was locked inside the room at 4.15 a.m. in the early morning on 26.02.2021, at that time, he was in



possession of cellphone but he contacted PW5/trustee of the temple only at 5.30 a.m. and no explanation given as to why PW1 waited 1.15 hours to contact PW5. In this case, admittedly PW1 is the only eye witness and the other witnesses PW2 to PW5 informed by PW1 about the occurrence. PW1 in his complaint not given any details about the accused and how the identity of the accused was confirmed, no reason given. Admittedly, the petitioners are strangers to PW1 and no identification parade conducted. The evidence of PW8 is that he found three persons in a suspicious manner, enquired them, arrested them and recovery was made in the presence of PW5 and another witness. PW5 admits that he does not remember the registration number of the bike and further submits that PW8 recorded the confession statement of the accused, EX.P3 to Ex.P5 are computer typed. He would further submit that the confession statement is said to have been recorded in the road but no explanation found, from where the computer was brought and statements typed. All the documents in this case, namely, Ex.P2 to Ex.P7 and Ex.P9 were prepared in the Police Station to suit the case of the prosecution and the obliging witnesses signed the same in the Police Station, none of the documents prepared in the time and manner as projected. The



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

entire investigation was conducted in the Police Station, all the witnesses, namely, PW1 to PW6, are interested witnesses and no public or independent witnesses examined in this case. Further, the registration of FIR is at 8.00 p.m. though the occurrence is said to have taken place at 4.15 a.m. and the complaint was lodged at about 7.30 a.m. In this case, no officials from H.R.&C.E. Department examined to prove that MO1 and MO2 belongs to the temple and no records produced.

8.The learned counsel for the petitioner would further submit that the evidence of PW3 is that he opened the lock with the key available with him but it is projected that lock was broke opened using a iron rod. PW6, who is the witness for observation mahazar states that lock was in open condition but the evidence of PW1 is that the accused persons broke opened the lock using the iron rod. From the seizure mahazar, it is seen that lock was in open condition and had no marks of hammering or any mark of levering is found in the lock. Thus the prosecution failed to prove the case beyond all reasonable doubt but the Trial Court as well as the Sessions Court not considering these vital contradictions, convicted the petitioners. Further, the



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

WEB COPY

Trial Court without any evidence and materials referred to Crime No.159 of 2021 for the offence under Sections 392 and 397 IPC pending before Paramathi Police Station, Crime No.258 of 2021 for the offence under Sections 457 and 380 IPC pending before Velur Police Station against all the three accused. Further against A1 the Trial Court referred Crime No.150 of 2019 for the offence under Sections 379 IPC pending before Nilakottai Police Station, Crime No.61 of 2020 for the offence under Sections 394 and 397 IPC pending before Dharapuram Police Station, Crime No.965 of 2020 for the offence under Section 394 IPC pending before Alanganallur Police Station and Crime No.2715 of 2016 for the offence under Section 75 of Tamil Nadu City Police Act pending before Anna Nagar Police Station, Madurai. As against A2 and A3, the Trial Court referred Crime No.843 of 2020 for the offence under Section 379 IPC pending before Paramathi Police Station. This recording of previous cases is without any materials and none of the witnesses including the Police Personnel, namely, PW7 and PW8 stated anything about the previous cases and produced any materials. On what basis the Trial Court recorded the same is not known. Further, this fact weighed against the petitioners/accused and they were directed to undergo



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

sentence consecutively. Admittedly, neither of the accused were convicted in any of these cases nor charges were framed against them under Sections 211 and 236 Cr.P.C. and no questions put against them. Hence, the judgment passed by the Trial Court directing the sentences to run consecutively is not sustainable.

9.The learned Additional Public Prosecutor filed a counter and submitted that in this case PW1/watchman of Sethukkal Maraiamman Kovil, Paramathi, Namakkal District is the victim/defacto complainant who was assaulted by the accused/A1 to A3 and kept him locked in a room. Thereafter, A1 to A3 committed the offence of robbery of MO1 and MO2. He would submit that PW1 was under shock and only after confirming the accused had left the place, he called PW5/trustee of the temple and informed about the incident, hence there was a delay. Thereafter, PW5 immediately called PW3/another trustee of the temple. Since he was unable to be contacted, he went in person to his house to inform the same, PW2 was also informed about the incident. All the three reached the temple, found PW1 kept under lock in a room, door was opened and thereafter, PW1 narrated the



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

incident to PW2, PW3 and PW5, thereafter entered into the temple and found MO1 and MO2 missing, lodged a complaint with PW7/Sub-Inspector of Police, who registered a case, conducted investigation, recorded the statement of witnesses, prepared observation mahazar and rough sketch and handed over the investigation to PW8/Inspector of Police. On the same day i.e., 26.02.2021 at about 3.00 p.m. PW8 found the accused in a suspicious manner near Karupannar temple with Pulsar bike bearing registration No.TN-57-BD-4222. Since the bike registration number denoted different District, there was some suspicion, the accused were questioned and they gave contradictory statements. Thereafter, the accused persons were arrested in the presence of PW5 and another person. The accused persons gave confession admitting the commission of offence and produced MO1 and MO2 from the bike. On completion of investigation, charge sheet filed. During the trial, PW1 identified the accused who committed the offence. PW5 identifies the accused who gave confession statements, Ex.P3 to Ex.P5 and thereafter, on their confession MO1 and MO2 recovered and produced before the Court. On conclusion of trial, the Trial Court convicted and sentenced the petitioners as stated above. The Sessions Court confirmed the



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

conviction and sentence imposed by the Trial Court by dismissing the appeals filed by the petitioners/A1 to A3. Hence, he prayed for dismissal of these petitions.

10.Considering the submissions made and on perusal of the materials, it is seen that in this case, A1 and A2 hail from Madurai District and A3 hails from Virudhunagar District, they have no reason to be present in Paramathi, Namakkal District. In this case, PW1/watchman identified A1 to A3 who assaulted and locked him in a room. Admittedly, MO1 and MO2 are temple properties, seized from the accused in the presence of PW5. Theft was committed at the early hours on 26.02.2021 at about 4.15 a.m. and at about 3.00 p.m., the accused persons were questioned, since they gave contradictory statements, they were arrested and seizure made. The accused persons could not give any reason or explanation for having possession of MO1 and MO2. The Trial Court on the evidence of PW1 to PW5 and on the materials had rightly convicted the petitioners which was confirmed by the Lower Appellate Court. In this case, the Trial Court took into consideration the cases pending against the accused at various Police Stations, not



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

WEB COPY

supported with any evidence and materials. The Trial Court placing reliance on these cases in the absence of any evidence and materials is not proper. It is seen that the previous cases against the petitioners had weighed very much with the Trial Court in convicting the petitioners and passing consecutive sentence. The petitioners not charged or put on notice and questioned with regard to the previous cases and hence, this Court finds that the Trial Court directing the sentences to run consecutively is not proper and sustainable. Hence, sentence to run consecutively is set aside. Further, A1 studied upto B.B.A and was doing computer designing work, A2 completed D.Pharm and A3 a skilled labour. In view of the same, the conviction by the Trial Court which was confirmed by the Lower Appellate Court is hereby confirmed. A1 in prison as under trial prisoner from 27.02.2021 to 31.03.2021 and after conviction he is in prison from 18.07.2021 to till date. A2 in prison as under trial prisoner from 27.02.2021 to 31.03.2021 and from 18.07.2021 till bail was granted by this Court on 10.01.2023. A3 in prison as under trial prisoner from 27.02.2021 to 31.03.2021 and after conviction he is in prison from 18.07.2021 to till date. Hence, the sentence of imprisonment is modified to that of period already undergone.



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

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11. Accordingly, the criminal revision petitions stand partly allowed.

Consequently, connected miscellaneous petition is closed.

04.06.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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WEB COPY



Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

To

- 1.The Sub-Inspector of Police,
Paramathi Police Station,
Namakkal District.
- 2.The Sessions Judge,
Special Court for Trial of Cases
registered under SC/ST(POA) Act,
Namakkal.
- 3.The Judicial Magistrate,
Paramathi.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Superintendent,
Central Prison, Coimbatore.



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Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

M.NIRMAL KUMAR, J.

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Pre-delivery order made in

Crl.R.C.Nos.646 & 405 of 2023
and 1685 of 2022

04.06.2024