



Bail Slip

The first appellant in CrI.A.No.57/08 Viz., Deepak @ Deepak Kumar, aged about 20 years, S/O.Ram Vilas Mandal (in M.P.No.2/08 dated 16.09.2008) and the second and third appellants in CrI.A.No.57/08 Viz., Saroj Kumar Mandal aged 21 years, S/O R.Rajendar Mandal, and suthish Kumar, aged 20 years, S/O Sivalal Doss (in M.P.No.1/08 dated 1.7.08) was directed to be released on bail as per orders dated 16.9.08 in M.P.No.2/08 in CrI.A.No.57/08 and 1.7.08 in M.P.No.1/08 in CrI.A.No.57/08 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.57 of 2008
and M.P.Nos.3/2008 and 2/2009

1.Deepak @ Deepak Kumar
2.Saroj Kumar Mandal
3.Sathish Kumar

... Appellants/Accused

vs.

State by Inspector of Police
F2, Egmore Police Station
Chennai-600 008

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment passed in S.C.No.282/2007, dated 30.11.2007 on the file of Additional District and Sessions Court, [Fast Track Court No.III], Chennai.

For appellants : Mr.P.Pugalenth

For respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor

JUDGMENT

The convictions and sentences passed in Sessions Case No.282/2007 by the Additional District and Sessions Court [Fast Track Court No.III], Chennai are being challenged in the present Criminal Appeal.



2. The case of the prosecution is that on 24.04.2007, at about 4 p.m., while the wife of the defacto complainant, Maya Israni has been in the house, their servant by name Deepak @ Deepak Kumar and his two friends have trespassed into the house of the defacto complainant and threatened her and subsequently, gagged her mouth, tied her hands and thereafter, they obtained Bureau key from her and subsequently opened the same and looted a cash of Rs.15,20,600/- and other valuables. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.795/2007. The complaint given by him has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.6 has taken up investigation, examined connected witnesses and subsequently recovered all the articles in the presence of witness by name Premkumar. After completing investigation, he laid a final report on the file of 14th Metropolitan Magistrate, Egmore, Chennai and the same has been taken on file in P.R.C.No.107/2007.

4. The 14th Metropolitan Magistrate, Egmore, Chennai, after considering the facts that the offences alleged to have been committed by all the accused are triable by sessions court has committed the case to the court of sessions, Chennai Division and the same has been taken on file in Sessions Case No.282/2007 and subsequently, made over the case to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed 1st charge against all the accused under Section 452; 2nd charge under Section 506(2); 3rd charge under Section 397 r/w.34 of the IPC and the same have been read over and explained to them and the accused have denied the charges and claimed to be tried.

6. On the side of the Prosecution, P.Ws.1 to 6 have been examined, Exhibits 1 to 10 have been marked and Material Objects 1 to 30 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, Exhibits 1 to 6 have been marked.



8. The trial court, after hearing arguments of both sides and after considering the available evidence on record has found all the accused guilty under Section 452 of the IPC and sentenced them to undergo 2 years rigorous imprisonment; they have been found guilty 506(2) of the IPC and sentenced them to undergo 2 years rigorous imprisonment. Further, they have been found guilty under Section 392 of the IPC and sentenced to undergo 7 years rigorous imprisonment and they have also been found guilty under Section 397 r/w.34 of the IPC and sentenced to undergo 10 years rigorous imprisonment. The trial court has directed that all the sentences imposed against all the accused shall run concurrently. Against the convictions and sentences, the present Criminal Appeal has been preferred at the instance of the accused as appellants.

9. The consistent case put forth on the side of the prosecution is that on 24.04.2007 at about 4 p.m., while the wife of the defacto complainant has been in the house, the accused have trespassed and threatened her and subsequently gagged her mouth by using a cloth and after obtaining Bureau key from her, they looted a sum of Rs.15,20,600/- and other valuables.

10. The defacto complainant has been examined as P.W.1 and he speaks about Ex.P.1, complaint. The only eye witness, who is the wife of the defacto complainant, has been examined as P.W.2 and she narrated the entire occurrence alleged to have been committed by all the accused. The recovery witness B.S.Premkumar has been examined as P.W.3. The Investigating Officer has been examined as P.W.6. The trial court, after considering the evidence given by P.Ws.1 to 3 and 6, has invited the convictions and sentences against all the accused as mentioned in the judgment.

11. The learned counsel appearing for the appellants/accused has raised the following points to set aside the conviction and sentence passed by the trial court:-

(a) The statements recorded under Section 161(3) from P.W.2 and other witnesses have reached court after lapse of 40 days;

(b) The wife of the defacto complainant viz., P.W.2 has not given proper identification with regard to accused 2 and 3 and her specific evidence is that she and her husband have seen them in the Police Station and before the said occurrence, the photographs of all the accused have been published in some newspapers.



(c) The First Information Report has reached the court the next day at about 11.30.

(d) The specific evidence given by P.W.3, recovery witness is that there is no correction in Ex.P.4, whereas in Ex.D.5, it is otherwise;

(e) No independent witness have been examined with regard to occurrence as well as recovery of articles.

12. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the entire occurrence has taken place inside the house of P.Ws.1 and 2 and therefore, the occurrence cannot be seen by outsiders. Further, the specific evidence given by P.W.2 is that the offences have been committed by her servant (A1) and his two friends and there is no specific denial on the part of the accused to the effect that prior to occurrence, P.W.2 has not known the accused 2 and 3 and further in the instant case, apart from recovery of articles, on the basis of the confession given by 1st accused, some more evidence is available and the trial court, after considering the overall evidence available on record has rightly invited the convictions and sentences against the accused and the same need not be interfered with.

13. For considering the rival submissions made on either side, the court has to necessarily look into Ex.P.1 and evidence of connected witnesses.

14. In Ex.P.1, it has been clearly mentioned about the name of the 1st accused. Further in Ex.P.1, it is mentioned to the effect that the first accused and his two friends have committed the crime. The specific evidence given by P.W.2 is that the offences have been committed by the 1st accused and his friends viz., Accused Nos.2 and 3. In fact, this court groped the entire evidence given by P.W.2 and suggestion has not been put to her to the effect that she has not known Accused Nos.2 and 3 prior to the occurrence. Therefore, in the instant case, proper identification is available on the side of the prosecution with regard to Accused Nos.2 and 3. Simply because the photographs of the accused are published in newspapers, the court cannot come to a conclusion that P.Ws.1 and 2 have not known about accused 2 and 3. It has already been pointed out that even a suggestion has not been put to P.W.2 with regard to Accused Nos.2 and 3 on the side of the accused to the effect that she has not known the accused 2 and 3 prior to the occurrence.



15. It is seen from the records that statements recorded under Section 161(3) of the Criminal Procedure code, 1973 have reached the court very belatedly. Likewise, the First Information Report has reached the court on 25.04.2007 at about 11.30. It is a settled principle of law that mere delay in sending statements or First Information Report to court does not itself cannot affect the case of the prosecution provided on the side of the prosecution, sufficient materials are available.

16. In the instant case, the specific evidence given by P.W.2 is that the offences have been committed by all the accused. Apart from her evidence, the prosecution has examined P.W.3 and his specific evidence is that the 1st accused has given a confession and in pursuance of the same, all the Material Objects have been recovered in his presence. Therefore, the contention put forth on the side of the appellants/accused with regard to delay cannot be entertained.

17. It is seen from the records that the entire occurrence has taken place inside the house of P.W.1 and 2. Since the entire occurrence has taken place inside the house of P.Ws.1 and 2, no occasion has arisen on the part of the third persons to witness the occurrence.

18. Further, it is seen from the records that recovery has been done near a Factory and no independent witness has been examined with regard to the said aspect on the side of the prosecution. Even though no independent witness has been examined on the side of the prosecution with regard to said aspect, the court cannot belittle the evidence given by P.W.3. Therefore, viewing from any angle, the contentions put forth on the side of the appellants/accused are not factually and legally sustainable.

19. The residual contention put forth on the side of the appellants/accused is that in Ex.P.4, it has been clearly mentioned as Morning 12.30 hours, whereas in Ex.D.5, it is mentioned early morning 12.30 hours and such discrepancy is nothing but dereliction on the part of the Investigating Officer and the same does not militate the case of the prosecution.

20. The specific evidence of P.W.2 is, in the place of occurrence, all the accused are present and they have done all the offences mentioned in the charges. Apart from her evidence, in the instant case, on the basis of confession given by first



accused, acceptable recovery of articles has been made. Under the said circumstances, the court can very well come to a conclusion that all the accused have committed the offences mentioned in the charges.

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21. The trial court, after considering the evidence, has rightly invited the convictions and sentences against the appellants/accused. In view of the discussion made earlier, this court has not found any force in the contentions put forth on the side of the appellants/accused and altogether the present criminal appeal deserves to be dismissed.

In fine, this Criminal appeal is dismissed. The convictions and sentences passed by the trial court in sessions Case No.282/2007 are confirmed. If the appellants/accused are not in duress, the trial court is directed to take appropriate steps so as to immure them in prison. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The Metropolitan Magistrate,
No.XIV, Egmore, Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai (for information)
- 3.The Additional District and Sessions Judge,
Fast Track Court No.III, Chennai.
- 4.The Superintendent,
Central Prison,
Puzhal,
Chennai.
- 5.The Public Prosecutor,
High Court,
Madras.



6.The Inspector Of Police,
F2 Egmore Police Station,
Chennai-8.

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+5cc to M/S. P.Pugalendhi, Advocate, S.R.No.65047

Crl.A.No.57 of 2008

ppa (CO)
srg (08/01/2016)