

BAIL SLIP

The Appellants / Accused namely

1. Azhagappa Padayachi
2. Pandurangan
3. Veerasamy, were directed to be released on Bail in and by the order at this court dated 02.01.2012 made in CrI.MP.No.1 of 2011 in CrI.RC.No.1805 of 2011 on the file at High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.7.2015

CORAM

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1805 of 2011

1. Azhagappa Padayachi
2. Pandurangan
3. Veerasamy

....Petitioners/Accused
1 to 3

Versus

State represented by its
Deputy Superintendent of Police
C.B.C.I.D. Villupuram District
Thirunavalur Police Station
(Crime No.724 of 1996)

.... Respondent/Complainant

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to set aside the judgment of the learned Judicial Magistrate No.II, Ulundurpet in C.C.No.163 of 1999 dated 23.10.2003 and confirmed by the learned Principal District and Sessions Judge, Villupuram in C.A.No.93 of 2003 dated 14.11.2011 and acquit the petitioners.

For Petitioners : Mr. R.Karthikeyan

For Respondent : Mr. V.Arul
Government Advocate (CrI.side)

ORDER

The petitioners, who were arrayed as accused in C.C. No.163 of 1999 on the file of the learned Judicial Magistrate No.II, Ulundurpet, were tried for the offence punishable under Section 120 B read with 423, 467, 468, 471 and 506 (1) of IPC. After trial, the trial court convicted the petitioners for the offences under Section 467, 468, 471, 120 (B) read with 467, 120(B) read with 468 and 120 (B) read with 471 of IPC to various terms of imprisonment by judgment dated 23.10.2003. Aggrieved over the said judgment of the trial court, the petitioners filed an appeal before the appellate Court. The appellate Court confirmed the conviction and sentence of the trial Court. As against the same, the present Criminal Revision Case is filed.

2. The facts of the case, as could be unfolded from the records, is that one Vijayanarayanan was enjoying the property to an extent of 6.51 acre of land based on the deed of settlement executed by Lakshmi Ammal, the grandmother of the said Vijayanarayanan. Since the said Vijayanarayanan was minor at that time, his father, Nandhakumar was shown as guardian to look after the affairs. Out of 6.51 acre of land, 3 acre of land was sold by the said Nandhakumar to one Kumararani @ Rani for valuable consideration. In respect of the remaining 3.51 acre of land, the sale deed was executed in favour of Azhagappan, after receipt of the advance amount of Rs.1,40,000/-. However, since the balance amount of Rs.1,35,000 /- was not paid as per the agreement, the sale deed was not registered. Without repaying the advance amount received, the said Nandhakumar, executed another sale deed in favour of one Kamalakannan by receiving Rs.50,000/-. Since the said Nandhakumar was forced to repay the advance amount back to Azhagappan, he thought of selling the remaining extent of land to Kannan. On 22.2.1996, the sale deed was executed in favour of Kamalakannan in respect of 1 acre 51 cents of land. However, the sale consideration was not paid to Nandhakumar by the said Kannan. As an outcome of meeting of Panchayatdars, Nandhakumar and kannan came to understand that regarding that portion of land there was already a sale deed found in the name of the Azhagappan registered on 29.12.1995. They also came to understand that the signature of Vijayanarayanan was forged and Azhagappan and his companion conspired together and registered the sale deed as if it was executed by Vijayanarayanan. A complaint was also lodged to the police station. A core allegation of the complaint is that as Azhagappan was not financially prepared to purchase the land as agreed upon either for want of money or due to some other reasons, delayed the execution of sale deed but later on found to have forged the signature of Vijayanarayanan and his father Nandhakumar by impersonating some other persons and accordingly, the signature of Vijayanarayanan and Nandhakumar have been deliberately forged in the sale deed now found in favour of Azhagappan. After investigation,

final report has been filed against the accused before the Judicial Magistrate No.II, Ulundurpet.

3. After due trial, the trial Court convicted the accused and sentenced to various terms of imprisonment by judgment dated 23.10.2003 as against which Criminal Appeal No.93 of 2003 was filed and the same was dismissed by judgment dated 14.11.2011 by confirming the judgment of the trial Court. Aggrieved against the said judgment, the petitioners are before this Court.

4. When the matter is taken up today, the learned counsel for the petitioners submitted that the second accused / second petitioner died as early as on 04.4.2010, i.e even before the judgment of the first appellate Court. The learned counsel for the petitioners also produced the death certificate before this Court.

5. It is the submission of the learned counsel for the petitioners that the Courts below failed to take into consideration the fact that since the complaint has been given with regard to the forgery committed in the sale deed, the disputed signature has been sent to Forensic Science for getting expert opinion. The Expert has compared the documents with the specimen signatures obtained from P.W.1. Though in the evidence, P.W.1 has stated that his specimen signature is found in certain documents, those signatures were not marked in the Court so as to enable the accused to cross examine P.W.1. Moreover, the handwriting expert has also categorically stated that he is not in a position to say that the specimen signatures obtained from P.W.1 can be compared with the disputed signature in the sale deed. In fact, the expert opinion has stated that disputed signature and the specimen signature are not same. If that is the case, there is no question of blaming A1 and A3. Insofar as the forgery of signature is concerned, expert has only stated that there is a difference in the signature and the signature is not same as that of the accused. Therefore, benefit of doubt has to be given to the accused especially when the other accused A4 to A7 have been acquitted by the Courts below. Therefore, the learned counsel would contend that the entire prosecution case is vitiated.

7. The learned Public Prosecutor would contend that once the specimen signature has been obtained and the same has been compared with the signature found in the alleged document, the presumption is that the forgery must have been done by the accused. Further, expert has not marked either the specimen signature or any other documents through which it is compared. The courts below analysed the entire evidence available on record and has rightly come to the conclusion that the accused had committed the offence. Therefore, the order passed by the courts below need not be interfered with.

8. I heard the learned counsel for both sides and perused the materials available on record.

9. The main ground of attack raised by the learned counsel for the petitioners is that as the disputed documents have been sent for comparison and the expert had opined that the signature found in the alleged document is not of the accused, the Court below ought to have given the benefit of doubt to these accused as given to the other accused.

10. Admittedly, specimen signatures of PW1, PW2 and A1 to A6 were sent along with admitted signatures in Ex.P1 and disputed signatures in Exs.P2 and P.3 to the Forensic Science Laboratory, Chennai and P.W.24, handwriting expert, after comparing the said signatures, had opined that he was not able to give any definite opinion with regard to the forgery of Exs.P2 and P.3. Even though the other documents were marked as Exhibits, these particular documents, where the specimen signatures of P.W.1 were found and which are the root cause for this case, were not marked whereas the specimen signature of P.W.2 and others have been marked as Exhibits. Coupled with the fact that Expert had opined that the signatures are not tallied with the admitted signatures. If that is the case, definitely, the benefit of doubt has to be given to these accused as has been given to the other accused. More so, for awarding conviction, offence against the accused should be proved beyond reasonable doubt. Therefore, the presumption that the accused could have signed cannot be taken into consideration.

11. Accordingly, the conviction and sentence imposed on the petitioners/accused 1 and 3 by the courts below are set aside. The Criminal Revision Case is allowed. The surety bond, if any, executed by the petitioners/accused shall stand cancelled. Fine amount, if any, paid by the petitioners/accused is ordered to be refunded. Since the second petitioner / second accused died even before the judgment of the first appellate Court, the charges as against him shall stand abated. Even otherwise, this Court, in this revision case, has now acquitted all the accused of all the charges framed against them.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Ulundurpet

2. The Chief Judicial Magistrate,
Villupuram
3. The Principal District and Sessions Judge,
Villupuram
4. The Public Prosecutor,
High Court, Madras.
5. The Deputy Superintendent of Police,
CBCID Villupuram District,
Thirunavalur Police Station.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.38938

KM(CO)
CA(14/08/2015)

Cr1.RC No. 1805 of 2011



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