

Bail Slip

The accused, Viz, Venkatesan having been released on bail as per order of this court dated 30/07/2009 and made in MP.No. 1 of 2009 in CrI.A.No.391 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.391 of 2008

Venkatesan

... Appellant

vs.

The State

Rep. by the Inspector of Police,  
Sipcot Police Station,  
Vellore District  
(Crime No.289 of 2006)

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the entire records in connection with S.C.No.273 of 2007, on the file of the learned Additional District and Sessions Judge, (Fast Track Court-II, Ranipet), Vellore District and set aside the judgment dated 1.11.2007.

For appellant : Mr.E.Kannadasan

For Respondent : Mr.P.Govindarajan,  
Additional Public Prosecutor.

JUDGMENT

This criminal appeal has been directed against the conviction and sentence dated 1.11.2007 passed in Sessions Case No.273 of 2007, by the Additional District and Sessions Judge, Ranipet (Fast Track Court No.II) Ranipet.

2. The case of the prosecution is that on 29.09.2006 at about 6.00 a.m, while the defacto complainant has been in her house, the accused has approached her under the guise of selling rice and subsequently asked her to bring water and at that time, he has shown a knife and avulsed Cell Phone, ear stud and anklet and also Rs.500/-. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.289 of 2006. The complaint given by her has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer, viz., P.W.7 has conducted investigation, examined connected witnesses, arrested the accused and on the basis of his

confession, recovered all material objects and after completing investigation laid a final report on the file of the Judicial Magistrate No.II, Wallajapet and the same has been taken on file in P.R.C.No.4 of 2007.

4. The Judicial Magistrate, No.II, Wallajapet, after considering the facts that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Vellore Division and the same has been taken on file in Sessions Case No.273 of 2007 and subsequently, made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed a charge against the accused under Section 397 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 7 have been examined and Exs.P1 to P11 and M.Os.1 to 5 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial Court, after hearing arguments of both sides and also upon perusing the relevant evidence available on record, has found the accused guilty under Section 397 of the Indian Penal Code and sentenced him to undergo seven years Rigorous Imprisonment and also imposed a fine of Rs.1000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The learned counsel appearing for the appellant/accused has contended that in the instant case, the specific evidence given by the defacto complainant (P.W.1) is that on the date of occurrence, she identified all the material objects in the police station and therefore, the police have shown the accused to her and under the said circumstances, the identification done by P.W.2 is not proper and to that extent, the evidence given by the defacto complainant cannot be accepted and further, a slight variation in weight is found place in M.O.1 and the trial Court, without considering the vital infirmities found on the side of the prosecution, has erroneously invited conviction and sentence against the appellant/accused and the same are liable to be set aside.

10. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the defacto complainant has been examined as P.W.1 and her specific evidence is that in the place of occurrence the accused has avulsed M.Os.1 to 5 from her and on the date of occurrence itself, she has identified all those things in the police station, but she has not seen the accused there and subsequently, she identified the accused in the identification parade conducted by P.W.2 and further on the side of the prosecution enormous evidence is available with regard to confession recovery of MOs.1 to 5 and the trial Court, after considering the replete evidence available on record, has rightly found the accused guilty under Section 397 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are not liable to be set aside.

11. On the basis of the divergent submissions made on either side, the Court has to analyse as to whether the prosecution has established the guilt of the accused punishable under Section 397 of the Indian Penal Code, even without a speck of doubt?

12. The defacto complainant has been examined as P.W.1 and in fact, she has given picturesque evidence to the effect that in the place of occurrence the accused avulsed M.Os.1 to 5 from her and on the date of occurrence itself she has identified all those material objects, but she has not seen the accused. Further she deposed to the effect that after some time, she identified the accused in the identification parade conducted by P.W.2.

13. Apart from the evidence given by P.W.1, P.W.5 has given clear evidence to the effect that the accused himself has voluntarily given a confession statement and accordingly, M.Os.1 to 5 have been recovered.

14. Since P.W.1 has given clear evidence to the effect that the accused has committed the offence punishable under Section 397 of the Indian Penal Code and apart from her evidence, in the instant case, confession recovery of M.Os.1 to 5 have also been clearly proved, this Court is of the view that the contentions put forth on the side of the appellant/accused cannot be accepted.

15. Further, a mere variation in weight of M.O.1 would not militate the case of prosecution. Even at the risk of repetition, this Court would like to point out that in the instant case enormous evidence is available so as to prove the guilt of the accused under Section 397 of the Indian Penal Code. The trial Court, after considering the over all available

evidence on record, has rightly found the accused guilty under Section 397 of the Indian Penal Code. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant and altogether the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The judgment passed in S.C.No.273 of 2007, by the Additional District and Sessions Judge, (Fast Track Court-II, Ranipet) Vellore District, is confirmed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To :

1. The Judicial Magistrate,  
No.II Walajapet.
2. The Chief Judicial Magistrate  
Vellore(for information)
3. The Additional District and sessions Judge,  
(Fast Track Court -II Ranipet), Vellore District
4. The Superintendent, central prison,Vellore.
5. The Inspector of police  
Sipcot police station  
vellore district.
6. The Public Prosecutor,  
High Court, Madras

+1 cc to Mr.E.Kannadasan, Advocate(sr.56242)

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Lrs(co)  
cp 2/11/2015