

BAIL SLIP

The appellants/Accused 1 to 4 in Criminal Appeal No.515/2007 viz

- (1) Murugan @ Duraimurugan
S/o. Duraisamy
- (2) Manikandan
S/o.Arumugam
- (3) Veecharuva @ Balasubramanian
S/o.Ganesan
- (4) Thangarasu
S/o.Govindan

were released on bail as per order of this Court dated 20/7/2007 made in MP.No.1 of 2007 in CrI.A.No.515 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.515 of 2007

Date of Reserving the Judgment	Date of Pronouncing the Judgment
09.02.2015	12.02.2015

- 1.Murugan @ Duraimurugan
- 2.Manikandan
- 3.Veecharuva @ Balasubramanian
- 4.Thangarasu

.. Appellants/Accused 1 to 4

सत्यमेव जयते vs.

State represented by
Inspector of Police
Sirupakkam Police Station
Cuddalore District.
(Crime No.16/2005)

.. Respondent

Prayer:Criminal appeals filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence dated 22.05.2007 made in S.C.No.39 of 2007 on the file of the Additional District Sessions Judge (Fast Track Court No.III), Virudhachalam.

For Appellants : Mr.G.K.Ilanthiraiyan,
for M/s.Sai Bharath and Ilan

For Respondent : Mr.V.Arul, G.A.(Cr1. Side)

J U D G M E N T

This Criminal Appeal arises out of the judgment of conviction and sentence dated 22.05.2007 made in S.C.No.39 of 2007 on the file of the Additional District Judge (Fast Track Court No.III), Virudhachalam, whereby the appellants/accused 1 to 4 are convicted and sentenced as follows:

Name of the Accused	Offence under Section	Conviction and sentence
A1/Murugan Duraimurugan A2/Manikandan A3/Veecharuva @ Balasubramanian A4/Thangarasu	@ 341 IPC	To undergo Simple Imprisonment for one month
A1/Murugan Duraimurugan	@ 392 IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default in payment to undergo rigorous imprisonment for six months.
A2/Manikandan A3/Veecharuva @ Balasubramanian A4/Thangarasu	392 r/w 34 IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default in payment to undergo rigorous imprisonment for six months.
A1/Murugan Duraimurugan A2/Manikandan A4/Thangarasu	@ 506 (ii) IPC	To undergo rigorous imprisonment for two years

The sentences awarded to the accused are ordered to run concurrently

and set off was also ordered under Section 428 Cr.P.C.

2.The case of the prosecution is as follows:

(a) P.W.1/Veeramani, who was residing in Attur, Salem District worked as Supervisor in Hatsun Agro Product Ltd., He used to make payments to all the Milk suppliers at the end of every week. On 09.04.2005 at about 2.30 p.m, P.W.1/Veeramani proceeded in a van to make payments to all the Milk Centres after receiving Rs.91,929/- from P.W.5/Durairaj, Purchase Officer at Hatsun Company along with the driver. P.W.2/Velumani and the cleaner, Kamaraj. At that time, P.W.7/Sekar, who was incharge of one of the Milk Centres, got his payment from P.W.1 in the office itself which amounts to Rs.3432.75. On the way, P.W.1 settled a sum of Rs.2889/- to Nainarpalayam Centre Incharge and proceeded to settle the other Milk Centres with the balance cash of Rs.85,608/-. When P.W.1 was passing through S.Mettur village, on the left side of the main road in front of a Milestone bearing 4 k.ms, as there was a pit in the small culvert the driver of the Van, P.W.2 drove the Van slowly. At that time, in the opposite direction four persons were standing with two vehicles, viz., one black color Yamaha without number plate and one red colour TVS Suzuki. Among those persons, three persons had sticks and one person had a knife. The accused persons struck off the front glass with knife and one person pointed a knife at the neck of the driver of the Van, P.W.2 and one another person climbed on the side of the cleaner and one another person threatened P.W.1 to give the money. When P.W.1 refused to give the money, the accused persons placed the knife at his neck and took away Rs.85,608/- kept under his legs. Then the accused persons sped away from the scene of occurrence in the motorcycles. PW.3/Subramani, who was working in his field along with his brother and others, on hearing the commotion rusehd to the place of occurrence. Then, P.W.1, P.W.2 and the cleaner went to Mangalore and from there, P.W.1 informed his Officer, P.W.5/Durairaj through Phone about the alleged occurrence. Thereafter, P.W.1 lodged a complaint in Sirupakkam Police Station.

(b) P.W.15/Liyakath Ali, Head Constable, Sirupakkam Police Station, on receiving complaint from P.W.1 registered a case in Crime No.16/2005 under Section 392 IPC and prepared the printed Ex.P.16/FIR. Then, he forwarded the copy of the printed FIR to Inspector of Police, Veppur for further investigation and the original copy of FIR to the Court.

(c) P.W.16/Duraisamy, Inspector of Police, Veppur Circle, on receiving the printed FIR in Crime No.16 of 2005 from Sirupakkam Police Station took up the case for investigation. He went to the place of occurrence in Sirupakkam-Mangalore road, S.Mettur village and prepared the Observation Mahazar/Ex.P.2 in the presence of the witnesses Subramani/P.W.3 and Chinnadurai. Then, he drew the rough sketch, which is marked as Ex.P.17. Thereafter, he examined the

witnesses, namely, Veeramani/P.W.1, Velumani/P.W.2, Kamaraj, Mani, Subramani/P.W.3, Muthusamy, Govindaraj/P.W.4, Durairaj/P.W.5, Jayaprakash/P.W.6, Sekar/P.W.7, Arumugam/P.W.8 and Ramamoorthy/P.W.9 and recorded their statements.

(d) P.W.17/Isaiyazhagan, Inspector of Police, who was the successor of P.W.16 took up the case for further investigation on 20.08.2005. During the course of investigation, on 26.07.2008 at 16.00 hours, he found the accused persons 1 to 4 standing with two suit cases and he enquired them. At that time, the Accused No.1/Murugan voluntarily gave confession statement which was recorded in the presence of P.W.12/Ananth and P.W.13/Karthikeyan. Thereafter, he enquired the Accused No.2/Manikandan, Accused No.3/Veecharuval @ Balasubramanian and Accused No.4/Thangarasu and recorded his confession statement in the presence of same witnesses. P.W.17 also seized the suit cases M.O.4 and M.O.5 containing drilling machines, drilling rods and wires in the presence of same witnesses, P.W.12 and P.W.13 and prepared the seizure mahazar which is marked as Ex.P.18.

(e) On 27.07.2006 at 10.30 a.m. on identification by the accused persons, P.W.17 seized M.O.1 to M.O.3, namely, single pattern chain and ring from P.W.10/Madhusoodhnan, owner of Sastha Pawn Shop at Kallakurichi in the presence of same witnesses, viz., P.W.12 and P.W.13. Then he prepared the seizure mahazar, which is marked as Ex.P.19. Thereafter, he recorded the statements of witnesses, Kamaraj, Seenu, Mani, Subramanian, Muthusamy, Govindaraj and also recorded the statements of witnesses Ananth/P.W.12, Karthikeyan/P.W.13 and Madhusoodhnan/P.W.10. Then, he sent the accused persons and the properties seized to the Court for remand.

(f) On 04.08.2006, P.W.17 sent a request to the learned Judicial Magistrate, Thittakudi, to conduct identification parade. Based on the request of P.W.17/Isaiyazhagan, Inspector of Police P.W.14/Tmt.P.Selvamuthukumari, learned District Munsif cum Judicial Magistrate, Thittakudi, conducted the identification parade on 24.08.2006 and the report was marked as Ex.P.15.

(g) P.W.17 examined the witnesses and recorded their statements and after completing the investigation, filed a charge sheet against the accused for the offence under Section 341, 392 r/w. 397, 506(ii) r/w. 34 IPC.

3. The Trial Court placed the incriminating evidence before the accused persons under Section 313(1)(b) of Cr.P.C. and the accused denied the same in toto. On the side of the defence, Ex.D.1 to Ex.D.4 were marked and no witness was examined. After considering the oral and documentary evidence on the side of the prosecution, the trial Court convicted and sentenced the accused persons as stated above.

4. Challenging the judgment of conviction and sentence passed by

the Trial Court, the appellants/accused A1/Murugan @ Duraimurugan, A2/Manikandan, A3/Veecharuva @ Balasubramanian and A4/Thangarasu have preferred the present appeal.

5. The learned counsel appearing for the appellants would raise the following points:

(a) During the Identification parade, P.W.1/Veeramani has identified only the accused A1/Murugan @ Duraimurugan and A4/Thangarasu and only P.W.2/Velumani has identified all the accused A1 to A4. After the identification parade, the accused persons had intimated to P.W.14/Selvamuthukumari, learned Judicial Magistrate that they were shown to the witnesses at the Police Station.

(b) P.W.3/Subramani and P.W.4/Govindaraj, who are alleged to be the eyewitnesses had identified the accused persons only in the police station.

(c) The vehicle/van has not been seized.

(d) The evidence of P.W.16/Duraisamy is not reliable because P.W.15/Liyakath Ali has not seized the vehicle, but P.W.16/Duraisamy in his evidence has stated that he has sent the vehicle for Motor Vehicle examination but has not received the report.

(e) Though the case of the prosecution is that the material objects have been seized on the basis of confession, the signatures of P.W.12/Ananth and P.W.13/Karthikeyan who were alleged to be the attestors of the confession alone have been marked.

(f) There is no evidence to show that only out of the money looted from P.W.1 and P.W.2, the accused persons had purchased the material objects viz., M.O.1/Gold Chain, M.O.2/Gold Ring and M.O.3/Gold Ring.

(g) Though the alleged occurrence took place on 09.04.2005, the accused persons who are cousin brothers were arrested only on 26.07.2006, nearly after a gap of 1¼ years. A1/Murugan @ Duraimurugan and A4/Thangarasu are natives of Sirupakkam Village.

(h) In Ex.P.18/Mahazar, though the name of one Kannan, s/o.Vaithiyalingam has been mentioned, nothing more has been stated about the said person.

(i) The motorcycles alleged to have been used for the commission of the offence has not been seized.

The Trial Court without considering all the above aspects have convicted and sentenced the accused. Thus, the learned counsel for the appellants prayed for allowing of the appeal.

6. Resisting the same, the learned Government Advocate (Crl. Side) appearing on behalf of the respondent would submit that the Ex.P.15/Identification parade report given by P.W.14/Selvamuthukumari, learned Judicial Magistrate who conducted the identification parade, would show that P.W.1/Veeramani has identified the accused A1/Murugan @ Duraimurugan and A4/Thangarasu, while P.W.2/Velumani had identified all the accused viz., A1/Murugan @ Duraimurugan, A2/Manikandan, A3/Veecharuva @ Balasubramanian and A4/Thangarasu. So, the accused persons were clearly identified. The learned Government Advocate would further submit that the non-recovery of the vehicle alleged to have been used for the commission of the offence is not fatal to the case of the prosecution. So, he would submit that the Trial Court has considered all the aspects in proper perspective and convicted the accused. Hence, he prayed for the dismissal of the appeal.

7. Considered the rival submissions made by both sides and perused the typed set of papers.

8. Now this Court has to decide whether the conviction and sentence passed against these accused is sustainable ?

It is the case of the prosecution that on 09.04.2005 at 3.30 P.M, when P.W.1/Veeramani who was working as Supervisor in the Arokyia Dairy was proceeding to disburse money to the milk suppliers in a van driven by P.W.2/Velumani, accompanied by cleaner one Kamaraj, the accused persons wrongfully restrained them near S.Mathur and committed robbery of Rs.85,608/- and made criminal intimidation, thereby punishable for the offence under Sections 341, 392 r/w 34 and 506(ii) IPC. The Ex.P.1/Complaint has been preferred on the same day of the alleged occurrence viz., 09.04.2005 @ 17.30 hrs and the case has been registered. However, on perusal of the Ex.P.16/FIR, it is seen that the name of the accused persons had not been mentioned. In the Ex.P.1/Complaint, it is specifically stated that P.W.1/Veeramani, after receiving a sum of Rs.91,929/- from the office for disbursing to the milk suppliers had disbursed a sum of Rs.3432.75/- to one Sekar and Rs.2889.00/- to one Veeramani and thereafter, when they were travelling towards Sirupakkam to reach Mangalore, the accused persons waylaid them and snatched away Rs.85,608/-. However, the name of the accused persons had not been mentioned either in the Ex.P.1/Complaint or in the Ex.P.16/FIR. After registering the case, the FIR has been received by the Court on 10.04.2005 at 11.20 A.M. So, I am of the view that there is no delay in registering the case.

9. Furthermore, the name of the accused has not been mentioned in the FIR. So, even if there is any delay in preferring the complaint, the same is not fatal to the case of the prosecution. Admittedly, the accused persons were arrested only on 26.07.2006, nearly after a gap of 1¼ years from the date of the alleged

occurrence. The identification parade was conducted by P.W.14/Selvamuthukumari, learned Judicial Magistrate and her report has been marked as Ex.P.15, wherein it has been specifically mentioned that P.W.1/Veeramani had identified only A1 and A4, while P.W.2/Velumani had identified all the accused viz., A1 to A4. Even as per the evidence of P.W.14/Selvamuthukumari, learned Judicial Magistrate, after the identification parade when she made an enquiry, the accused persons intimated her that they were shown to the witnesses at the Police Station. So, the identification of the accused alone is not sufficient to convict them.

10. It is also pertinent to note that P.W.4/Govindaraj, who owns a Tea shop in Sirupakkam Village has categorically stated in his deposition that four persons consumed Tea in his shop, however after seeing the milk van, they left from the place. When they were brought to the police station after one year, he could identify A1 and A4 since they too belong to Sirupakkam Village and would visit the shop frequently for taking Tea. So, the evidence of P.W.4/Govindaraj is no way helpful to the case of the prosecution.

11. P.W.3/Subramani, in his evidence has stated that when he was doing agricultural work in his land along with his brother and other workers, he saw a milk van going towards Mangalore from Sirupakkam. Since the bridge near his land was very bad, the vehicle must slow down and at that time four persons intercepted the vehicle and after threatening the persons in the vehicle, they snatched the amount and sped away from the scene of occurrence. Then, P.W.3/Subramani along with others rushed to the place and came to know the crime. P.W.3 had further deposed that after one year, on 27.07.2006, he identified the accused. However, in his cross-examination, P.W.3 has fairly conceded that he witnessed the incident from about 100 feet distance and that he had not given the identity of the accused during the course of initial enquiry. So, the evidence of P.W.3/Subramani is also not helpful to the case of the prosecution.

12. Now this Court has to consider the evidence of P.W.1/Veeramani and P.W.2/Velumani.

A perusal of the evidence of P.W.1/Veeramani would show that he was working as a Supervisor in Hatsun Agro Product Ltd., Since only P.W.1 and P.W.2 has seen the accused, except their evidence, the evidence of other persons does not support the case of the prosecution. But, if really such incident has taken place, they would have clearly mentioned the identity of the accused in the complaint. But, P.W.1/Veeramani has not mentioned the identity of the accused. So, the evidence of P.W.1/Veeramani and P.W.2/Velumani is not wholly reliable and it needs corroboration.

13. The learned counsel for the appellants would also submit that the en-trustment of the amount has not been proved. However,

P.W.5/Durairaj, who is the purchasing officer in the Hatsun Agro Product Ltd., has deposed that he gave a sum of Rs.91,929/- to P.W.1/Veeramani for disbursing the same to the milk suppliers at 2.30 P.M on 09.04.2005. However, at 4.00 P.M he received the information from P.W.1/Veeramani that four persons had waylaid them and taken away Rs.85,806/-. But, P.W.5/Durairaj has fairly conceded that he has not given any complaint but he only rushed to the scene of occurrence after receiving the information. In his cross-examination, P.W.5 has deposed that P.W.1/Veeramani was not working in the Company now.

14. Now this Court has to consider the other aspect i.e., the van has not been seized.

Even though the Material Objects 1 to 5 has been marked, there is no evidence to connect them with the incident. Further, there is also no evidence to show that the M.O.'s 1 to 3 were purchased out of the looted amount. P.W.10/Madhusoodhanan, pawn broker from whom the M.O.'s 1 to 3 were seized had deposed that A1/Murugan @ Duraimurugan had pledged the M.O.'s 1 to 3 on 25.11.2005. Except the said evidence, there is nothing more to show that the said material objects had been purchased out of the looted money. Further, it is pertinent to note that after the arrest, the Material objects M.O.4 and M.O.5/suit cases containing drilling machine were seized in the presence of P.W.12/Ananth and P.W.13/Karthikeyan. But the signatures in the confession of A1, A2, A3 and A4 alone had been marked as Exhibits P3 to P.6 and P.9 to P.12. The Seizure Mahazar alone has been marked but they have not marked the discovery portion in the confession.

15. The defence has filed the arrest memos Ex.D.1 to Ex.D.4, wherein it has been specifically stated that not only the M.O.4 and M.O.5/suit cases containing drilling machine were seized but they have also seized ten electric motors from the accused persons. The relevant portion in the arrest memos viz., Ex.D.1 to Ex.D.4 is extracted here under:

கைது செய்யப்பட்ட நபரிடமிருந்து/அவர் இ	ஞானசூர் கம்பெனி டிரிலிங் மிஷின் பாக்ஸ் 2
ருப்பிடத்திலிருந்து பரிழுதல் செய்யப்பட்ட ஆயுதங்கள்	மற்றும் 10 மின்மோட்டார்கள்
மற்றும் பிற பொருட்கள்	

However, in the Ex.P.18/Mahazar, it has been stated as follows:

கைப்பற்றப்பட்ட சொத்தின் விவரம்	னாடிளடா சிவப்பு வண்ணத்தால் எழுதப்பட்ட டிரிலிங் மிடின் மற்றும் டிரில்லர் ராடு முன்று சலிட்சபாக்ஸ் மஞ்சள் ஓயர் சுமார் 10மீட்டர் னாடிளடா சிவப்பு வண்ணத்தால் எழுதப்பட்ட எழுத்துக்கள் பொறிக்கப்பட்ட முருடி ஐஐநுடு வெள்ளை வர்ணத்தால் எழுதப்பட்டது மற்றும் 15 மீட்டர் சிவப்பு ஓயருடன் கூடிய சலிட்சபாக்ஸ் டிரிலிங்மிடின் ராடுகள் முன்று.
--------------------------------	--

16. Furthermore, in the Ex.P.18/Mahazar, along with the name of the appellants herein, the name of one Kannan finds place. However, they have not clarified the discrepancies in the Ex.P18/Mahazar and the Arrest Memos D1 to D4.

17. One more adding circumstances is that it is the case of the prosecution that the accused persons came in two two-wheelers and committed the offence. However, the two wheelers have not been seized and no reason has also be assigned as to why the same has not been seized. Furthermore, the tripsheet of the vehicle which was used by the P.W.1/Veermani for disbursing the money was also not seized and though it was stated by P.W.16/Duraisamy, Inspector of Police that he had sent the vehicle for Motor Vehicle Inspector examination, no report was received and marked. So, except the ipse dixit of P.W.1/Veeramani and P.W.2/Velumani, there is no evidence to show that the accused persons A1 to A4 had waylaid them and committed the offence. But, even their evidence is not wholly reliable.

18. Considering the above facts and circumstances, I am of the view that the evidence of P.W.1 to P.W.4 are is not sufficient to convict the appellants. Even though P.W.3 and P.W.4 belong to the same locality, at the time of giving the complaint, they had not given the identity of the accused. Furthermore, the non-seizure of the tripsheet of the van, the non-seizure of the van, the non-seizure of the two-wheelers alleged to have been used for the commission of the offence and the non-availability of the evidence to show that the Material Objects M.O.1 to M.O.3 were purchased out of the looted money would support the case of the appellants. In such circumstances, the Trial Court without considering the above aspects has convicted the accused. Hence, I am of the view that the conviction and sentence passed by the Trial Court is unsustainable and it is hereby set aside.

19. In fine,

(a) The Criminal Appeal is allowed.

(b) The judgment of conviction and sentence dated 22.05.2007 made in S.C.No.39 of 2007 on the file of the Additional District Judge (Fast Track Court No.III), Virudhachalam is hereby set aside.

(c) The appellants/A1 to A4 are acquitted from the charges levelled against them and they are set free.

(d) The fine amounts paid by the accused persons are ordered to be refunded to them.

(e) Bail bond executed by the appellants/A1 to A4 shall stand cancelled.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

pgp

To

1.The Additional District Sessions Judge
(Fast Track Court No.III), Virudhachalam

2 -do- Thro' Principal Sessions Judge, Virudhachalam

3 The Judicial Magistrate No.I,
Virudhachalam

4 The Chief Judicial Magistrate,
Cuddalore.

5 The Superintendent,
Central Prison, Cuddalore.

WEB COPY

6 The Inspector of Police,
Sirupakkam Police Station
Cuddalore.

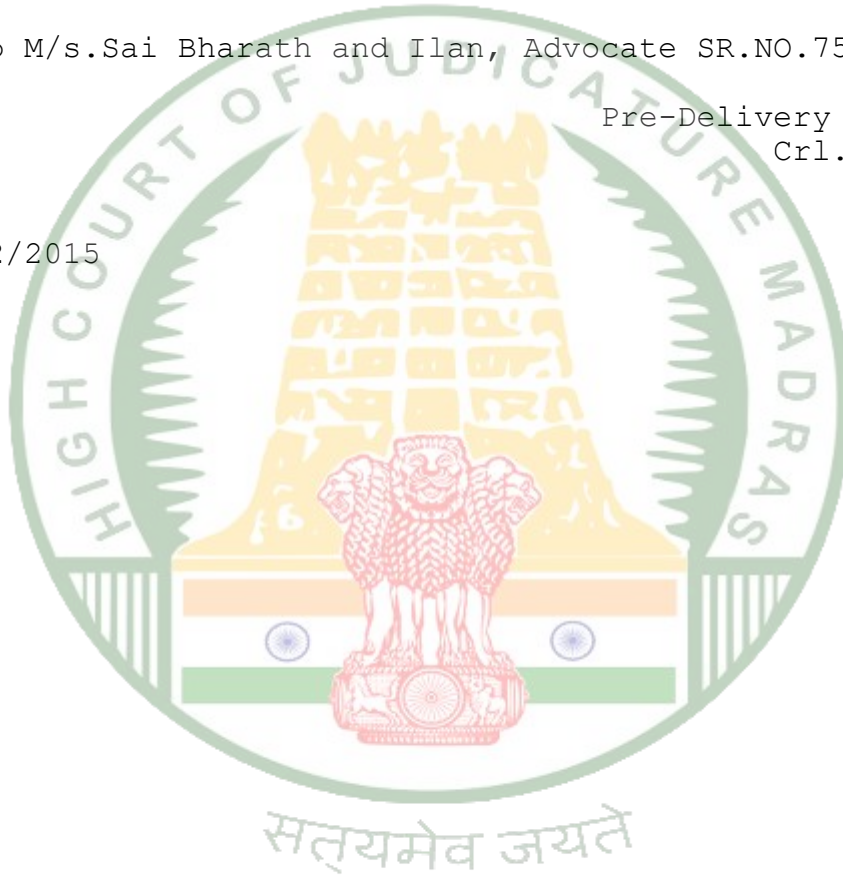
7 The Public Prosecutor
High Court, Madras.

8. The Record keeper
High Court, Madras.

+1 CC to M/s.Sai Bharath and Ilan, Advocate SR.NO.7537

Pre-Delivery judgment made in
Crl.A.No.515 of 2007

VD(CO)
DRL :21/02/2015



WEB COPY