

Bail Slip

The Appellants/Accused Namely Udayakumar S/O Elumalai, Seker S/O Basker, Ashok Kumar S/O Kangadaran, Ashok Kumar S/O Rajiv was released on bail as per order of this Court dated 17/7/2007 made in MP 1/07 in CrI.A.No.547/07

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.547 of 2007

1. Udayakumar
2. Sekar
3. Ashok Kumar
4. Ashok Kumar

... Appellants

vs.

State Rep. By
Inspector of Police,
M.2, Port Marine Police Station
Chennai

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.145 of 2007 dated 19.06.2007 on the file of the Additional District and Sessions Judge, F.T.C.No.III, Chennai.

For appellant : Mr.S.Swamidoss Manoharan

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

JUDGMENT

The conviction and sentence dated 19.06.2007 passed in Sessions Case No.547 of 2007 by the Additional District and Sessions Court, (Fast Track Court NO.3), Chennai are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 26.5.2004 at about 12.05 p.m., in the Port of Chennai away from 3-1/2 Miles from Port, a ship by name Ruhu Nupra has been anchored and at that time, the accused have reached there by using a boat. The accused 1, 2, 4 and 5 have made attempts to commit robbery by using deadly weapons by way of boarding into the said ship and their attempts have been foiled and subsequently the defacto complainant has given a complaint and the same has been registered in Crime No.1 of 2004. The complaint alleged to have been given by the complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer has conducted investigation, examined connected witnesses and after completing the same, laid a final report on the file of 16th Metropolitan Magistrate, George Town, Chennai and the same has been taken on file in P.R.C.No.103 of 2004.

4. The 16th Metropolitan Magistrate, George Town, Chennai, after considering the facts that the offences alleged to have been committed by 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.145 of 2007 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records has framed first charge against all the accused under Section 395 r/w 398 and second charge against them under section 395 r/w 398 r/w 511 IPC and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 7 have been examined and Exhibits P.1 to 11 and Material Objects 1 to 4 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing relevant records, has found the accused 1 to 5 guilty under Section 395 r/w 398 of the IPC and sentenced them

to undergo 7 years Rigorous Imprisonment. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused 1 to 3 and 5 as appellants.

9. The learned counsel appearing for the appellants/accused 1 to 3 and 5 has sparingly contended that the complaint alleged to have been given by the complainant has been marked as Ex.P.1, wherein it has been clearly stated that out of six accused, four accused have already boarded into the ship, but his evidence is otherwise and no recovery has been made on the side of the prosecution and the trial court, without considering the vital infirmities found on the side of the prosecution, has erroneously invited conviction and sentence against the appellants/accused 1 to 3 and 5 and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

10. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the author of the complaint has been examined as P.W.1 and one Ravi has been examined as P.W.2 and both of them have clearly spoken about the overtacts alleged to have been committed by all the accused and the trial court, after considering their evidence, has rightly found them guilty under section 395 r/w 398 of IPC and therefore, the conviction and sentence passed by the trial court do not require interference.

11. The specific case put forth on the side of the prosecution is that out of six accused, four accused have boarded into the ship in question for committing dacoity.

12. At this juncture, the court has to look into the allegations made in the complaint. The complaint in question has been marked as Ex.P.1, wherein it has been clearly stated that four accused out of six accused have already boarded into the ship in question. The author of Ex.P.1 has been examined as P.W.1. During the course of chief examination, he would say that four accused have tried to board into the ship in question by using its cable, but during the cross-examination he would say that he did not say anything that four accused have already boarded into the ship in question. The specific case of the prosecution is that four accused have already boarded into the ship, but the evidence of P.W.1 is totally inverse. Further, P.W.1 during the course of cross-examination has disowned the allegation made in Ex.P.1. Therefore, on the basis of rickety

type evidence given by P.W.1, the Court cannot come to a conclusion that four accused out of six accused have already boarded into the ship or attempted to scale.

13. It is not an exaggeration to say that on the side of the prosecution, trustworthy evidence is not available for the purpose of proving the offence alleged to have been committed by all the accused. Further, as rightly pointed out on the side of the appellants/accused 1 to 3 and 5, no recovery has been made and further for the purpose of knowing the juxtaposition of the ship in question, no rough sketch is available on the side of the prosecution. Therefore, viewing from any angle, the contentions put forth on the side of the prosecution cannot be accepted.

14. The trial court, without considering the vital infirmities found on the side of the prosecution and also without looking into the nebulous evidence adduced by P.W.1, has erroneously invited conviction and sentence against the appellants/accused 1 to 3 and 5. In view of the discussions made earlier, this Court has found acceptable and considerable force in the contentions put forth on the side of appellants/accused 1 to 3 and 5 and altogether the present Criminal Appeal deserves to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellants/accused 1 to 3 and 5 in S.C.No.145 of 2007 by the trial court are set aside. The appellants/accused 1 to 3 and 5 are acquitted. Bail bond, if any, executed by them shall stand cancelled.

Sd/-
Assistant Registrar

True Copy

सहायक न्यायाधीश
Sub Assistant Registrar

To :

1.The Additional District and Sessions Judge,
F.T.C.No.III,
Chennai.

WEB COPY

2.The Metropolitan Magistrate No.XVI,
George Town,
Chennai.

3.The Chief Metropolitan Magistrate,
Egmore,
Chennai (For Information)

4.The sperintendent,
Central Prison,
Puzhal, chennai.

5. Inspector of Police,
M.2, Port Marine Police Station,
Chennai

6. The Public Prosecutor,
High Court,
Chennai.

+1cc to Mr.S.Swamidoss Manoharan, Advocate sr.65135

Crl.A.No.547 of 2007

vsn[col]
srg 10/12/2015



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