

Bail Slip

That the Appellant herein/Accuse Viz., (1) Raja Mohammed (2) Abdul Hadi, (3) Mariyam Ayisha, (4) Vahitha, (5) Abdul Razack, was directed to be released on bail as per the order of this Court dated 13.04.2007 and made in CrI.M.P.No.1 of 2007 in CrI.Appeal NO.318 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.1.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.318 of 2007

1. Raja Mohammed
2. Abdul Hadi
3. Mariyam Ayisha
4. Vahitha
5. Abdul Razack ... Appellants/Accused

vs.

StateBy
Inspector of Police,
Vadalur Police Station
(Crime No.62/2002) ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.5 of 2005 dated 21.03.2007 on the file of the Chief Judicial Magistrate, Cuddalore.

For appellant : Mr.Sathiyamoorthy for
Mr.C.Sreedharan

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

JUDGMENT

The conviction and sentence dated 21.3.2007 passed in Sessions Case No.5 of 2005 by the Chief Judicial Magistrate Court, Cuddalore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 18.2.2002, at about 7 p.m., the first accused by name Raja Mohammed has contacted Sun Cabs Travels over phone and introduced himself as Ismail and as per the order placed by him, on 20.2.2002 at about 10 a.m., a Tata Sumo Car has been given to him for rent and its Registration Number is T.N 09-R 6874. The said Car has been driven by the defacto complainant by name Senthoo Pandian. The defacto complainant has met the first accused and he introduced himself as Ismail. The remaining accused have also boarded into the car. Instead of going to Airport, Chennai, they directed the defacto complainant to drive the Car towards Cuddalore from Meenambakkam and accordingly, the defacto complainant has done it. On Kumbakonam to Panrutti Road, near Vadalur, all the accused have joined together and pushed the defacto complainant from the Car and subsequently stealthily taken away the same. After occurrence, the defacto complainant has given a complaint in Vadalur Police Station and the same has been registered in Crime No.62 fo 2002.

3. On receipt of the complaint, the Investigating Officer, viz., P.W.20, has taken up investigation. During pendency of the same, on 8.11.2002, P.W.20 has received an information from the Inspector of Police, Seven Wells Police Station with regard to arrest of the accused Nos.1 and 2 and on the basis of such information, P.W.20 has recovered the vehicle, viz., Tata Sumo Car bearing Registration No. T.N 09-R 6874 and also conducted Identification Parades on various dates and after completing investigation, laid a final report on the file of Judicial Magistrate Court No.3, Cuddalore and the same has been taken on file in P.R.C.No.7 of 2004.

4. The Judicial Magistrate No.3, Cuddalore, 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, Cuddalore Division and the same has been taken on file in Sessions Case No.5 of 2008 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 a charge against the first accused under Sections 395 and 397, against the accused Nos.2 to 5 under sections 395 and 397 r/w 34 of Indian Penal Code 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 21 have been examined and Exhibits P.1 to P.20 and Material Objects 1 and 2 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 adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing relevant evidence available on record, has found all the accused guilty under Section 395 of the IPC and sentenced them to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellants.

9. The sum and substance of the case of the prosecution is that the first accused, viz., Raja Mohammed, by way of posing himself as Ismail has placed an order to Sun Cabs Travels on 18.2.2002 at about 7 p.m through telephone and accordingly, the defacto complainant has been given a Tata Sumo Car bearing Registration No. T.N 09-R 6874 and on 20.2.2002, he met the first accused and the first accused introduced himself as Ismail and directed the defacto complainant to go to Airport and on the way to Airport, the remaining accused have boarded in the Car and all of them have directed the defacto complainant to drive the Car towards Cuddalore and accordingly, the defacto complainant has driven the same and on Kumbakonam to Panrutti Road, near Vadalur, all of them have joined together and pushed out the defacto complainant from the Car and subsequently taken away the Car.

10. The trial court has relied upon the averments made in the complaint, which has been marked as Ex.P.8 and also the evidence given by P.W.18 and P.W.19, recovery witnesses and ultimately invited conviction and sentence as noted down in the judgment.

11. The learned counsel appearing for the appellants/accused has repeatedly contended that the accused Nos.1 and 2 have been arrested on 8.11.2002 by P.W.17 in connection with some other case at Moolakothalam and subsequently necessary information has been given to P.W.20,

Investigating Officer and he has seized the Car bearing Registration No. T.N 09-R 6874 and further the evidence of P.W.20 is that he arrested the accused 3 and 4 on 13.11.2002 as per identification given by the defacto complainant and with regard to accused 3 and 4, Identification Parade has been conducted on 18.11.2002 and further for the first and second accused, Identification Parade has been conducted on 29.11.2002 and the fifth accused has been arrested on 6.12.2002 and Identification Parade has been conducted on 9.12.2002. Before conducting Identification Parade, the defacto complainant has seen all the accused in the Police Station and therefore, no proper Identification Parade has been conducted and the trial court, without considering the same and also merely on the basis of alleged recovery of M.O.1, Tata Sumo Car bearing Registration No. T.N 09-R 6874, has erroneously invited conviction and sentence against the appellants/accused and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

12. Per contra, the learned Additional Public Prosecutor has also equally contended to the effect that in the instant case, after giving Ex.P.8, the defacto complainant has passed away and further the accused 1 and 2 have been arrested on 8.11.2002 in connection with some other case by P.W.17 and only on the basis of their confession, with regard to involvement in the present Crime, necessary information has been given to P.W.20 and subsequently, P.W.20 has arrested the remaining accused and made proper arrangements for conducting Identification Parade and in all the Identification Parades, the defacto complainant has identified all the accused and since proper recovery has been proved on the side of the prosecution and since proper identification has been done by the defacto complainant in respect of all the accused, the trial court has rightly invited conviction and sentence against them and therefore, the conviction and sentence passed by the trial court are not liable to be set aside.

13. From the divergent submissions made on either side, the Court can easily come to a conclusion that the accused 1 and 2 have been arrested on 8.11.2002, but their identification has been done on 29.11.2002. Likewise, the accused 3 and 4 have been arrested on 13.11.2002 and identification has been done on 15.11.2002. The 5th accused has been arrested on 6.12.2002 and identification has been done on 9.12.2002.

14. The specific evidence given by P.W.20, Investigating Officer is that on 13.11.2002, the accused 3 and 4 have been arrested only as per the identification given by the defacto complainant. If really the defacto complainant has already

identified the accused 3 and 4 on 13.11.2002 and with regard to identification of the accused 3 and 4, second Identification Parade need not be conducted on 15.11.2002. Further, on the side of the prosecution, sufficient explanation has not been given with regard to identification alleged to have been done in the presence of the defacto complainant on 15.11.2002, even though he has clearly identified the accused 3 and 4 on 13.11.2002. Further, as stated earlier, the accused 1 and 2 have been arrested on 8.11.2002 by P.W.17, but their identification has been done on 29.11.2002, after a lapse of 21 days.

15. The main contention put forth on the side of the appellants/accused is that before conducting Identification Parade, the defacto complainant has seen all the accused in Police Station. Since the alleged Identification Parades have been done belatedly and since the defacto complainant has already identified the accused 3 and 4 on 13.11.2002 at the time of their arrest, the Court cannot completely believe the alleged identification of the accused done by the defacto complainant.

16. On the side of the prosecution, P.Ws.18 and 19 have been examined with regard to recovery of Tata Sumo Car bearing Registration No. T.N 09-R 6874. Even assuming without conceding that the prosecution has adduced consistent evidence with regard to recovery of Tata Sumo Car bearing Registration No. T.N 09-R 6874, the same evidence is not sufficient to come to a conclusion that all the accused have committed an offence punishable under section 395 of IPC.

17. Further, it is a settled principle of law that mere recovery of material objects as per Section 27 of Indian Evidence Act, 1872 is not at all sufficient for coming to a conclusion that the particular accused has committed particular offence and some more evidence is required in connection with alleged recovery.

18. In the instant case, in fact, the prosecution has not given proper explanation for conducting Identification Parade with regard to the accused 3 and 4 and further, the prosecution has not given proper explanation to the effect that the accused 1 and 2 have been identified on 29.11.2002, even though they have been arrested on 8.11.2002.

19. The trial court, without considering the infirmities found on the side of the prosecution has invited conviction and sentence against the appellants/accused. In view of the discussions made earlier, this Court is of the view that the

conviction and sentence passed by the trial court are not factually and legally sustainable and altogether the same are liable to be set aside.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellants/accused in S.C.No.5 of 2005 by the trial court are set aside. The appellants/accused are acquitted. Bail bonds, if any executed by them shall stand cancelled. Fine amounts, if any paid by them, are ordered to be refunded forthwith.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ajr

To :

1. The Chief Judicial Magistrate, Cuddalore
2. The Inspector of Police,
Vadalur Police Station.
3. The Superintendent Central Prison, Cuddalore.
4. The Superintendent, Central Prison, for Women Cuddalore.
5. The Public Prosecutor, High Court, Chennai.

+ 2 ccs to Mr.C.Sreedharan, Advocate Sr.2770

Crl.A.No.318 of 2007

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