

Bail Slip

The Appellant/Petitioner/Accused namely 1)Gurusamy @ Kumar @ Bumbay Kumar @ Anandanan Navashkhan @ Navabkhan @ Nagaraj @ Dilip Kumar @ Arunkumar S(1) Chidambara Nadar was directed to be released on bail as per the order of this court dated 24/4/2007 in CrI.M.P No.1 of 2007 in CrI.A.351 of 2007 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-3-2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.351 of 2007

Gurusamy @ Kumar @ Bombay Kumar @
Anandanan Navashkhan @ Navabkhan @
Nagaraj @ Dilip Kumar @ Arunkumar ... Appellant/Single Accused

Versus

State: Rep. by
The Inspector of Police,
F1, Chindadripet Police Station,
Chennai. ... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C to set aside the Judgment and Conviction passed by the learned Additional District and Sessions Judge, Fast Track Court No.V, Chennai in S.C.No.459 of 2006 dated 23.02.2007.

For Appellant : Mr.S.Doraisamy

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

JUDGMENT

The sole accused in the Sessions Case in S.C.No.459 of 2006 on the file of the learned Additional Sessions Judge, Fast Track Court No.V, Chennai is the appellant.

2. He was prosecuted before the said Court for offences under Sections 448, 336, 427, 392 r/w 397 and 506(ii) of IPC.

3. After trial, the trial court found him guilty and sentenced him as under:

Conviction	Sentence
(i) 392 r/w 397 IPC	(i) 7 years R.I. and fine Rs.500/- i/d 2 months S.I.
(ii) 448, 336, 425 & 506(ii) IPC	No separate sentence imposed in view of major punishment stated supra.

Fine amount paid.

4. The case of the prosecution briefly runs as under:

(i) PW.1 is a Sales Representative. He is residing at Dr. No.173, Singanna chetty street, Chindadripet, Chennai-2. On 30.3.2005 at about 9.30 a.m., he had seen the accused stealing his Camera (M.O.3) and Wrist Watch (M.O.2) in his room. When he questioned, at knife (M.O.1) point the accused robbed him Rs.250/- and ran into the street. It was witnessed to by P.W.2.

(ii) At about that time, P.W.7 S.I. of Police and P.Ws.3 to 5 policemen tried to apprehend the accused. Showing M.O.4 knife, the accused had challenged the Police. P.W.3 tried to snatch the knife from him. It fell down. The accused went to the nearby petty shop, took out a soda bottle and thrown at them. With great difficulty, the Police party overpowered him. They took him to Chindadripet Police station and handed over him to P.W.8 Inspector along with case properties.

(iii) At the police station, P.W.1 gave Ex.P1 complaint to P.W.8. He registered this case (Ex.P5 F.I.R.).

(iv) P.W.8 took up his investigation. He has arrested the accused. He visited the scene place. Prepared Ex.P2 Observation Mahazar in the presence of P.W.6 and another person. He drew Ex.P6 Rough sketch. He had also collected stones under Ex.P7 Mahazar in the presence of said witnesses. He had also collected several material objects (M.Os.6 to 20). Concluding his investigation, P.W.8 filed the final report in this case before the concerned Court.

5 The learned Additional Sessions Judge, Fast Track Court No.V, Chennai upon hearing both sides and on consideration of the case-records, framed cluster of charges under Sections 448, 336, 427, 392 r/w 397 and 506(ii) of IPC as against the accused. He pleaded not guilty to the charges.

6. Prosecution examined P.Ws.1 to 8, marked Exs.P1 to P8 and exhibited M.Os.1 to 20.

7. When the accused was examined under Section 313 Cr.P.C. on the incriminating aspects appearing in the prosecution evidence, he denied the offences. There is no defence evidence.

8. Upon consideration of the said evidence as noted already, the trial Court has convicted and sentenced him.

9. The learned counsel for the appellant would contend that neither P.W.1 nor P.W.2 had implicated the accused in this case. The other witnesses are police witnesses. There is quarrel among them as to certain vital aspects of the case. It would clearly show that this is a put-up case.

10. The learned counsel for the petitioner also contended that the case also suffers from certain inherent improbability. According to prosecution, the accused had carried a knife in one hand and carried M.Os.6 to 20 in a bag in another hand. In such circumstances, how he would have rushed to a nearby petty shop and took a soda bottle and thrown at the police and general public.

11. On the other hand, the learned Additional Public Prosecutor would submit that complaint has been lodged by P.W.1. There are more than one witness who have chased the accused. The case properties were also recovered from him. Thus, the trial court has rightly convicted and sentenced him.

12. I have anxiously considered the rival submissions, perused the judgment of the trial court and the entire materials on record.

13. Now the question is whether the prosecution has established the charges framed as against the accused beyond all reasonable doubts?

14. The sum and substance of the prosecution version is that on 30.3.2005 at about 9.30 a.m. the appellant is alleged to have stolen a Camera and a Wrist Watch from P.W.1's house and also robbed him Rs.250/- at knife point. And, when the accused took to his heels a Police party consisting of P.Ws.7 and 3 to 5 had chased him and apprehended him. The accused also challenged them by throwing soda bottles.

15 P.W.1 is the complainant. In the trial Court, he did not say that the accused had stolen nor the accused had robbed him. P.W.2 turned hostile. P.Ws.3 to 5 and P.W.7 are stated to be ocular witnesses. They are policemen. A close reading of their evidence would show that there is no unanimity even among them in deposing before the court as to certain vital aspects of the case. P.W.3 says that when he neared the accused, his knife fell on the ground. But the other witnesses says that the knife was in his hand. P.W.8 the Investigation Officer stated that the knife was produced at the police station by the accused. As per the evidence of P.W.3 knife had fallen down, then how it had gone to the hands of the accused. Further, there is no corroborative evidence as regards the contents of a rexine bag stated to have been seized from the accused.

16 Prosecution has not established the charges framed against the accused beyond all reasonable doubts.

17 In the result, this Criminal appeal is allowed. The conviction recorded and the sentence awarded by the trial Court are set aside. He is acquitted. Fine amount shall be refunded to him.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Metropolitan Magistrate No.XIV,
Egmore, Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Superintendent,
Central Prison,
Puzhal,
Chennai.
4. The Additional Sessions Judge,
Fast Track Court No.V,
Chennai.

5. The Additional Public Prosecutor,
High Court, Madras.

6. The Inspector of Police
F1, Chindadripet Police Station,
Chennai.

+1cc to Mr.S.Doraisamy, Advocate sR.16310

Crl.A.No.351 of 2007

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srg 29/03/2016



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