

BAIL SLIP

The Sole Accused namely viz: Lingan @ Lingaraj S/O Subbiah Nadar, was directed to release on bail made in MP.NO.1/2007 in CrI.A.745/07 of this Court, dated 06.09.2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

THE HONOURABLE DR. JUSTICE P. DEVADASS

CrI.Appeal No. 745 of 2007

Lingan @ Lingaraj ... Appellant / Accused

vs

State rep. by
Inspector of Police
Tiruppur South Police Station
Tiruppur, Coimbatore.

... Respondent /
Complainant

PRAYER: Appeal filed under Section 374 (2) of Cr.P.C. against the conviction and sentence passed in S.C. No. 277 of 2006 dated 30.03.2007, by the learned Additional District and Sessions Judge (Fast Track Court No.2) Coimbatore.

For Appellant : Mr. S. Ashok Kumar, Senior Counsel
for Mr.A.K. Arunachalam

For Respondent : Mr.R. Sekar, G.A (CrI.Side)

J U D G M E N T

A-1 in the Sessions Case in S.C. No.277 of 2006 on the file of the learned Additional Sessions Judge (FTC No.II) Coimbatore, is the appellant.

2. He was tried for a charge under Section 397 IPC before the said Court.

3. After trial, the trial court, while acquitting A-2, convicted A-1, under Section 397 IPC and sentenced him to 7 years R.I and fined Rs.500/-, I/d, 3 months S.I. He has paid the fine amount.

4. The case of the prosecution in brief runs as under :-

- (1) On 08.07.1999, at about 1.30 p.m, in a bag PW-1 carried cash in a two wheeler to Bank. He was waylaid by two persons. They were holding Aruval and iron rod. They have assaulted PW-1. He was bleeding. The robbers ran away with cash bag. Two by-standees took PW-1 to Government Hospital, Tiruppur. PW-5 treated PW-1.
- (2) At about 3 p.m, on intimation, at the said hospital, PW-6 Sub Inspector, Tiruppur South Police Station recorded Ex.P1, statement from PW-1. Based on the same, he has registered this case (Ex.P9 - FIR) for an offence under Section 397 IPC.
- (3) PW-7 Inspector took up his investigation. He visited the scene of occurrence. In the presence of witnesses, prepared Ex.P11 Mahazar. Drew Ex.P12 Rough Sketch of the scene place. He examined material witnesses and recorded their statement. On 27.02.2000, at about 5.30 a.m., at the Tiruppur bus stop, PW-7 arrested A-2 in the presence of PW-3 and one Eswaran and recorded his confessional statement.
- (4) On 03.03.2000, at about 6 a.m., at Tiruppur-Palladam Road, near Tamilnadu Theatre, PW-7 arrested A-1 in the presence of PW-2 and one Manickam. He recorded his confessional statement/ Ex.P3. It is to the effect that he gave Rs.1,25,000/- to the owner of Sarojini Stores in Anupparpalayam for safe custody. Further, at about 9.30 a.m, from a bush at Valayangadu, Samandipuram, he has handed over 2 Aruvals, The Investigation Officer seized them under Ex.P15 Mahazar. In the presence of PW-2, the Investigation Officer recovered Rs.1,21,000/- under Ex.P6 Mahazar, from the said provision stores. He has produced the arrested persons to the Jurisdictional Magistrate and also the case properties.
- (5) After PW-7, PW-8 Inspector continued the investigation. He gave Ex.P17 requisition, to the Court to conduct Test Identification Parade. On 03.07.2000, at the Central Prison, Coimbatore, PW-4 Judicial Magistrate-I, Tiruppur conducted test identification parade. PW-1 identified A-1 (Test Identification Parade report Ex.P8). Concluding his investigation, PW-8 filed the final report for offences under Section 394 IPC, as against A1- A6.

5. The committal Magistrate committed the case to the Principal Sessions Judge, Coimbatore. It was made over to Additional Sessions (FTC NO.II), Coimbatore.

6. The Trial Court after hearing both sides and after perusal of the case records, framed charges under Section 397 IPC as against A1 to A6, in S.C. No. 344 of 2005. Subsequently, the case against A-5

and A-6, was split up in different Session case number. The erstwhile Accused 5 and 6 were arrayed as Accused 1 and 2, namely, Lingam @ Lingaraj and Thangaraj.

7. To substantiate the charges, prosecution examined PWs 1 to 8, marked exhibits P1 to P17 exhibited M.Os 1 to 4.

8. Appreciating the said evidence, A-2, namely, Thangaraj was acquitted, however, A-1 namely Lingam @ Lingaraj was convicted and punished.

9. Now, this appeal is by A-1.

10. According to the learned senior counsel appearing for the appellant, there is no acceptable incriminating evidence implicating the appellant in this case. The identification of A-1 by PW-1 before PW-4 is to be totally rejected because in his cross examination PW-1 admitted that he knows the first accused already and he knows his name also.

11. The learned senior counsel for the appellant further contended that although PW-1 knows the identity of A-1 he did not name him, in the FIR. But he has stated in the F.I.R., that the robbers are unknown persons. When the identity of a person is known to the witnesses, yet he did not disclose it, then identifying and naming him for the first time before the trial court, will open to doubt.

12. The learned senior counsel for the appellant further contended that the recovery of Aruvals and Rs.1,25,000/- by PW-7 Investigation Officer, based on the disclosure statement of A-1 is totally false. It is concocted. Shop owner Rajkumar, to whom the cash has been stated to have been entrusted has not been examined.

13. A-1 was arrested by the police on 27.02.2000 itself and he was kept under illegal detention and a confessional statement was extracted from him, as though he was arrested on 03.03.2000. It is a confessional statement recorded during police custody. It is not genuine. It is not voluntary. It is required to be excluded. PW-2 states that A-1 was already arrested on 27.02.2000, the evidence of PW-7 as well as filing of HCP No.295/2000 by the wife of the accused to produce her husband from illegal custody from 27.02.2000, all goes to show that A-1 is fixed as accused as early as 27.02.2000 and he has been kept under illegal custody. Thus the arrest, confession and the recovery goes.

14. Learned Government Advocate would submit that evidence of PW-1 clearly shows that he was assaulted with Aruval and his cash bag was robbed by two persons. PW-1, identified A-1 in the test identification parade before the learned Magistrate/ PW-9. In the circumstances, the trial court has rightly convicted him and punished him.

15. Heard the arguments of the learned senior counsel appearing for the appellant and the learned Government Advocate for the State. Perused the impugned judgment and the entire material on record.

16. Now the question is whether the charge under Section 397 of IPC has been proved as against the accused beyond all reasonable doubts.

17. As per the prosecution before the trial court, A-1 has assaulted PW-1, on the occurrence day at about 1.30 p.m while he was carrying his cash bag, to bank in a scooter. Prosecution relies on identification of A-1 by PW-1, before PW-4/Judicial Magistrate in test identification parade and the recovery of material objects.

18. It is stated that A-1 was arrested on 03.03.2000. The test identification was conducted on 08.05.2000. PW-1 identified A-1 before PW-4. In his evidence before the trial court, PW-1 did not pinpoint A-1. In his cross examination PW-1 admits that he knows A-1 for about 3 to 4 years and he know his name also. In such circumstances, his identification before PW-4 goes.

19. The Investigation Officer PW-7 is stated to have recorded confessional statement from A-1 on 03.03.2000. He has also stated that in the presence of PW-2, he has recovered Rs.1,25,000/- from Sarojini Stores in Anupparpalayam. As per the confessional statement of A-1, he has handed over Rs.1,20,000/- to Mr.Rajkumar, owner of Sarojini Stores. That Rajkumar was not examined. The recovery of Aruvals near a bush, based on the confession statement of PW-7 and PW-2. In his cross examination, PW-7 admits that he arrested the accused on 27.02.2000. Recovery has been shown to have effected on 03.03.2000. It is relevant here to mention that the wife of A-1 filed HCP No.295/2000 before this Court on 28.02.2000 for producing her husband/A-1 from illegal custody of the police.

20. Vide reading Section 17, 25, 26 & 27 of the Evidence Act, confession containing some implicating information, in the form of admission, if it is made to police during police custody and it is not made in the presence of a Magistrate, it is inadmissible, however, to the extent of information leading to recovery of fact. Therefore, the limited extent of admissibility of confession has been provided in Section 27 of the Evidence Act. But, still the confession must be truthful, genuine, acceptable and it must be voluntary. Now, in this case, consideration of evidence of PW-7, 1 and 2, relates to recovery. In this case, it is stage managed and it is unreliable. It is quite unsafe to rely such recovery evidence.

21. In view of the foregoing, prosecution failed to establish the offence alleged against the accused beyond all reasonable doubts.

22. In view of the foregoing, we hold as under :-

1. This Criminal Appeal is allowed.
2. The conviction and sentence awarded to the appellant by the trial court are set aside.
3. The appellant is acquitted under Section 397 IPC.
4. He shall be refunded the fine amount.

Sd/-
Asst.Registrar

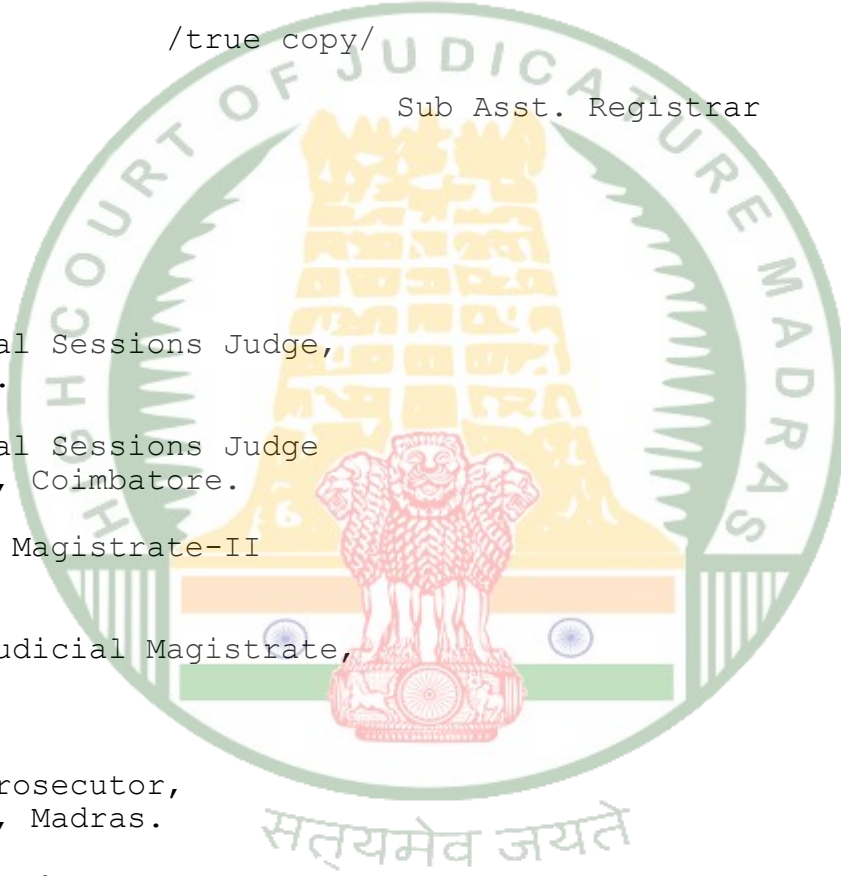
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Sub Asst. Registrar

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To

1. The Principal Sessions Judge,
Coimbatore.
2. The Additional Sessions Judge
(FTC - II) , Coimbatore.
3. The Judicial Magistrate-II
Tiruppur.
- 4 The Chief Judicial Magistrate,
Coimbatore.
5. The Public Prosecutor,
High Court, Madras.
6. The Superintendent
Central Prison, Coimbatore.
7. Inspector of Police,
Tiruppur South Police Station
Tiruppur.



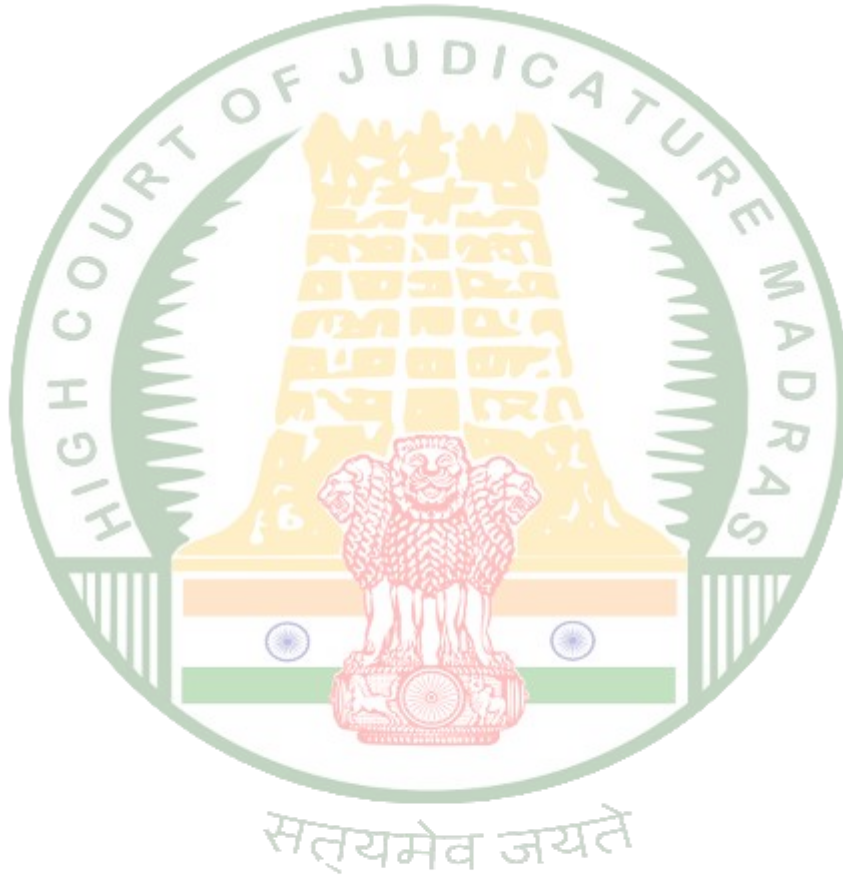
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+1 CC to Mr.T.R.Ravi, Advocate SR.No.66964

CO-SCD

ths : 02.01.2017

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