

BAIL SLIP

CRL.RC.1011/2011:

The petitioner/Appellant/Accused namely P.Sakthivel @ Ramachandran, S/o.Palaniappa Mudaliar, was directed to be released on bail by the Order of this Court dated 17/08/2011 and made in Crl.Mp.1/11 in Crl.RC.1011/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.1011 of 2011

P.Sakthivel @Ramachandran ... Petitioner/Accused 2

Vs.

The State by Inspector of Police,
Chennimalai Police Station,
Erode District.
(Crime No.343 of 2007)

... Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the conviction imposed in the judgment dated 31.03.2011 made in C.A.No.88 of 2010 on the file of the Additional District Sessions Court/ Fast Track Court No.I, Erode, confirming the conviction imposed in the judgment dated 25.06.2010 made in C.C.No.328 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai and set aside the same.

For Appellant : Mr.N.Manokaran

For Respondent : Mrs.M.F.Shabana
Government Advocate (Criminal side)

JUDGMENT

The Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code praying to set aside the order of conviction and sentence imposed in C.A.No.88 of 2010 dated 31.03.2011, on the file of the Additional District Sessions Court/ Fast Track Court No.I, Erode, confirming the conviction and sentence imposed in the judgment dated 25.06.2010 made in

C.C.No.328 of 2007 on the file of the District Munsif cum Judicial Magistrate Court, Perundurai.

2. There are two accused in C.C.No.328 of 2007, on the file of the District Munsif cum Judicial Magistrate Court, Perundurai and the second accused, is the revision petitioner herein. Both the accused stood charge for an offence under Section 379 of IPC. The Trial Court convicted both the accused and sentenced them to undergo two years of rigorous imprisonment. Challenging the above said conviction and sentence, the petitioner herein filed an appeal in C.A.No.88 of 2010 on the file of the Additional District Sessions Court/ Fast Track Court No.I, Erode. The Appellate Court dismissed the appeal and thereby confirmed the conviction and sentence passed by the Trial Court. Challenging the above said conviction and sentence, the petitioner is before this Court with this Revision.

3. The brief facts of the case is as follows:

PW1, is the victim in this case. On 12.08.2007, at about 2 p.m., when PW1 was taking water from the public waterline, A1 and A2 came in a motor cycle, A2 was driving the motor cycle and A1, was sitting in the pillion and they snatched four sovereign gold chain from PW1, and fled away. When she raised alarm Pws.2,3 and 4 came to the scene of occurrence, but before that both accused were escaped from the scene. Immediately, PW1 filed a complaint before the respondent Police at about 4.30 p.m., and PW7-Sub-Inspector of Police, received the complaint and registered a case in Crime No.343 of 2007 for offence under Section 379 of IPC and prepared F.I.R., and commenced investigation. He went to the scene of occurrence at 5.45 p.m. and prepared an observation mahazar and a rough sketch. P2 and P7, recorded the statements of witnesses. On 13.08.2007, at about 9 a.m. when the Sub-Inspector of Police was regular checking of the vehicles in Oothukuli and Sennimalai Road, both the accused came in a motorcycle and on suspicion he enquired both the accused. Both the accused admitted their guilt, then PW.7, arrested them. On such arrest, A1 gave a voluntary confession and based on the disclosure statement, PW7 recovered the stolen gold chain, and he remanded the accused to Judicial custody. Thereafter, he recorded the statement of other witnesses, and after completion of the investigation, he filed the charge sheet.

4. Based on the above incriminating materials, the Trial Court framed charges for an offence under Section 379 of IPC, for which the accused denied the same. In order to prove the case, prosecution examined 7 witnesses and marked 10 exhibits and 2 material objects.

5. Out of the witnesses examined, PW1, is the victim in this case. According to her, on 12.08.2007, while she was going back to her home, after taking water from the public tap, the accused came in a motorcycle and snatched her gold

chain, when she raised alarm, her mother-PW.3 and one Murugan-PW.4 came to her help, but before that the accused had escaped, then immediately, she lodged a complaint. Next day, she was informed by the Police that her chain has been recovered. She went to the police station and identified the chain. According to PW.1, when she went to the police station for filing complaint, she saw the A2 sitting in the police station. PW.2 is the person from the same village, and he saw two persons came in a motorcycle and he was told that two persons had snatched the chain of PW1. PW3 is the mother of PW.1. She had also deposed that two persons came in a bike and snatched the chain of PW.1. PW4 is the cousin of PW.1, he is an eye witness to the occurrence. According to him, at the time of occurrence, PW1 was fetching water in a public tap, at that time two persons came in a motorcycle and snatched the chain and fled away from the scene of occurrence. PW.5 and PW.6 are the witness to the observation mahazar. PW7 is the Inspector of Police, who registered the complaint, conducted investigation and filed a charge sheet.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., the accused denied the same, and they do not examine any witnesses or marked any documents.

7. Considering all the above incriminating materials, the Trial Court convicted both the accused under Section 379 of IPC and sentenced them for two years rigorous imprisonment. Challenging the above said conviction and sentence, the petitioner filed C.A.No.88 of 2010, on the file of the Additional District Sessions Court/ Fast Track Court No.I, Erode. The Appellate Court dismissed the appeal and confirmed the conviction and sentence. Challenging the above said judgment of conviction and sentence, the petitioner is before this Court with the present revision.

8. Heard the Mr.N.Manokaran, learned counsel appearing on behalf of the petitioner and Mrs.M.F.Shabana, Government Advocate (Criminal side) appearing on behalf of the respondents.

9. The learned counsel appearing for the appellant would submit that there are lot of contradiction in arrest and recovering of the material objects. As per the evidence of PW1, while she went to the police station for filing the complaint, she found A2, in the police station. But, according to the PW7 -Inspector of Police, A1 and A2 were arrested on 13.08.2007, and thereafter based on the confession of A1, stolen articles were recovered. In view of the above contradiction, the arrest and recovery is not proved by the prosecution. Apart from that there is no proper investigation conducted by the police. Especially as the identity of the accused was not known to PW1, no test identification parade was conducted. Even as per the prosecution case, the recovery was made based on the confession of A1, nothing was recovered

from A2, and on the above grounds he sought for allowing the case.

10. On the otherhand, the learned Government Advocate appearing for the respondent would submit that, there are two eye witnesses, to the occurrence, PW1 is the victim, PW4 is the cousin of PW.1, and both of them clearly deposed that the accused came in a motorcycle and A1 snatched the chain of PW1, and A2 was driving the bike then both fled away and there is no contradiction in the evidence of PW1 and PW4, the minor discrepancy in the arrest and recovery of the chain cannot be a reason to acquit the accused. Hence, he sought for dismissal of the revision.

11. I have carefully considered the rival submission made by the learned counsel for the petitioner as well as the respondents and perused the materials placed before the court.

12. PW1 is a defacto complainant and victim in this case. According to her, at the time of occurrence, A1 and A2 came in a motorcycle, A2 was riding the bike and A1 was sitting in the pillion, and A1 snatched the chain from her. In the cross examination, she had stated that when she went to the police station at 5 p.m., on the same day for filing the complaint, she saw A2 was sitting in the police station, she also saw the motorcycle involved in the crime, in the police station, and she also received the stolen gold chain from police station on the same day. PW4, the other eye witness to the occurrence had stated that both the accused were caught by the villagers of Ottaparai, on the same day. On the next day, he saw both the accused in the police station. But, according to PW7, on 13.08.2007, at about 9 a.m, when he was conducting vehicle inspection, both accused came in a motorcycle, and on suspicion when he enquired them, they admitted their guilt. A1 also gave voluntary confession and based on that PW7 recovered the stolen chain-MO.1. From the evidence of PW1, PW4 and PW7, there is contradiction regarding the arrest and recovery. According to PW1, A2 was in the police station on the date of occurrence itself, the motorcycle was also kept in the police station, and she had received the stolen chain in the police station on the same date. PW4 says that A1 and A2 were apprehended by some other villagers on the same day, but PW7 says that they were arrested only on 13.08.2007 at about 9 a.m. Apart from that, the accused are totally stranger to PW.1. In that circumstances, no test identification parade was conducted to identify the accused.

13. In the above circumstances, I am of the view that the prosecution did not prove the case beyond reasonable doubt in respect of A2, and A2 is entitled for acquittal. The Courts below without considering the evidence in proper perspective convicted the petitioner and hence it is liable to be set aside.

14.In the result, the revision is allowed, conviction and sentence imposed on the petitioner is set aside and the petitioner is acquitted. The bail bond, if any executed, shall stand canceled.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif cum Judicial Magistrate,
Perundurai.
- 2.The Chief Judicial Magistrate,
Erode.
3. The Additional Sessions Judge,
Fast Track Court No.I, Erode.
- 4.The Officer-in Charge,
Sub Jail, Erode.
5. The Public Prosecutor,
High Court of Madras.
- 6.The Inspector of Police,
Chennimalai Police Station,
Erode District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.3128

Criminal Revision No.1011 of 2011

VGII(CO)
GN(07/11/2017)

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