

Bail Slip

Crl.A.139 of 2009: The appellant herein viz V. Senthil @ Murukku Senthil accused No 2 in S.C. No 110/2008 on the file of the Additional District and Sessions Judge, Fast Track Court No 3, Virudhachalam. was directed to be released on bail as per order of this court dated 19.06.2009 in M.P. No 1/2009 in Crl.A. No 139/2009.

Crl.A.246 of 2009: The Appellant herein viz Veeramani, Accused No 1 S.C. No 110/2008 on the file of the Additional District and Sessions Judge, Fast Track Court No 3, Virudhachalam. was directed to be released on bail as per order of this court dated 13.07.2009 in M.P. No 1 of 2009 in Crl.A. No 246/2009.

Crl.A. No 327/2009: The appellant herein viz Manikandan , Accused No 4 S.C. No 110/2008 on the file of the Additional District and Sessions Judge, Fast Track Court, No 3, Virudhachalam. was directed to be released on bail as per order of this court dated 02.07.2009 in M.P. No 1 of 2009 in Crl.A. No 327/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.139, 246 and 327 of 2009

V.Senthil @ Murukku Senthil

..Appellant in Crl.A.139 of 2009/2nd accused

Veeramani

..Appellant in Crl.A.246 of 2009/1st Accused

Manikandan

..Appellant in Crl.A.327 of 2009/4th Accused

Vs

State rep. By

The Inspector of Police,
Neyveli Town Police Station,
Neyveli.

(Cr.No.524 of 2007) ..Respondent in all Crl.As./Complainant

Prayer in all Crl.As:- Criminal Appeals filed under Section 374 (2) of Cr.P.C., against the judgment dated 22.01.2009 made in S.C.No.110 of 2008 on the file of the Additional District and Sessions Judge, Fast Track Judge No.3, Virudhachalam.

For Appellant in Crl.A.139/2009 : Mr. S.Prabhu

For Appellant in Crl.A.246/2009 : Mr. K.Gandhi Kumar

For Appellant in Crl.A.327/2009 : Mr. S.Thangavel

For Respondent in all Crl.As : Mrs.M.F.Shabana,
Gov. Adv. (Crl.

Side)

COMMON JUDGEMENT

A1, A2 and A4 in S.C.No.110 of 2008, are the appellants herein. Totally there are 4 accused. A1, A2 and A4 stood charged for the offences under Sections 341, 397 r/w.34 IPC and A3 stood charged for an offence under Section 397 IPC. By judgment, dated 22.01.2009, trial court, convicted A1, A2 and A4 under Section 397 r/w.34 IPC and sentenced them to undergo rigorous imprisonment for 7 years and convicted A3 under Section 397 IPC and sentenced him to undergo rigorous imprisonment for 7 years. Challenging the above said conviction and sentence, the appellants/A1, A2 and A4 are before this Court with these Criminal Appeals.

2. The case of the prosecution, in brief, is as follows:-

P.W.1, is the victim in this case. On 13.10.2007, at about 7.00 p.m., while she was going for a walk, A1, A2 and A3, went there in a motorcycle and waylaid her, A2 put a knife on her neck and A3 snatched the gold chain with Mangal Sutra. Thereafter, one more person also joined them, and all of them escaped in a motorcycle. Then, she informed about the occurrence to her husband, thereafter, she lodged a complaint before the respondent police.

3. P.W.9, Sub-Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.524 of 2007 and prepared a First Information Report, Ex.P.11 and sent the same to the jurisdiction magistrate and copies of the same to his higher officials.

4. P.W.13, Inspector of Police, on receipt of the First Information Report, took up the case for investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2, and drew a Rough Sketch, Ex.P.18, in the

presence of the witnesses and recorded the statements of the witnesses.

5. P.W.11, Inspector of Police, incharge of the respondent police, on 15.10.2007, at about 9.00 p.m., while on patrol, found A1 and A4 near a Wine shop at Neyveli, and arrested them. On such arrest, A1 had voluntarily given a confession and in his disclosure statement, he identified A2 and A3. A4 had also voluntarily given a confession. Based on the disclosure statement of A1, P.W.11, recovered some gold jewels, belonging to P.W.1, from P.W.5, wife of A1, in the presence of the witnesses under the cover of Mahazar, Ex.P.15, and remanded them to judicial custody.

6. P.W.12, regular Inspector of Police, continued the investigation and since A3 was arrested in some other case, and confined in judicial custody, he took police custody of A3, and A3 also has given a voluntary confession and based on the disclosure statement of A3, some jewels were recovered from one Dhanalakshmi Ammal, in the presence of the witnesses under the Mahazar, Ex.P.17. Then, he handed over the case to P.W.13.

7. P.W.13, continued the investigation and since A2 was in jail in connection with another crime, on 27.12.2007, he took A2 under police custody and on enquiry, A2 had voluntarily given a confession, and based on his disclosure statement, he recovered a sickle and also a gold chain with dollar, and after recording the statements of other witnesses and on completion of investigation, he laid charge sheet.

8. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgment, and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined, and 18 documents were exhibited, besides 6 material objects.

9. Out of the witnesses examined, P.W.1 is the victim in this case. According to her, while she was going for a walk A1, A3 and A4, came in a bike and way laid her and A2 had shown a knife, and A3 snatched the chain. Thereafter, yet another person came there in a motorcycle, and all the accused fled away in the motorcycle. P.W.1 had identified A2 and A3, in the court.

10. P.W.2 is the witness to the Observation Mahazar. P.Ws.3 and 4, Mahazar witnesses, have turned hostile. P.W.5, wife of A1 also turned hostile. P.W.6, a Village Administrative Officer, had spoken about the confession made by A2 and recovery of gold chain and a sickle(M.Os.4 and 5). P.W.7, witness to the

confession of A3, and recovery of gold chain, had turned hostile. P.W.8 also turned hostile. P.W.9, Sub-Inspector of Police, spoken about the registration of the case. P.W.10, Mahazar witness, had turned hostile. P.W.11, Inspector of Police (incharge), spoken about the arrest of A1 and A4 and recovery of the stolen articles. P.W.12, Inspector of Police, had spoken about the arrest of A3 and recovery of material objects. P.W.13, Inspector of Police, earlier commenced investigation, thereafter, continued the investigation and arrested A2, and recovered a sickle and gold chain, and after completion of investigation, he laid charge sheet.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or marked any documents.

12. Having considered all the above materials, the trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/A1, A2 and A4 are before this Court with these Criminal Appeals.

13. I have heard Mr.S.Prabhu, learned counsel appearing for the appellant in CrI.A.139/2009; Mr.K.Gandhi Kumar, learned counsel appearing for the appellant in CrI.A.246 of 2009; Mr.S.Thangavel, learned counsel appearing for the appellant in CrI.A.327 of 2009 and Mrs.M.F.Shabona, learned Gov.Adv. (CrI.Side) appearing for the respondent/State in all CrI.As and also perused the records carefully.

14. The learned counsel appearing for the appellants would submit that the accused were not identified by P.W.1, and no test identification parade was conducted, and all the recovery witnesses have also turned hostile, and the prosecution did not prove the recovery, and there is no other material to connect the accused with the crime.

15. Per contra, the learned Government Advocate (CrI.Side) would submit that P.W.1, victim in this case has categorically stated that only this accused came in a motorcycle and waylaid her and snatched her gold chain with mangalsutra. Thereafter, the accused were arrested and based on their confession, the stolen articles were also recovered and P.W.1 also identified the accused and also the stolen properties and since the stolen articles were recovered from the appellant/accused, there is a presumption under Section 114-A. But there is no proper explanation on the part of the accused for the possession of the stolen articles. Considering all those facts, the trial Court convicted the appellant and there is no reason to interfere with the order of the trial Court.

16. Except P.W.1 , all other material witnesses have turned hostile in this case. According to P.W.1, at the time of occurrence, more than 3 persons came in a motorcycle, and one person shown a knife and threatened her, another person snatched her chain with Mangal Sutra, thereafter, yet another person joined with him and all of them fled away in a motorcycle. As per the evidence of P.W.1, she had implicated 4 persons, but while lodging the complaint, she had only mentioned about 3 known persons. Eventhough she has stated in her evidence that she does not know the identity of the accused, she had stated that she came to know about the name of the accused, while they called themselves by their name. From her evidence, it is clear that the identity of the accused was not known to P.W.1, but the respondent did not take any steps to conduct test identification parade to identify the accused. P.W.1 identified A2 and A3 alone in the Court after a long time, but she did not identify the other two accused.

16. So far as the recovery of stolen article is concerned, all the mahazar witnesses, except P.W.6, turned hostile. P.W.6 had spoken about the recovery of gold chain based on the confession of A2. But P.W.1 in her cross examination had stated that the above gold chain does not belong to her. Hence, recovery of chain from A2 not belongs to P.W.1. So far as the recovery from A1 is concerned, A1 said to have given the stolen articles to his wife and her wife was examined as P.W.5, but she turned hostile, and other mahazar witness also turned hostile. So far as the recovery from A3 is concerned, he is said to have given a portion of the jewels to one Dhanalakshmi Ammal, she was examined as P.W.8, but she turned hostile, and the mahazar witness also turned hostile. As far as A4 is concerned, there is no recovery from him. In the above circumstance, the prosecution failed to prove the recovery from the appellants.

17. Eventhough, P.W.1 in her complaint has stated that only 3 persons came in a motorcycle and waylaid her and snatched the chain, in her evidence, she has implicated one more person. But as stated earlier since identity of the accused was not known to P.W.1, and no test identification parade was conducted and, even P.W.1 identified A2 and A3 alone in the court. Hence, in the absence of any other evidence supporting the prosecution case, A2 and A3 cannot be convicted based on the belated identification of P.W.1.

18. In the above circumstances, I am of the considered opinion that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the accused

are entitled for acquittal. The Court below without considering the evidence erroneously convicted the appellant.

19. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants in S.C.No.110 of 2008 dated 22.01.2009, are set aside and the the appellants/A1,A2 and A4 are acquitted from all the charges. Bail bond, if any, executed by the appellants, shall stand cancelled.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mrp

To

1. The Additional District and Sessions Judge,
Fast Track Court-III,
Virudhachalam.
2. The Superintendent, Central Jail, Cuddalore
3. The Inspector of Police
Neyveli Town Police Station
Neyveli.
4. The District Munsif cum Judicial Magistrate
Neyveli.
5. Do Thro The Chief Judicial Magistrate
Cuddalore.
6. The Public Prosecutor
High Court , Madras.

+1 cc to Mr.S. Prabhu, Advocate sr 7984.
+1 CC to Mr.S. Thangavel, advocate sr 7588.

CrI.A.Nos.139,246 and 327 of 2009

GJII(CO)
SP(06/12/2017)