

BAIL SLIP

The Appellant/Accused namely Sivaraman, @ Billa S/o.Velu be and hereby was directed to the released on bail vide court order dated 02.04.2008 in MP.1 of 2008 in CrI.A.132 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.132 of 2008

Sivaraman @ Billa
S/o.Velu

... Appellant/Accused

-Vs-

State by

The Inspector of Police,
Sholingar Police Station,
Vellore District.

[Crime No.530 of 2002]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 28.07.2005 in S.C.No.141 of 2005 passed by learned Additional District and Sessions Judge, F.T.C.No.2, Ranipet and to set aside the same.

For Appellants : Mr.V.Parthiban

For Respondent : Mr.V.Arul

Additional Public Prosecutor.

J U D G M E N T

This appeal arises against the judgement of learned Additional District and Sessions Judge, F.T.C.No.2, Ranipet, passed in S.C.No.141 of 2005 on 28.07.2005.

2. The case of the prosecution is that on 10.10.2002 at about 9.00.a.m., appellant/accused entered into the house of PW-1, when her husband was away, under the guise of being a cable TV repair man. He held a pen knife to the neck of PW-1 and

under threat of doing her as also her infant son to death had PW-1 hand over her Thali chain. He opened a bureau and took away 20.75 sovereigns and a camera worth about Rs.1000/- The value of the articles was placed at Rs.50,000/-. PW-1 preferred Ex.P1, complaint, on 10.10.2002 at 10.30.a.m. PW-6, Sub Inspector of Police, Sholingar, registered a case in Crime No.530 of 2002 on the file of respondent for offence u/s.392 IPC. The First Information Report is Ex.P9. PW-7, Inspector of Police, took up investigation on 10.10.2002, visited the place of occurrence, prepared Ex.P2 - Observation Mahazar and Ex.P10 - Rough Sketch in the presence of PW-2 and another. He examined PWs-1 to 4 and recorded their statements. Thereafter, Mr.Anbazhagan, Inspector of Police, took up further investigation. On 28.12.2004 at about 6.00.a.m., he arrested the accused near Sholingar bus stop. He recorded the confession statement of accused in the presence of PW-5 and another. He seized MOS-1 to 14 under Ex.P4 to 8 - seizure mahazar. On the same day, he called PW-1 and asked her to identify the jewels in the presence of the accused. He sent the accused to judicial custody. On completion of investigation, he filed a charge sheet before learned Judicial Magistrate, Sholingar, informing the commission of offences under Sections 451(ii), 392(i) and 75 IPC. The case was tried in S.C.No.141 of 2005 before the learned Additional District and Sessions Judge, F.T.C.No.2, Ranipet. Appellant/accused was charged u/s. 75 IPC on the allegation that he had been convicted for offence under Section 379 IPC in respect of a case registered in Crime No.1002 of 2004 on the file of Kanchipuram Taluk Police Station, had been given the benefit of the Probation of offenders Act and had executed a bond for good conduct in such case.

3. Before trial Court, prosecution examined 7 witnesses and marked 11 exhibits and 14 material objects. None were examined on behalf of the defence nor were any exhibits marked. When questioned u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgement dated 28.07.2005, convicted appellant/accused for offence u/s.451(ii), 392(i) and 75 IPC and sentenced him to 5 years R.I. for offence u/s.451(ii) IPC and 10 years S.I for offence u/s 392(i) IPC. Trial Court directed sentences to run concurrently.

4. Heard learned counsel for appellant and learned Government Advocate [Crl.side]. Perused the records.

5. Learned counsel for appellant's initial submission was the case was tried by the learned District and Sessions Judge while offences charged were to be tried by the Chief Judicial Magistrate/ Magistrate and the failure to comply with Section 228(i)(a) Cr.P.C., vitiated the trial and hence the

matter would have to be remitted for fresh trial by the Court having proper jurisdiction. In rejecting such submission, this Court usefully would refer to decision of the Supreme Court in *Sudhir Vs. State of Madhya Pradesh* [(2001) 2 SCC 688]:-

"14. Now we have to deal with the powers of the Sessions Court in the light of Section 228 of the Code which says that when the Sessions Court, after hearing under Section 227, is of the opinion that none of the offences presumed to have been committed by an accused is triable by a Court of Session he is to transfer the case for trial to the Chief Judicial Magistrate.

15. In this context, we may point out that a Sessions Judge has the power to try any offence under the Indian Penal Code. It is not necessary for the Sessions Court that the offence should be one exclusively triable by a Court of Session. This power of the Sessions Court can be discerned from a reading of Section 26 of the Code. When it is realised that the Sessions Judge has the power to try any offence under the Indian Penal Code and when a case involving offence not exclusively triable by such court is committed to the Court of Session, the Sessions Judge has to exercise a discretion regarding the case which he has to continue for trial in his court and the case which he has to transfer to the Chief Judicial Magistrate. For this purpose we have to read and understand the scope of Section 228(1) in the light of the above legal position. The sub-section is extracted below:

"228. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the court, he shall frame in writing a charge against the accused."

16. The employment of the word "may" at one place and the word "shall" at another place in the same sub-section unmistakably indicates that when the offence is not triable exclusively by the Sessions Court it is not mandatory that he should order transfer of the case to the Chief Judicial Magistrate after framing a charge. In situations where it is advisable for him to try such offence in his court there is no legal obligation to transfer the case to the Chief Judicial Magistrate. One of the instances for not making the transfer is when a case and a counter-case have been committed to the Sessions Court and one of those cases involves an offence exclusively triable by the Sessions Court and the other does not involve any such offence."

However, on merits, this Court finds itself in agreement with submission of learned counsel for appellant that Court below has erred in rendering a finding of conviction.

6. Learned counsel for appellant submitted that the appellant, allegedly was arrested on the allegation of his having snatched away a chain of PW-3, the husband of PW-1, when he was walking along a road in an earlier occurrence. No proof in support of such allegation had been produced before the trial Court.

7. It is the prosecution case that upon arrest in such other case, the arrest of the appellant in the present case was effected. The FIR in the present case is of the year 2002 and the arrest allegedly was made after a period of 2 ½ years. The FIR in the present case did not inform any description of the accused. P.W.1 has admitted in cross that on 28.12.2004, she had been examined by police and also prior thereto and that one year prior to such date, she had been informed of the appellant having been arrested and that she had then been taken to the police station. She has admitted to not knowing the accused before his having been shown to her at the police station. She has admitted that appellant/accused was the person accused also in a case arising out of complaint of theft preferred by her husband. While, PW-5 has spoken to recovery of jewels allegedly stolen by the accused from pawn brokers, no pawn broker has been examined nor any pawn receipt marked.

8. In the aforesaid circumstances, the prosecution case cannot be seen as proved beyond reasonable doubt.

9. Accordingly, the Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Additional District and Sessions Judge, F.T.C.No.2, Ranipet, in S.C.No.141 of 2005 on 28.07.2005, are set aside and appellant is acquitted of all the charges. Fine amount, if any, paid shall be refunded Bail bond(s), if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmi

To

1. The Judicial Magistrate, Sholingar.
2. The Chief Judicial Magistrate, Vellore.
3. The Additional District and Sessions Judge,
Fast Track Court No.2, Ranipet.
4. The Principal District Sessions Judge, Ranipet
5. The Inspector of Police,
Sholingar Police Station, Vellore District.
6. The Superintendent, Central Prison, Vellore.
7. The Public Prosecutor, High Court, Chennai.
8. The District Collector, Ranipet, Vellore.
9. The Director General of Police,
Mylapore, Chennai-4. सत्यमेव जयते
10. The Section Officer,
Criminal Section, High Court, Madras

+1cc to Mr.V.Parthiban, Advocate, S.R.No.60592

Criminal Appeal No.132 of 2008

KJI (CO)
CS/11/08/18