

Bail Slip

V.Muthu,

The appellant was directed to be released on bail as per order of this court dated 5.12.06 made in Crl.MP.No.1/06 in Crl.A.1009/06 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.1009 of 2006

V.Muthu

Appellant

Vs

State rep. by
Inspector of Police,
Karumathampatti Police Station,
Coimbatore District,
Crime No.388 of 2005.
(amended as per order dated 22.01.2007
in M.P.No.1 of 2007)

Respondent

Prayer :- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records in S.C.No.118 of 2005 on the file of the Additional District cum Sessions Judge, Fast Track Court No.V, Coimbatore and set aside the conviction and sentence imposed on the appellant by an order dated 31.07.2006.

For Appellant : Mr. D.Krishnamoorthy,
Legal Aid Counsel

For Respondent : Mr.R.Sekar,
Government Advocate.

JUDGEMENT

The sole accused in S.C.No.118 of 2005 on the file of the Additional District cum Sessions court (Fast Track Court NO.V) , coimbatore at Tiruppur is the appellant herein. He stood charged for an offence under Section 397 IPC. By judgment dated 31.07.2006, the trial Court, convicted the accused under Section 397 IPC and sentenced him to undergo rigorous imprisonment for 7 years. Now, challenging the above said conviction and sentence the appellant is before this Court with this appeal.

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

P.W.1 is the victim in this case. On 08.08.2005, at about 1.00 p.m., while he was walking alone in the

Somanoor-Unjapalayam main road, the accused waylaid her and threatened her with knife and snatched away 6 sovereigns of gold chain with mangalsudhra and ran away. At that time, P.W.2, her brother-in-law, came there and with his help, she lodged a complaint before the respondent police. P.W.7, Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.388 of 2005, under Sections 392 and 397 IPC and prepared an First Information Report Ex.P.7. Then, he proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.6) and drew a rough sketch (Ex.P.8) in the presence of the witnesses. On 11.08.2005, at about 5.00 a.m., while P.W.7 was on patrol, on suspicion, enquired the appellant and the appellant/accused admitted his guilt and voluntarily given a confession and also produced a knife (M.O.3) used in the crime. Thereafter, he arrested the accused and based on his disclosure statement, he recovered the stolen articles from one Palanivel, proprietor of a hotel, where the accused was working, in the presence of the witnesses. On 23.08.2005, a Test identification parade was conducted by P.W.5, Judicial Magistrate, in which, P.W.1 identified the accused. Thereafter, P.W.7, recorded the statement of the Judicial Magistrate and other witnesses and after completion of investigation, he laid a charge sheet.

3. 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 7 witnesses were examined and 10 documents were exhibited, besides 2 material objects were marked.

4. Out of the witnesses examined, P.W.1 is the victim in this case, according to her, on the date of occurrence, while she was walking in the Somanoor-Unchapalayam main road, the accused, who was coming behind her, waylaid her and threatened her with knife and snatched gold chain, then she lodged a complaint before the respondent police, and she has identified the accused in the test identification parade, also identified the stolen article. P.W.2 is the brother-in-law of P.W.1. At the time of occurrence, he accidentally came to the scene of occurrence and after hearing about the occurrence, he informed the same to the husband of P.W.1. P.W.3 is a person known to P.W.1. He also came to the scene of occurrence after hearing the alarm of P.W.1, he has chased the accused, but the accused ran away. P.W.4 is the witness to the arrest and confession of the appellant and also recovery of M.O.1 Gold chain and knife. P.W.5 is the Judicial Magistrate, Mettupalayam, who conducted test identification parade, in which, P.W.1 identified the accused. P.W.6 is a witness to the Observation Mahazar. P.W.7, Inspector of Police, registered the case, arrested the accused and recovered the material objects and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness or mark any documents on his side.

6. Having considered all the above materials, the trial Court convicted the accused as mentioned in paragraph one of the judgment. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

7. Earlier when the matter was taken up for hearing, the learned counsel appearing for the appellant withdrew his appearance. Hence, this Court by an order dated 13.07.2017 issued notice to the appellant with regard to the cancellation of suspension of sentence and the notice was also served on the appellant on 01.08.2017 and subsequently, when the matter was posted for hearing on 14.11.2017, there was no representation for the appellant and hence, this Court directed the the Public Prosecutor to serve notice on the appellant through the jurisdictional police and the jurisdictional police also served notice on the appellant, and his name was also printed in the cause list. Despite the same, there was no representation for the appellant. In such circumstances, Mr. D.Krishnamoorthy, Advocate, was appointed as legal aid counsel for the appellant.

8. I have heard the Ms. D.Krishnamoorthy, Legal Aid Counsel, appearing for the appellant and Mr.R.Sekar, learned Government Advocate appearing for the respondent.

9. The learned counsel appearing for the appellant submits that the prosecution failed to prove the recovery of stolen articles from the accused, and P.W.4 is only a stock witness. Apart from that even though the stolen articles were recovered from one Palanivel, he was not examined by the prosecution to prove the recovery. Apart from that identity of the accused was also made known to P.W.1 and photo of the accused was shown to P.W.1, only thereafter the test identification parade was conducted, hence, the identification of the accused cannot be believed. There is also a delay of more than 5 1/2 hours in filing the complaint and the delay was also not explained by the prosecution. Hence, the prosecution failed to prove the offence beyond any reasonable doubt and the appellant is entitled for acquittal.

10. Per contra, the learned Government Advocate would contend that P.W.1 victim in this case has clearly identified the accused in the test identification parade and the stolen articles were also recovered in his disclosure statement and she has also identified the stolen articles. P.W.4, the witness to the recovery of the stolen articles and also M.O.2 knife, clearly supported the case of the prosecution. Apart from that, so far as the delay in filing the complaint is concerned, P.W.1 being a lady has clearly stated that after the occurrence she was under severe fear and

she went to the house and informed her husband and thereafter, her husband took her to the police station and lodged the complaint and hence, the delay was properly explained by the prosecution. Only based on the confession of A1, the stolen articles were recovered. The recovered stolen articles were also identified by P.W.1. Hence, the prosecution has clearly proved the offence against the accused. The trial Court after considering the materials rightly convicted the appellant and there is no reason to interfere with the same.

11. I have considered the rival submissions and perused the materials available on record carefully.

12. The occurrence said to have taken place on 08.08.2005, at about 13.00 hours. While P.W.1 was walking in the main road, the accused way laid her and threatened her with knife and stolen the gold Jewells along with mangalsutra. P.W.2 and P.W.3 came to the scene of occurrence immediately after the occurrence. P.W.3 also stated that after hearing the noise, he rushed there and saw the accused snatching the chain and running away and he tried to catch him and somehow the accused managed to escape. Subsequently, the accused was arrested by P.W.7 on 11.08.2005. On such arrest, the accused had voluntarily given a confession and based on the disclosure statement, the stolen articles and weapon used in the crime were recovered. P.W.4 is a witness to the confession of the accused and also for recovery of the stolen articles. Subsequently, a test identification parade was conducted, immediately after the occurrence on 13.08.2005 by P.W.5, Judicial Magistrate, in which, P.W.1 clearly identified the accused, subsequently, P.W.1 also identified the stolen articles. From the above materials, it could be seen that the stolen articles were recovered from the accused, immediately after the occurrence and there is no explanation by the accused for possession of the stolen articles. In the said circumstance, the presumption under Section 114(a) of the Evidence Act clearly attracts and it could be presumed that the accused has stolen the articles. So far the contention of the learned counsel for the appellant that the delay of 5 1/2 hours in filing the complaint, is concerned, on a perusal of P.W.1's evidence, it could be seen that after the occurrence, P.W.2, who is her brother-in-law, took her to the house, and they informed her husband about the occurrence and thereafter, they went to the police station and lodged a complaint. Hence, the delay is also explained by the prosecution. P.W.4, who is a witness to the Observation Mahazar and recovery of stolen articles, is a natural witness. According to him, during the vehicle inspection, P.W.7 enquired the appellant, where he admitted his guilt and voluntarily given the confession and handed over the M.O.2 knife and there is no reason to disbelieve his evidence. Considering all the above materials, I am of the considered view that the prosecution has clearly established that it is only this accused had committed the crime.

13. The trial Court considering the entire materials rightly convicted the appellant and I do not find any illegality or perversity in the judgment of the Court below and the appeal is liable to be dismissed.

14. In the result, the Criminal Appeal is dismissed, the conviction and sentence imposed on the appellant are confirmed. The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any. The period of imprisonment already undergone by them shall be set off under Section 428 Cr.P.C.

15. While parting with the case, I appreciate the services rendered by Mr. D.Krishnamurthy, learned counsel who appeared on behalf of the appellant, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

mrp

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Fast Track Court No.V,
Coimbatore at Thiruppur.
2. The Inspector of Police,
Karumathampatti Police Station,
Coimbatore District.
- 3.the Judicial Magistrate, Tirupur.
- 4.The Chief Judicial Magistrate, Coimbatore
- 5.the Principal Session Jude, Coimbatore
- 6.The Superintendent, Central Prison, Madurai
- 7.The Member Secretary,
Legal Services Authority, High Court, Chennai.
- 8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Krishnamoorthy, Advocate SR.No.86002

KS (CO)

sm:27.2.2018

Cr1.A.No.1009 of 2006