

BAIL SLIP

The Appellants 1 to 3 was released on bail as per order of this court dated 24/04/2008 made in MP.No.1/2008 in CrI.A.No.200/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.200 of 2008

1.Mani
S/o.Kanjimalai Gounder

2.Muthuraj
S/o.Mariyappanaicker

3.Ramasamy
S/o.Chinnathambi Gounder ... Appellants/ Accused 1
to 3

Vs.

The Inspector of Police,
Kamanaickenpalayam Police Station,
Coimbatore District.
Crime No.57 of 2006 ... Respondent/Complainant

Criminal Appeal preferred under Section 374 (2) of Cr.P.C against the judgment of learned Additional District and Sessions Judge, Fast Track Court IV, Coimbatore, Tiruppur, passed in S.C.No.179 of 2007 on 26.02.2008.

For Appellants : Mr.S.Ananthanarayanan,
senior counsel
for Mr.M.A.P.Thangavel

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

J U D G M E N T

This appeal arises against the judgment of learned Additional District and Sessions Judge, Fast Track Court IV, Coimbatore, Tiruppur, passed in S.C.No.179 of 2007 on 26.02.2008.

2. Prosecution case is that accused on 06.02.2006, entered into a criminal conspiracy to commit robbery and put the same into effect on the same day. PW-1 was proceeding to a bank towards depositing collection monies of TASMAC shops, when the accused 1 and 2 on a motor cycle, assaulted him and took away the money by throwing chilly powder on PW-1. PW-1 preferred Ex.P1 - complaint, to PW-17, Sub-Inspector of Police, who registered a case in Crime No.57 of 2006 on the file of respondent for offence u/s.392 IPC. Ex.P19, Printed First Information Report, was forwarded to Court and higher officials. PW-18, Inspector of Police, took up investigation in the case, on 06.02.2006. PW-18 went to the place of occurrence along with PW-12 and PW-13, Deputy Superintendents of Police, Finger Print Department and prepared Ex.P4 - Observation Mahazar and Ex.P20 - Rough Sketch. PW-18 seized MO-1 - helmet and MO-2 - chilly powder under Ex.P5, seizure mahazar in the presence of PWs.12 and 13. PW-18 examined witnesses and recorded their statements. PW-18 took finger prints of suspected accused and of officials working in the TASMAC shop and forwarded the same for examination. On 17.02.2006, PW-18 arrested A3 and recorded his confession in the presence of PWs.14 and 15. PW-18 seized Rs.46,000/- handed over by A3 at 10.30 a.m. under Ex.P14 - Seizure Mahazar. PW-18 recorded A1's confession in the presence of witnesses and seized MO-7 - Rs.43,500/-, MO-8 - Helmet, MO-9 - Jerkin and MO-10 - Polythene bag under Ex.P16, seizure mahazar and MO-11, Rs.30,500/- under seizure mahazar Ex.P21. PW-18 recorded A2's confession and seized MO-12 - Rs.90,000/- under Ex.P18 - seizure mahazar. PW-18 seized MO-14 - Aruval and MO-15 - Motor Cycle under Exs.P22 and P23, seizure mahazars. PW-18 sent the accused to judicial custody. PW-18 forwarded the seized articles under Form-95 to Court. PW-18 took finger prints of accused 1 and 2 and forwarded the same for examination. PW-18 submitted Ex.P6, requisition to Judicial Magistrate towards conduct of identification parade. On 27.03.2006, PW-18 took PW-1 for conduct of identification parade and after completion thereof PW-18 examined him and recorded his statement. Ex.P7 is the identification parade report. On 17.05.2006, PW-18 obtained finger prints reports from PWs.12 and 13 and recorded their statements. Finger Print of A2 matched finger prints found in MO-5, photographs. On completion of investigation, PW-18 filed a charge sheet informing commission offences u/s.392 r/w 397 IPC against A1 and A2 and 309 IPC against A3 before learned Judicial Magistrate, Palladam and on committal, the case was tried in

S.C.No.179 of 2007 on the file of learned Additional District and Sessions Judge, Fast Track Court IV, Coimbatore, Tiruppur.

3. Before trial Court, prosecution examined 18 witnesses, marked 23 exhibits and 15 material objects. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court under judgment dated 26.02.2008, convicted accused for offences u/s.120(B) and 392 r/w 397 IPC and sentenced each of them to 7 years R.I. and fine of Rs.1,000/- i/d 6 months S.I. for each offences. There against, the present appeal has been filed.

4. Heard learned senior counsel for appellants and learned Additional Public Prosecutor.

5. Learned senior counsel submitted that according to prosecution, PW-1, a sales man in a TASMACH shop has collected a sum of Rs.3,34,306/- from the TASMACH Branch at Sanchery and three other shops on 06.02.2006 between 2.20 and 2.30 p.m. He was on a TVS moped when accused 1 and 2, wearing helmets, gave chase on a Red Yamaha Motorcycle and kicked at him as a result of which the money bag fell down. PW-1 and second accused tussled for it and second accused's helmet fell off. Second accused managed to get the bag though some of the money spilt out. PW-1 was treated to chilli powder towards blinding him. First accused lifted visor of his helmet to tell second accused that they should make a get away. PW-7, an elderly lady gave PW-1 water to wash up. PW-1 went to the police station 3 kms. away and preferred a complaint and he carried with him the helmet of second accused and some chilli powder. On the way to police station, he, from a public booth, informed PW-2, supervisor, who came to the police station. Informing such to be the basic prosecution case, learned senior counsel spelt out the following infirmities:

- (i) There was no proof for collection of a sum of Rs.3,34,306/- from four TASMACH shops. It is PW-2, who was in charge of depositing previous day collections into the Bank, the next day. Though it was the prosecution case that since PW-2 was unwell on the date of occurrence PW-1 was deputed to deposit the amounts into the bank, no document has been produced to establish that PW-2 was unwell. There absolutely is no material to show that the alleged amount has been given to PW-1 except for the oral evidence of PWs.2 to 6. Further, it was also not the prosecution case that PW-2 used to deposit the collections of other three branches also. When so, prosecution ought to have examined the person, who normally deposits the collection of other three branches.
- (ii) Neither the account books nor the account statements have been produced to establish that a sum of Rs.3,34,306/- was collected on a particular date. Prosecution has failed to produce records i.e., documentary evidence which has to be

statutorily maintained in the normal course of business, at least for auditing purpose.

- (iii) Though a two wheeler has been seized and marked alleging that the same belonged to first accused, no document has been produced to establish such fact.
- (iv) While PWs.2 and 3 deposed that arrest was effected within a week of occurrence, it was the evidence of PW-18, Investigation Officer, that he effected arrest on 17.02.2006 at about 08.00 a.m. A perusal of Ex.P12, fingerprint impressions, clearly reveal that fingerprints of second accused have been taken on 06.02.2006 itself. Hence, the date of arrest as stated by prosecution is false. Given such position, the arrest, confession and recovery, as suggested by prosecution, were unbelievable.
- (v) The conduct of PW-3, who, despite having information about the occurrence at 03.00 p.m. of 06.02.2006, proceeded to police station only at 06.00 p.m., was unnatural.
- (vi) While PW-1 spoke to his inability to identify first accused since A1 wore a helmet and chilli powder was thrown on his face and hence, was unable to give particulars of PW-1 in Ex.P1. It was not known how and on what basis PW-10 arranged for Test Identification Parade.

6. Heard learned Additional Public Prosecutor on the above submissions.

7. Given the various discrepancies and infirmities in the prosecution case listed above, the benefit of doubt necessarily has to be afforded to appellants.

The Criminal Appeal shall stand allowed. The judgment of learned Additional District and Sessions Judge, Fast Track Court IV, Coimbatore, Tiruppur, passed in S.C.No.179 of 2007 on 26.02.2008, shall stand set aside. It is represented that second accused died pending appeal. Hence, the charges stand abated against him. Appellants 1 and 3 are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Fast Track Court IV,
Coimbatore, Tiruppur.

2.The Inspector of Police,
Kamanaickenpalayam Police Station,
Coimbatore District.

3. The Judicial Magistrate
Palladam, Coimbatore

4.The Chief Judicial Magistrate
Coimbatore

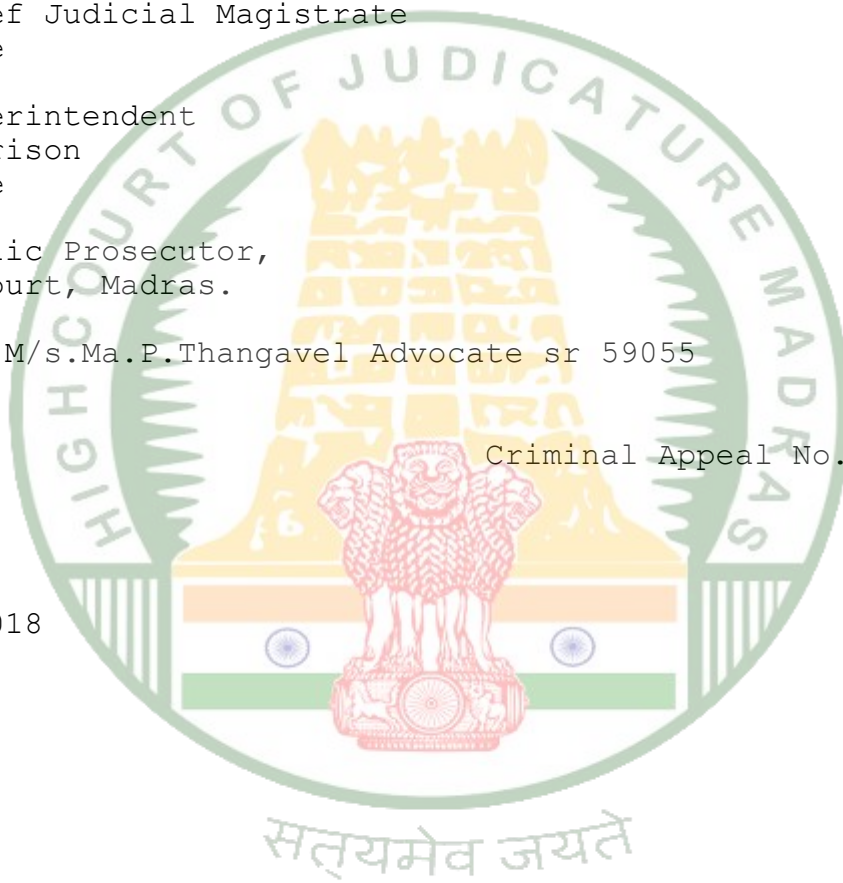
5.The Superintendent
Central Prison
Coimbatore

6.The Public Prosecutor,
High Court, Madras.

+2 ccs to M/s.Ma.P.Thangavel Advocate sr 59055

Criminal Appeal No.200 of 2008

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