

Bail Slip

The Appellants herein/Accused 1&3 Viz 1)Vanaraj S/o.Gopal(A1)
2)Muthu S/o.Gopal(A3) were released on bail by the Order of this
Court dated 07/07/2008 made in MP.1/2008 in Crl.A.202/08 on the
file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.202 of 2008

1.Vanaraj S/o.Gopal

2.Muthu S/o.Gopal ... Appellants/Accused 1 & 3

Vs.

State represented by

Inspector of Police,

Erode Taluk Police Station,

Erode District.

Crime No.39 of 2001

... Respondent/Complainant

Criminal Appeal preferred under Section 374(2) of Cr.P.C
against the judgment of learned Principal Assistant Sessions
Judge, Erode, passed in S.C.No.91 of 2005 on 22.11.2005.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.V.Arul,

Additional Public Prosecutor

J U D G M E N T

This appeal arises against the judgment of learned Principal
Assistant Sessions Judge, Erode, passed in S.C.No.91 of 2005 on
22.11.2005.

2. The prosecution case is that on 26.02.2001 at about 01.30
a.m., seven accused wearing masks broke into the house of PW-1,
caused injury to PW-1 and also did away with jewelleries of
value of Rs.4,000/- belonging to the inmates. A case was
registered in Crime No.39 of 2001 on the file of respondent.

Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.458, 395 r/w 397 IPC. Upon committal, the case against accused 1 to 3 has been spilt up and tried separately in S.C.No.91 of 2005 on the file of learned Principal Assistant Sessions Judge, Erode.

3. Before the trial Court, prosecution examined ten witnesses and marked twelve exhibits and five material objects. None were examined on behalf of the defence nor were any exhibits marked. Trial Court, under judgment dated 22.11.2005, has acquitted second accused but convicted appellants/accused 1 and 3 for offences u/s.458 and 395 r/w 397 IPC and sentenced each of them to 8 years R.I. and fine of Rs.500/- i/d 6 months R.I. for each of the aforesaid offences. Trial Court directed that the sentences run concurrently. There against, the present appeal has been filed.

4. Heard learned counsel for appellant and learned Additional Public Prosecutor.

5. Before the trial Court, the defence has raised the issue of need for a test identification parade. When it is the admitted case that the prosecution party knew not the accused, such contention rightly has been rejected on the reasoning that it was the evidence of prosecution witnesses that the intruders wore masks at the time of occurrence. No purpose would be served by test identification parade in the said circumstances. However, trial Court has held as follows (translated) :

"In the confession statements of accused 5, 6 and 7, it is stated that accused 1 and 3 also were involved. On the basis of confession statements of accused 1 and 3, recoveries have been made on 21.04.2004 in S.C.No.90/2005. In that case, in the confession statements, it has been stated that they went to the house of PW-1 and committed theft. Hence, accused 1 to 3 have been arrayed as accused in the present case."

6. This appeal is to be allowed on the sole contention of learned counsel for appellants that trial Court erroneously has relied on confessional statements tendered by other accused in the case, such accused not having been tried jointly with appellants herein. Section 30 of the Indian Evidence Act allows for reliance upon the confession of a co-accused towards arriving at a finding of conviction vis-a-vis, a particular accused, only when both, viz., the accused, who have tendered confessional statements as also the other accused who stands implicated in such confession are tried jointly. The aid of Section 30 of the Indian Evidence Act not being available in the present case, this Court holds that the trial Court fell into grave error in placing reliance on confessions of the other

accused, who had not been tried along with appellants, in arriving at a finding of conviction. Appellants herein have neither tendered any confession admissible u/s.27 of the Indian Evidence Act nor have any recoveries been made from them.

The Criminal Appeal shall stand allowed. The judgment of learned Principal Assistant Sessions Judge, Erode, passed in S.C.No.91 of 2005 on 22.11.2005, shall stand set aside. Appellants are acquitted of all charges. Fine amount, if any, paid by them shall be refunded. Bail bonds, if any, executed by them shall stand cancelled.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate no.1, Erode.
- 2.-do-Thro 'The Chief Judicial Magistrate, Erode.
- 3.The Principal Assistant Sessions Judge, Erode.
- 4.-do-Thro the Principal Judicial Magistrate, Erode.
- 5.The Superintendent, Central Prison, Coimbatore.
- 6.The Inspector of Police, Erode Taluk Police Station, Erode District.
- 7.The Public Prosecutor, High Court, Madras.
- 8.The Section Officer, Criminal Section, High Court, Madras-104.(For Standing Lower Court Records)

Criminal Appeal No.202 of 2008

LRS (CO)
GN(24/08/2017)