

Bail Slip :

Crl.A.No.477/08 : The Appellant / petitioner accused namely Nagoor Gani was directed to be released on bail as per the order of this court dated 15.07.2008 made in mp 1/08 in Crl.A.No.477/08 on the fixed this court

Bail Slip :

Crl.A.No.526/08 : The Appellant / petitioner namely 1.Baskar s/o.Rajangam 2.Sekar S/o Muniandi 3.Sundar S/o. Muthu 4.Baby S/o. Ahmed Meeran were directed to be released on bail as per the order of this court dated 23.07.2008 made in mp 1/08 in Crl.A.No.526/08 on the fixed this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2017

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos. 477 and 562 of 2008

Nagoor Gani

.. Appellant in

Crl.A.No.477/2008

1. Baskar

2. Sekar

3. Sundar

4. Babu

Appellants in

Crl.A.No.526/2008

सत्यमेव जयते

..

vs

State rep.by

The Inspector of Police,

B1, North Beach Police Station,
Chennai.

Cr.No.647/2005

.. Respondent in both
Crl.As

Common Prayer in both Criminal Appeals:- These Criminal Appeals have been filed under Section 374(2) Cr.P.C., to call for the records and set aside the conviction and sentence passed by the

learned Additional District and Sessions Judge, Fast Track Court NO.V, Chennai in S.C.No.77 of 2008 dated 12.06.2008.

In Crl.A.No.477 of 2008:-

For Appellant : Mr. P.Nagaraju

For Respondent : Mr.R.Sekar,

Government Advocate (Crl. side)

In Crl.A.No.526 of 2008:-

For Appellant : Mr.L.Ganasekar, for A4

: Ms.A.Gouri, for A1 & A5

Legal Aid Counsel

: Mr.T.Surendran, for A3

For Respondent : Mr.R.Sekar,

in both appeals Government Advocate (Crl. side)

COMMON JUDGMENT

The appellant in Crl.A.No.477 of 2008 is A-2; the appellants in Crl.A.No.562 of 2009 are A1, A3, A4 and A5, in S.C.No.77 of 2008, on the file of the Additional District and Sessions Court, (Fast Track Court-V), Chennai. They stood charged for the offences under Section 395 IPC. By judgment dated 12.06.2008, the trial Court convicted the appellants under Section 395 IPC and sentenced them to undergo rigorous imprisonment for 10 years, and to pay a fine of Rs.3000/- each, in default to undergo rigorous imprisonment for 6 months. Challenging the said conviction and sentence, the appellants/accused 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. He was working as a driver under P.W.3. On 06.08.2005, P.W.3 has given a sum of Rs.5,00,000/- to P.W.1 and asked him to hand over the same to his brother P.W.3 at Teynampet, P.W.2 sent him in a Government Transport Corporation bus boarded near Guindy roundana, at about 12.00 p.m. Along with P.W.1 two persons were also got into the bus and they were seated behind him. At Tambaram bus-stand, two more persons boarded into the bus. When the bus halted at Mamandoor, the driver and conductor got down from the bus to have a coffee. At that time, two more persons got into the bus, and told P.W.1 that they came from CBCID Police, and they got an information that P.W.1 is carrying narcotic drugs and they want

to search and examine him. A3 also showed an identity card, then A3 asked A1 to bring him down. At that time, two more persons were also standing there, and they questioned P.W.1 about the money, and took his bag. Thereafter, A3 asked A1 to bring him to Tindivanam in another bus. When they reached Tindivanam, 3 more persons were standing there and they handed over the bag to him, and P.W.1 found the cash was missing. When he questioned them, they told him that another Inspector will bring the money. Thereafter, A1, A3, took him back to Tambaram, from Tambaram, they came to Saidapet in another bus. Thereafter, from Saidapet, both the accused took P.W.1 in an auto rickshaw, on the way they stopped the auto rickshaw near petty shop and asked P.W.1 to buy a cigarette, when P.W.1 went to buy cigarette, they fled away from the place in the auto. Thereafter, P.W.1 informed the same to P.W.2, Subsequently, on 01.09.2005, they have given a complaint before the B1 Beach Police Station. P.W.9, Inspector of Police, on receipt of the complaint, registered a case in Crime No.647 of 2005, for an offence under Section 395 r/w. 394 IPC and prepared First Information Report (Ex.P.7), then, he commenced investigation and recorded the settlements of P.Ws.1, 2 and 3. During the investigation, he arrested A1 and A2. On such arrest, A1 voluntarily given a confession, based on the disclosure statement (Ex.P.8) a sum of Rs.10,000/- was recovered from A1, and A2 also given a voluntary confession, based on his disclosure statement a sum of Rs.21,000/- was recovered from him. On 07.09.2005, P.W.9 arrested A3 and on such arrest, he had given a voluntary confession, based on his disclosure statement, a sum of Rs.75,000/- was recovered, an Identity card (Ex.P.2) was also seized. Then, P.W.9 arrested A4, on the very same day and on such arrest, he has also given a voluntary confession, based on the disclosure statement a sum of Rs.15,000/- has been recovered, later A5 was arrested on 17.10.2005 and on such arrest, he has also given a voluntary confession, based on the disclosure statement, P.W.9 recovered a sum of Rs.1,52,000/-, thereafter, he sent all the seized currency notes to the Court, and he recorded the statement of the other witnesses, and after completion of investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed a sole charge under Section 395 of IPC against the accused. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 9 witnesses were examined and 20 documents were exhibited, besides 10 Material Objects were marked.

4. Out of the witnesses examined, P.W.1 is the victim in this case. According to him, on 06.08.2005, at about 12.00 p.m., he carried a sum of Rs.5,00,000/- and travelled in the

State Transport Corporation bus, boarded at Kathipara Junction. At that time, two other persons were also got into the bus, and sat behind him, and he identified A1 alone. Thereafter, at Tambaram, two more persons boarded into the bus, but he did not know the identity. When the bus halted at Mamandoor for tea, two more persons boarded into the bus and he identified A3 as one of the persons, and he was not able to identify other person. A3 told him that he was from CBCID Police, and he wants to examine him and brought him down from the bus. At that time A4 & A5 were standing there, A3 took the bag containing cash, and asked A2 to bring P.W.1 to Tindivanam. Then, he was taken to Tindivanam, where they handed over the bag to him, and he found the cash missing, then A1, and A3, took him to Tambaram, from Tambaram to Saidapet, from Saidapet, they took him in an auto and left him near a petty shop. Thereafter, he informed the same to P.W.2 and lodged a complaint.

5. P.W.2 is the brother of P.W.3. According to him, he has handed over money to P.W.1 and asked him to hand it over to P.W.3, his brother. He is only a hearsay witness. According to him, only P.W.1 told him about the occurrence and then he lodged a complaint. P.W.3 is the employee of P.W.1, for whom, P.W.1 carried the money in the bus. According to him, on the date of occurrence, his brother P.W.2 sent a sum of Rs.5 lakhs for his daughter's marriage through P.W.1. Subsequently, he came to know that the money was missing, P.W.1, told him about the occurrence and then, they lodged a complaint. P.W.4 is the conductor of the bus, in which P.W.1 was travelling. According to him, at Guindy Kathipara junction only one person has boarded into the bus, then at Tambaram, 4 or 5 persons got into the bus, when they stopped the bus at Mamandoor, for taking tea, they found 7 persons were missing from the bus; he did not identify any of the accused. P.W.5 is the driver of the bus. According to him, one person alone boarded the bus at Kathipara and at Tambaram 5 more persons boarded, while they stopped the bus at Mamandoor, 7 persons were found missing, he also not identified the accused. सत्यमेव जयते

6. P.W.6 was examined by the prosecution with regard to the identity card (Ex.P.2) and he has stated that the identity card was not issued by him. But, in his evidence he has not stated anything about where he was working and other details.

7. P.W.7, is the witness for the arrest of A1 to A4 and the confession given by them, and also for recovery of cash. But he turned hostile. P.W.8, speaks about arrest of A5 and recovery of a sum of Rs.1,52,000/- and also witness to the recovery Mahazar (Ex.P.5). P.W.9 is the Inspector of Police, who registered the complaint, conducted investigation, arrested the accused and recovered the stolen money, and after completion

of investigation, he laid the final report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They examined 10 witnesses and also marked 4 documents .

9. Out of the witnesses examined DW1 is the wife of A3. He says that on the date of occurrence her husband came to Redhills, to see his ailing mother. Subsequently, the Sub-Inspector of Police took him from the house and they also asked her to Pay Rs.10,000/-. DW2 is the brother-in-law of A3, and he says that at the time of occurrence, A3 was in his house to look after his mother, who was ill. DW3 is the neighbour of A3. According to him, on the date of occurrence, A3 was in the house of his mother-in-law at Redhills. DW4 is the landlord, where A2 was doing business. According to him on the date of occurrence, at about 11.15 p.m., A2 was present in his shop and he had handed over the rental amount to him. P.W.5 is the wife of A4. According to her, on 30.08.2005, her husband, A4 was taken by the police from his house. DW.6 is the neighbour of A5. According to him, A5 was running a mobile shop at Pudhucherry and on the date of occurrence, at about 11.30 p.m., A5 was in his shop. DW.7 is the wife of A1. According to her, on the date of occurrence, she was at her house. Subsequently, on 01.09.2005, A1 was arrested from his house and the police demanded Rs.1,00,000/- from her. D.W.8 running a shop at Burma Bazaar. According to him he know A2 and A4. On the date of occurrence, while he was in his shop, A2 took A4 in a two wheeler and left him in the bus stand at about 11.30 p.m., thereafter, he and A2 went in a share auto to their houses and A2 was residing in the opposite house. D.W.9 is wife of A5. According to her, the police has forcibly obtained a sum of Rs.1.35,000/- from her. DW.10 is the wife of A2. According to her, on the date of occurrence, midnight, her husband came to house with DW8, who was residing in the opposite house and they have also marked 4 exhibits to establish that they were all not present in the scene of occurrence, and they were somewhere else.

10. Having considered all the above, the trial Court found the accused guilty under the charge framed against them and accordingly, convicted and sentenced them as detailed in the first paragraph of this judgment. Aggrieved by the same, the appellants/accused are before this Court with these appeals.

11. I have heard Mr. P.Nagaraju , learned counsel for the appellant/A2 in CrI.A.No.477 of 2008 and Ms.Dr.R.Gowri, learned counsel appearing for the appellants 1 and 4/A1 & A5 and Mr.L.Gunasekar, learned counsel appearing for the 3rd

appellant/A4 and Mr.T.Surendran, learned counsel appearing for the second appellant/A3 in CrI.A.No.526 of 2008 and Mr. R.Sekar, learned Government Advocate appearing for the State and I have also perused the records carefully.

12. So far as A1 and A5, there is no representation on their behalf, hence Ms.R.Gowri, learned counsel was appointed as a legal aid counsel to represent them.

13. The learned counsel for the appellants would contend that the prosecution has miserably failed to establish the identity of the accused. P.W.1 is the one and only eye-witness to the occurrence and he identified only A1 and A3, and he could not identify other accused. The prosecution also did not conduct any test identification parade to establish the identity of the accused, especially when the accused were not known to P.W.1. That apart, there is a huge delay of 29 days in filing the complaint. Even though occurrence took place on 06.08.2005, the complaint has been lodged on 01.09.2005, to the respondent, B1 police Police Station, which has no jurisdiction to register the complaint. That apart, so far as the recovery is concerned, the arrest and recovery witnesses turned hostile. Hence, the recovery is also not proved by the prosecution, the evidence of P.Ws.4 and 5 conductor and driver of the bus, is also totally contradictory to the evidence of P.W.1.

14. The learned counsel further submitted that the accused were able to prove that they are not present in the scene of occurrence through oral and documentary evidence. The trial Court, without considering all the materials had erroneously convicted the accused.

15. Per contra the learned Government Advocate would contend that P.W.1 is the victim in this case and he has identified the accused in the Court. Since all the witnesses had identified the accused in the Court, the non conduction of test identification parade will not affect the prosecution case. That apart, the stolen cash was also recovered from the accused and even though the mahazar witness turned hostile, since the money was recovered based on the confession statement of the accused, the prosecution has clearly established the case against the accused and the trial Court also considered all the materials and rightly convicted the appellants.

16. I have considered the rival submissions and perused the materials available on records carefully.

17. P.W.1 is the victim in the case. According to P.W.1, at about 12.00 p.m., he boarded the bus at Guindy Kathipara Junction. At the time, 2 persons got into the bus,

but, he identified A1 alone. Subsequently, two more persons boarded the bus at Tambaram, but he was not able to identify those two persons, and in his evidence he told that he does not know identity of the two persons. Then at Mamandoor two more persons got into the bus and A3 told him that he is from CBCID police and showed his identity card and he was not able to identify any other person, as he did not see them properly. According to P.W.1, while they got down from the bus, two more persons A4 and A5 were standing there. But, no overt act was attributed against them and he only says that 2 and 4 were standing near the bus. Then A1, A3 took him to Tindivanam and he found the cash missing, from Tindivanam, they took him back to Tambaram, and from Tambaram to Saidapet and near Saidapet, they left the P.W.1.

18. According to P.W.1 at Kathipara junction along with him two more persons had boarded the bus, but P.Ws.4 and 5, Driver and conductor of the bus, totally contradicted his evidence and said that except P.W.1 no one has got into the bus at Kathipara and at Tambaram 4 or 5 persons got into the bus, subsequently at Mamandoor, 7 persons were missing, and both P.Ws.4 and 5 did not identify any of the accused. Apart from that admittedly, no test identification parade was conducted by the prosecution to identify the accused and except A1 & A3, P.W.1 also not identified the other accused.

19. Apart from that there is a delay of 25 days in filing the complaint. Even though the occurrence took place on 06.08.2005, the complaint was lodged only on 01.09.2005, after a delay of 25 days, and the complaint was lodged before B1 North Beach Police, which has no jurisdiction. The prosecution did not give any valid reason for the delay in filing the complaint. Even though P.Ws.2 and 3 say that they have approached Tindivanam Police Station, and their complaint was not accepted. But, no material was produced by the prosecution to show that they have lodged a complaint at Tindivanam Police Station and also for giving a complaint to the respondent police, which has no jurisdiction to entertain the complaint. Hence, the inordinate delay in filing complaint also creates doubt in the prosecution case.

20. The next contention of the appellant was that the recovery was not proved by the prosecution. P.W.7, is the only witness examined by the prosecution for the arrest of A1 to A5 and recovery of cash from them, But P.W.7 turned hostile. So far as A5 is concerned, even though P.W.8 speaks about the arrest and recovery, P.W.1 did not identify A5 as the person involved in the crime. In view of the above, the recovery was also not proved by the prosecution.

21. Considering the witnesses examined by the accused, they are closely related to accused and they are only trying to raise alibi and except their oral evidence, there is no other corroborated materials available to establish their case .

21. Considering all the materials available on record, this Court is of the view that it is highly unsafe to convict the accused based on the doubtful evidence of P.W.1. The Court below without considering all the materials erroneously convicted the accused. In the circumstances, I am of the considered view that the prosecution has failed to prove the charge beyond any reasonable doubt. Hence, the benefit of doubt should be given to the appellant and the appellants are entitled for acquittal.

22. In the result, the Criminal Appeals in C.A.No.477 and 528 of 2008 are allowed and the conviction and sentence imposed on the appellants are set aside and the accused are acquitted from the charge. Fine amount, if any, paid by the accused, shall be refunded to them. Bail bond, if any, executed by them shall stand cancelled.

23. While parting with the case, I appreciate the useful assistance rendered by Ms.Dr.R.Gowri, learned counsel who appeared on behalf of the appellants 1 and 4 /A1 and A5, as Legal Aid Counsel. The Legal Services Authority is directed to pay her remuneration.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mrp

To

1.The Additional District and Sessions Court, Fast Track Court-V, Chennai.

2.The VII Metropolitan Magistrate, George Town, Chennai.

3.The Chief Metropolitan Magistrate, Egmore, Chennai.

4.The Superintendent Central Prison, Chennai.(Puzhal)

5.The Inspector of Police, B1 North Beach Police Station, Chennai.

- 6.The Secretary, Legal Service Authority, Chennai.
- 7.The Public Prosecutor,High Court, Madras.
- 8.The Vth Metropolitan Magistrate, George Town, Chennai.
- 9.The Director General of Police, Mylapore, Chennai.
- 10.The District Collector, Chennai, Chennai District.
- 11.The Section Officer, Criminal Section, High Court Madras.

+1cc to Mr.Dr.R.Gouri, Advocate, S.R.No.91053

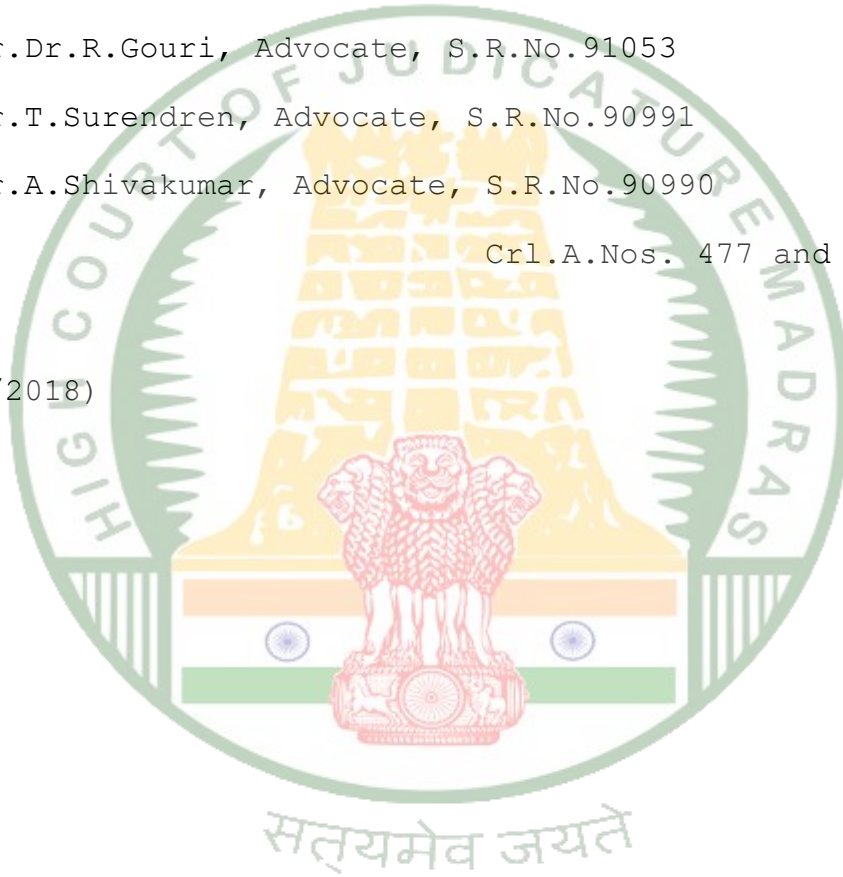
+1cc to Mr.T.Surendren, Advocate, S.R.No.90991

+1cc to Mr.A.Shivakumar, Advocate, S.R.No.90990

Crl.A.Nos. 477 and 526 of 2008

GMR (CO)

RRK (20/03/2018)



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