

Bail Slip:

That the appellants/Accused No.1 & 3 namely Muthukumar & Saravanan were directed to be released on bail by the order of this court dated 27.6.2007 in CrI.MP.1/07 in CrI.A.No.543/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.543 of 2007

1.Muthukumar

2.Saravanan

.. Appellants/Accused 1 & 3

Vs

State

Rep. by

The Inspector of Police,
Chromepet Police Station,
Chennai.

Cr.No.631/03

.. Respondents

Prayer:- Criminal Appeal filed under Sections 374 (2) of the Code of Criminal Procedure, to set aside the judgment passed in S.C.No.713 of 2005 dated 09.06.2007 on the file of the Additional District and Sessions Judge (Fast Track Court), Chengelpet.

For Appellants : Mr.T.Rajkumar (Legal Aid Counsel)

For Respondent : Mrs.M.F.Shabana,
Govt. Advocate (CrI.side)

* * * * *

J U D G M E N T

The present appeal has been filed by the appellants/A.1 and A.3 against the judgment passed in S.C.No.713 of 2005 dated 09.06.2007 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Chengelpet.

2. Totally, there are three accused in this case. All the accused stood charged for the offences under Sections 341 r/w 34 and 392 IPC. The trial Court convicted all the accused

under Section 341 r/w 34 I.P.C and sentenced them to undergo one month Simple Imprisonment each and convicted under Section 392 IPC and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/- each in default to undergo six months Rigorous Imprisonment. The trial Court ordered the sentences to run concurrently. Challenging the above said order of conviction, A.1 and A.3 are before this Court by way of filing the present Criminal Appeal.

3. The brief case of the prosecution is as follows:

(i) P.W.1 is a victim in this case. On 31.08.2003, at about 7.00 p.m both P.W.1 and P.W.2 were walking along the road near C.L.C. Works Road, Chrompet, Chennai. At that time, A.2 came near to them and called P.W.1 and told him that A.1 and A.3 were calling him. Then P.W.1 went there, where A.1 threatened him with knife and snatched the gold chain and gold ring from him and he had also took Rs.1,500/- from P.W.1, and they ran away. Out of fear, P.W.1 went to his house, and next day morning, P.W.1, went to the Police Station and lodged a complaint. P.W.6, who was working as Sub Inspector of Police, Chitlapakkam received the complaint and registered a case in Cr.No.631 of 2003 for the offence under Section 398 IPC and he prepared F.I.R - Ex.P.8.

(ii) P.W.7, who was working as Inspector of Police, Chrompet, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar Ex.P.2 and Rough Sketch Ex.P.9. On 2.9.2003, at about 8.45 p.m, he arrested the accused. On such arrest, A.1 voluntarily gave a confession statement. Based on the disclosure statement, P.W.7 seized the gold chain M.O.1 and gold ring M.O.2. He also prepared Ex.P.11, Mahazar. He also recorded the statement of other witnesses. Then, he made a request to the learned Judicial Magistrate, Alandur to conduct a test identification parade. P.W.5, the learned Judicial Magistrate, Alandur conducted the test identification parade on 17.9.2003 at Central Jail, Chennai. Both P.W.1 and P.W.2 identified all the accused. He also recorded the statement of other witnesses. After completing investigation, P.W.7 filed a charge sheet under Sections 341, 392 r/w 34 against the accused.

(iii) Considering all the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 7 witnesses were examined and 11 documents were exhibited, besides 2 Material Objects were marked.

(iv) Out of the witnesses examined, P.W.1, has spoken about the occurrence. According to him, on 31.08.2003, while he was walking along the road in Chrompet with P.W.2, a person told him that A1 and A.3 called him. When P.W.1 went there,

A.1 has shown a knife and threatened him and asked him to remove the gold chain and gold ring and snatched them and ran away. His evidence was corroborated by the evidence of P.W.2. P.W. 3 is the witness to the Observation Mahazar. P.W.4 is the witness to the confession statement of the accused, who turned hostile. P.W.5, who was working as Judicial Magistrate, Alandur, conducted test identification parade. P.W.6, who was working as Sub Inspector of Police, Chrompet registered the F.I.R. P.W.7 who was working as Inspector of Police, Chrompet arrested the accused, recorded their confession statement, seized the material objects, send a request to P.W.5 to conduct the test identification parade. After completing investigation, he filed a charge sheet against the accused.

(v)When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or mark any document on their side.

(vi)Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the appellants/A1 and A3 are before this Court with this appeal.

4. Despite several adjournments, none appeared for the appellant. Hence, the matter was directed to be posted "for dismissal" on 20.12.2016. Even on that day also, there was no representation for the appellant. Hence, Mr.T.Rajkumar, learned counsel was appointed as legal aid counsel for the appellants.

5. I have heard Mr.Rajkumar, learned counsel, who was appointed as legal aid counsel for the appellant and Ms.M.F.Shabana, learned Government Advocate (Criminal side). I have also perused the records carefully.

6. The learned counsel for the appellants submitted that the knife used by A1 was not seized by the respondent and P.W.2 cannot be an eye witness to the occurrence. P.W.1 and P.W.2 are stock witnesses for the police and the respondent falsely foisted a case against the appellants. Apart from that, there is a delay in filing F.I.R and the delay was not properly explained by the prosecution, it creates doubt in the prosecution case and the prosecution failed to prove the case beyond reasonable doubt. Hence, he requested this Court to allow the appeal.

7. Per contra, the learned Government Advocate (Criminal side) submitted that on the complaint filed by the defacto complainant, all the accused were arrested and based on the disclose statement of A.1, recovery of gold chain and gold ring was made and P.W.1 has also identified the same.

P.W.1 and P.W.2 identified all the accused and the prosecution has also proved the case beyond any reasonable doubt. Hence, she sought for dismissal of the appeal.

8. I have considered the rival submissions and perused the entire records carefully.

9. P.W.1 is the victim in this case. According to him, on that day, while he was walking in the road along with P.W.2, A.2 told him that A.1 and A.3 called him. When P.W.1 went there, A.1 has shown a knife and threatened him to remove the gold chain and gold ring and ray away. Since the occurrence took place in the night hours, out of fear, he did not go to the police immediately. On the next day morning, he went to the respondent police station and lodged a complaint and based on the complaint, a case was registered. On the next day, P.W.7 arrested the accused and recorded their confession statements. Based on the disclose statement of A.1, M.O.1 and M.O.2 were seized from the house of A.1. Subsequently, P.W.1 also identified the same. Within a short period, a test Identification Parade was conducted by P.W.5, the Judicial Magistrate, Alandur. Both P.W.1 and P.W.2 identified all the accused. The accused are in possession of the stolen articles. Hence, there is a presumption under Section 114 a of the Evidence Act, against them but, the presumption was not rebutted by the accused.

10. Apart from that, so far as delay in filing F.I.R, P.W.1 stated that the occurrence took place in the night, out of fear, he did not go to the police station immediately and on very next day morning, he went to the police station and gave the complaint.

11. Hence, I am of the opinion that the prosecution has clearly explained the delay in filing the complaint and it was registered only against the three unknown persons. Hence, the delay no way create any doubt in the prosecution case. In the above circumstances, I am of the considered view that the prosecution has established the guilt against the accused beyond any reasonable doubt, and there is no merit in the appeal.

12. In the result, the appeal is dismissed. The judgment passed in S.C.No.713 of 2005 dated 09.06.2007 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Chengelpet is confirmed.

13. If the appellants are on bail, the bail bonds should be cancelled and the trial Court is directed to take steps to secure them immediately to undergo the sentence of the remaining period.

14. While parting with the case, I appreciate the services rendered by Mr.T.Raj Kumar, learned counsel, who

appeared on behalf of the appellants as Legal Aid counsel.
The State Legal Services Authority is directed to pay his remuneration.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

cla
To

1. The Additional District and Sessions Judge
(Fast Track Court),
Chengelpet.
- 2.The Judicial Magistrate,Tambaram
- 3.Do Thro the Chief Judicial Magistrate Chengalpattu
- 4.The Superintendent,Central Prison,Puzhal,Chennai.
- 5.The Inspector of police Chrompet Police Station,Chennai.
- 6.The Director General of police,
Mylapore,Chennai
- 7.The District Collector,Chennai.
- 8.The Public Prosecutor,
High Court, Madras.

Copy to:

- 1.The Secretary
State Legal Services authority,High Court Campus,Chennai
- 2.The Section Office,criminal Section,High Court,Madras

+lcc to Mr.Rajkumar,Advocate sr.8792

mg(co)
ss(23/3/2017)

CrI.A.No.543 of 2007