

Bail Slip

The appellants/Accused(A3 &A2) namely 1)Jeeva @ Jeevanandam age 24 years s/o. Deivasigayam, 2) Sundar @ Jaba Sundar aged 34 years. S/o. Arulraj were directed to be released aan on bail by the order of this court dated 19/11/2008 in M.P.NO.1/2008 IN C.A.No.800/2008 and M.P.NO.1/2009 IN C.A.No.1/2009 order dated 8/7/2009 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

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THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.A.Nos.800 of 2008 and 1 of 2009

Jeeva @ Jeevanandam
S/o.Deivasagayam

... Appellant in Crl.A.No.800 of 2008

Sundar @ Jaba Sundar
S/o.Arulraj

... Appellant in Crl.A.No.1 of 2009

vs

State by:

The Inspector of Police,
T-4 Valasaravakkam Police Station,
Chennai.

Crime No.151 of 2000

... Respondent in both appeals

Criminal Appeals filed u/s.374(2) of the Code of Criminal Procedure against judgment of learned Additional Sessions Judge, Fast Track Court I, Poonamallee, passed in S.C.No.165 of 2008 on 16.10.2008.

Appearance:

Appellants:

Crl.A.No.800 of 2008 :Mr.A.Balamurugan for Mr.P.T.Perumal

Crl.A.No.1 of 2009 :Mr.K.KannanforM/s.T.K.Sampath Associates

Respondent

:Mr.V.Arul, Additional Public Prosecutor

(in both appeals)

COMMON JUDGMENT



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These appeals arise against judgment of learned Additional Sessions Judge, Fast Track Court I, Poonamallee, passed in S.C.No.165 of 2008 on 16.10.2008.

2. Prosecution case is that on 31.01.2000 at about 10.45 hours, accused threatened PW-1 at knife point, took cash of Rs.20,000/-, jewels and a watch and thereby committed offence of theft. PW-1 preferred a complaint to PW-5, Inspector of Police, who registered a case in Crime No.151 of 2000 on the file of respondent for offence u/s.397 IPC. Printed First Information Report is Ex.P8. PW-5 visited the scene of occurrence and prepared Ex.P2 - observation mahazar and Ex.P9 - rough sketch in the presence of PW-3 and another. PW-5 examined PWs.2 and 3 and others and recorded their statements. PW-6, Inspector of Police, took up further investigation in the case. PW-6 recorded the confession statement of second accused in the presence of witnesses. The admissible portion of confession statement is Ex.P10. PW-6 recovered MOs.1 and 2 - bracelet and a ring under Ex.P11 - seizure mahazar. PW-6 sent the accused 1 and 2 to judicial custody and forwarded the seized articles to Court under Form-95. PW-6 examined PW-4 and another and recorded their statements. PW-6 recorded the confession statement of third accused in the presence of PW-4 and another. The admissible portion of confession statement is Ex.P12. On 30.07.2000 at about 10.30 a.m., PW-6 seized MOs.3 and 4 - a gold chain and V.C.R. under Ex.P13 - seizure mahazar in the presence of witnesses. PW-6 recorded the confession statement of fourth accused in the presence of witnesses. PW-6 sent the accused 3 and 4 to judicial custody and forwarded the seized articles to Court under Form-95. PW-6 examined PW-1 and recorded his statement. On completion of investigation, PW-6 filed a charge sheet informing commission of offences u/s.392 r/w 397 IPC before learned Judicial Magistrate I, Poonamallee. On committal, the case was tried in S.C.No.165 of 2008 on the file of learned Additional Sessions Judge, Fast Track Court I, Poonamallee.

3. Before trial Court, prosecution examined 6 witnesses and 13 exhibits and 4 material objects. None were examined on behalf of defence nor were any exhibits examined. On appreciation of materials before it, trial Court, under judgment dated 16.10.2008, convicted A2 for offence u/s.392 r/w 397 and A3 for offence u/s.411 IPC and sentenced A2 to 10 years R.I. and fine of Rs.1,000/- i/d 3 months S.I. for offence u/s.392 r/w 397 IPC and A3 to 2 years R.I. for offence u/s.411 IPC. There against, appellants have preferred the present revision.

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

5. The case has been registered in Crime No.151 of 2000 on the file of respondent for offence u/s.397 IPC. PW-1, in chief,



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has spoken to a good acquittance with third accused and their frequently riding together in a Car. While so, his arrest, 6 months after the occurrence i.e. on 29.07.2000 is inexplicable. If indeed, third accused, a known person, was party to PW-1 being deprived of properties under threat of injuries by use of weapons, it is only is to be expected that his arrest would have been effected immediately or on a date close to the occurrence. It is not the prosecution case that third accused had made himself unavailable. In any event, it is the admission of PW-1, in cross, that both accused 3 and 4 were not at the scene. Trial Court, on this score, having acquitted fourth accused ought also to have acquitted third accused. As regards second accused, he has been taken into custody in connection with another case and thereafter, pursuant to Transfer Warrant his arrest has been shown in this case on 19.07.2000. PW-1 admits to awareness of the accused through their display by police on television channels and of also seeing second accused at the police station, when his jewellery allegedly was recovered and he was called thereto to identify the same. In such circumstance, identification of second accused as a person involved in the occurrence becomes suspect. PW-4, a witness to the recovery of PW-1's property in the hands of accused has turned hostile. This Court finds that trial Court has convicted A3 for offence u/s.411 IPC on the reasoning that PW-1 has deposed that A3 was not present at the time of occurrence. However, after coming out on bail, A3 has filed a petition seeking return of MO-3, gold chain, seized from him and such petition came to be dismissed on the reasoning that already MO-3 was handed over to PW-1 upon his filing a petition seeking return of properties and upon due identification by him. Court below reasoned that in such circumstance, it was clear that though A3 was not present at the time of occurrence, he was in possession of MO-3, gold chain, which originally belongs to PW-1. Such reasoning is fallacious.

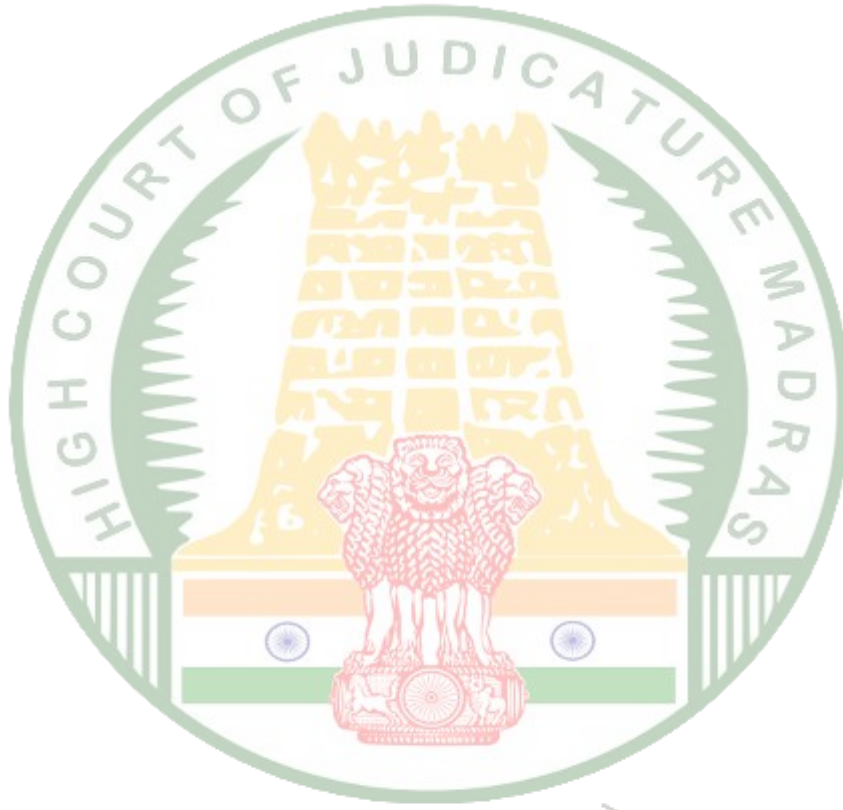
The Criminal Appeals shall stand allowed. The judgment of learned Additional Sessions Judge, Fast Track Court I, Poonamallee, passed in S.C.No.165 of 2008 on 16.10.2008, shall stand set aside. Appellants/accused are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall be refunded.

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Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Additional Sessions Judge,
Fast Track Court I,
Poonamallee.

2.The Inspector of Police,
T-4 Valasaravakkam Police Station,
Chennai.

3.The Public Prosecutor,
High Court,
Madras.

4 The chief Judicial Magistrate, Thiruvallur

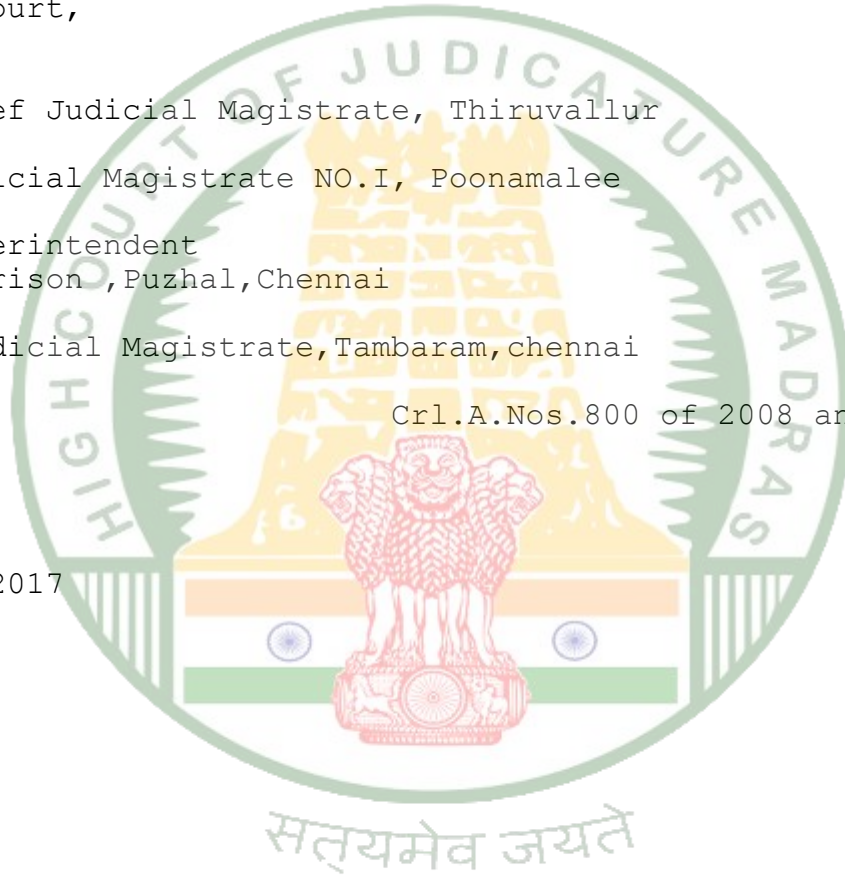
5 The Judicial Magistrate NO.I, Poonamalee

6 The superintendent
Central Prison ,Puzhal,Chennai

7. The Judicial Magistrate,Tambaram,chennai

Crl.A.Nos.800 of 2008 and 1 of 2009

sj[co]
RD 13/11/2017



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