

Bail Slip

Crl A.No.856/16 : The Acused / Appellants namely 1.Bakthavasthalam (A1) 2.Santhanam (A2), 3.Babu (A3) were directed to be released on bail as per order of this court dt 18.01.17 made in Crl Mp.No 744/17 in Crl Rc.No.856/16.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.856 of 2016

1.Bakthavasthalam  
S/o.Kuppan

2.Santhanam  
S/o.Chinnasamy

3.Babu  
S/o.Jeyaraj

.... Petitioners

Vs.

State represented by  
Sub-Inspector of Police,  
Desur Police Station.  
Crime No.127 of 2002

... Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the judgment of learned Sessions Judge, Thiruvannamalai, passed in C.A.No.85 of 2006 on 05.04.2016 confirming the judgment of learned Assistant Sessions Judge, Cheyyar, passed in S.C.No.30 of 2006 on 25.09.2006.

For Petitioners : Mr.L.Poompavai

For Respondent : Mr.M.Mohammed Riyaz, G.A(Crl.side)

O R D E R

This revision arises against concurrent judgments of Courts below convicting A1 for offences u/s.448 and 392 IPC, A2 for offences u/s.448, 392 and 394 IPC and A3 for offences u/s.448, 392 and 398 IPC and sentencing all accused to 1 year R.I. and

fine of Rs.1,000/- i/d 3 months R.I. for offence u/s.448 IPC, 7 years R.I. and fine of Rs.5,000/- i/d 3 years R.I. for offence u/s.392 IPC and A2 to 7 years R.I. and fine of Rs.5,000/- i/d 3 years R.I. for offence u/s.394 IPC and A3 to 7 years R.I. and fine of Rs.5,000/- i/d 3 years R.I. for offence u/s.398 IPC.

2. Prosecution case is that on 05.09.2002 at about 01.15 a.m., accused trespassed into the house of PW-1, committed robbery as also caused hurt to PW-1. At the time of commission of offence, A3 was armed with a dangerous weapon. A case was registered in Crime No.127 of 2002 on the file of respondent. On completion of investigation, a final report was filed informing commission of offences u/s.448, 392, 394 and 398 IPC r/w 34 IPC. On committal, the case was tried in S.C.No.30 of 2006 on the file of learned Assistant Sessions Judge, Cheyyar.

3. Before trial Court, prosecution examined 9 witnesses and marked 7 exhibits and 1 material object. On the side of defence, 2 witnesses were examined and 2 exhibits and 1 material object were marked. On appreciation of materials before it, trial Court, under judgment dated 25.09.2006, convicted A1 for offences u/s.448 and 392 IPC, A2 for offences u/s.448, 392 and 394 IPC and A3 for offences u/s.448, 392 and 398 IPC and sentenced all accused to 1 year R.I. and fine of Rs.1,000/- i/d 3 months R.I. for offence u/s.448 IPC, 7 years R.I. and fine of Rs.5,000/- i/d 3 years R.I. for offence u/s.392 IPC and A2 to 7 years R.I. and fine of Rs.5,000/- i/d 3 years R.I. for offence u/s.394 IPC and A3 to 7 years R.I. and fine of Rs.5,000/- i/d 3 years R.I. for offence u/s.398 IPC. Trial Court directed that sentences run concurrently. Against such finding, petitioners preferred C.A.No.85 of 2006 on the file of learned Sessions Judge, Tiruvannamalai, which came to be dismissed under judgment dated 05.04.2016. Hence, this revision.

4. Heard learned counsel for petitioners and learned Government Advocate [Crl.side].

5. Ex.P1, complaint, has been preferred at the instance of PW-1/injured on 09.09.2002. According to PW-1, the three accused trespassed into her house on 05.09.2002 at about 1.00 a.m. and relieved her of a gold chain. Second accused applied pressure to her neck and caused injury. Third accused was armed with an iron pipe. She has spoken to such occurrence having taken place when her husband was away from home and she was sleeping alone. She deposed that upon hearing her screams, her father-in-law and mother-in-law came to the street and raised a noise and came running into her house and thereupon, the accused made a get away. She has spoken to the accused not being present when her father-in-law and mother-in-law came into the house. She has spoken to her husband having been informed by her father-in-law

of the occurrence, of going to the police station on the very same night and of her husband, who had been away at Chennai being present there. According to her, there were no police personnel at the police station. She has spoken to preferring the complaint four days after the occurrence on 09.09.2002 in the accompaniment of PW-2 - her husband, PW-3 - mother-in-law and PW-4 and one another. Ex.P1, FIR, has reached the Court only on 11.09.2002. Such is the sorry state of affairs regards Ex.P1, FIR, despite PW-1 having deposed to villagers having assembled immediately after the occurrence and PW-2, her husband, informing of proceeding to the police station to prefer the complaint on the next day i.e., 06.09.2002. PW-1 admits to all accused being relatives. Admittedly, a civil case is pending between parties. There has been a long unexplained delay in preference of complaint and in the same reaching the Magistrate. All the prosecution witnesses are immediate relatives. They all admit to attending a marriage in between the occurrence and preference of the complaint. She admits to accused 1 and 2 having been arrested in relation to an attack on PW-2 ten days prior to the alleged occurrence. She informs the date of arrest as 02.09.2002 and that they have come out on bail 3 to 4 days later. However, she alleges their participation on the night of 05.09.2002. While PW-1 speaks to the gathering of villagers immediately after the occurrence, PW-3 informs of 400/500 persons having gathered. In such circumstances, the delay in preference of complaint totally is unacceptable. The case is one of previous enmity since not only has PW-1 spoken to the arrest of accused 1 and 2 in connection with attack on her husband ten days prior but both in the evidence as also in the very FIR she has informed of the civil litigation pending between parties. While in the complaint, it is mentioned that the act of the accused were intended to instill fear in the minds of prosecution party against pursuing the civil action, the very registration of the case can also be seen as intended to cause fear of repeated prosecution in the minds of accused. In admitted circumstance where the witnesses are all relatives of the de facto complainant and there is enormous delay in preference of complaint despite the alleged presence of PW-2 at the police station, the very next day after occurrence, the gathering of 400 to 500 people at the time of occurrence, PW-1's version of going to police station and finding no police personnel on the night of occurrence totally does not merit acceptance. Courts below totally erred in entering a finding of conviction.

The Criminal Revision Case shall stand allowed. The judgment of learned Sessions Judge, Thiruvannamalai, passed in C.A.No.85 of 2006 on 05.04.2016 confirming the judgment of learned Assistant Sessions Judge, Cheyyar, passed in S.C.No.30 of 2006 on 25.09.2006 shall stand set aside. Petitioners are acquitted

of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

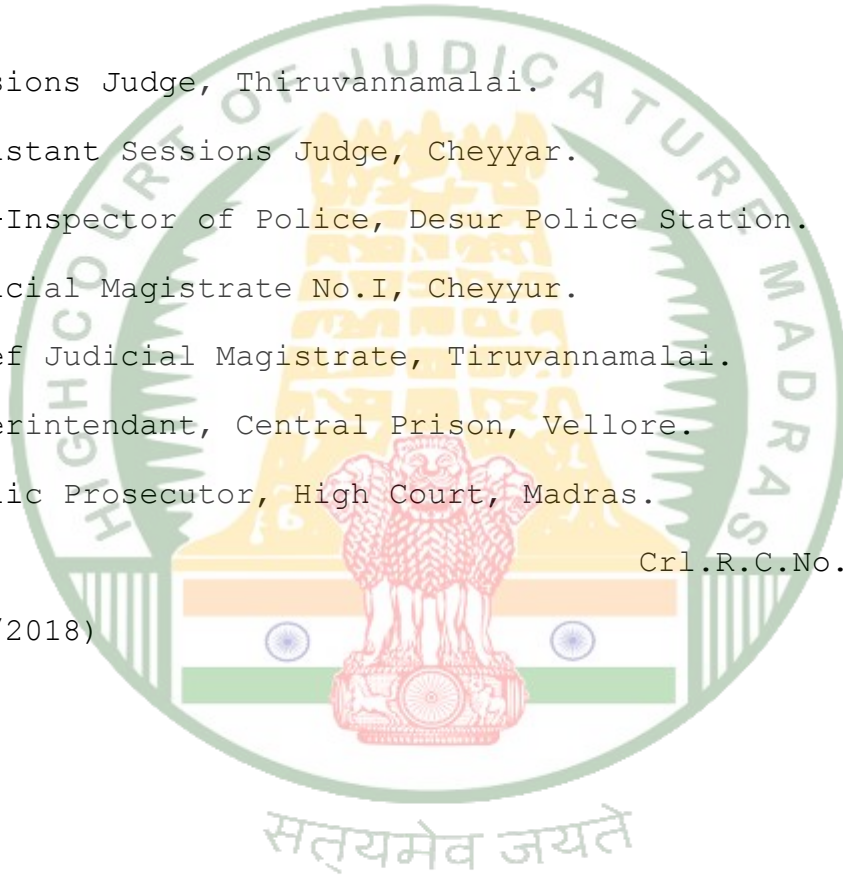
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To

- 1.The Sessions Judge, Thiruvannamalai.
- 2.The Assistant Sessions Judge, Cheyyar.
- 3.The Sub-Inspector of Police, Desur Police Station.
- 4.The Judicial Magistrate No.I, Cheyyur.
- 5.The Chief Judicial Magistrate, Tiruvannamalai.
- 6.The Superintendant, Central Prison, Vellore.
- 7.The Public Prosecutor, High Court, Madras.

Crl.R.C.No.856 of 2016

KAN(CO)  
RRK(24/01/2018)



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