

Bail Slip

The Appellant/Accused namely Hussain Mohamed @ Hussain S/o Ibrahim was released on bail in and by the order of this court dated 20.09.2006 made in Crl.M.P. No. 4285/2006 in Crl.A.No.831 of 2004.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.831 of 2004

Hussain Mohammed @ Hussain

Appellant

Vs

The State of Tamil Nadu
Rep. by Inspector of Police,
Erode South Police Station,
Cr.No.206 of 2002
Respondent

Prayer :- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records in S.C.No.166 of 2002 on the file of the Additional Sessions Judge, Fast Track Court No.1, Erode and set aside the conviction and sentence imposed on the appellant by an order dated 25.04.2003 and acquit the appellant.

For Appellant : Mr.P.Rajathi
Legal Aid Counsel

For Respondent : Mr. R.Sekar,
Government Advocate.

JUDGEMENT

Totally there are 4 accused and the appellant is A4. They stood charged for the offences under Sections 120-B, 397 r/w. 394 IPC. By a judgment dated 25.04.2003, the trial Court, convicted the appellant under Section 397 r/w.394 IPC and sentenced the appellant to undergo rigorous imprisonment for 10 years and imposed a fine of Rs.1000/-, in default to undergo rigorous imprisonment for 3 months and acquitted him from the charge under Section 120-B IPC. Now, challenging the above said conviction and sentence, the appellant is before this Court

with this appeal.

2.The case of the prosecution, in brief, is as follows:-

P.W.1 is a resident of Chennimalai in Erode. On 30.03.2002, at about 8.00 p.m., while P.W.1, P.W.2, his uncle son, and P.W.3, his mother along with two servant maids were in the house, A1, and A2 entered into his house with knife and threatened them to hand over all the jewels and cash. Then A1 attacked P.W.1 with hands and also threatened him with a pistol. Subsequently, A3 and A4 also came inside the house and tied other inmates of the house with bed sheets. Then, they have stolen the gold bracelet, ear studs, a camera, leather bag, a suit case and also a mobile phone, Rs.3000/- and also removed a gold chain from P.W.3. Then, they took TATA Indigo car belonging to P.W.1 and fled away. Thereafter, both P.Ws.1 and 2 went to the police station and lodged a complaint.

3. P.W.14, Sub-Inspector of Police, based on the complaint given by P.W.1, registered a case in Crime No.206 of 2002 for an offence under Section 397 IPC and prepared the First Information Report (Ex.P.19) and sent the same to the higher officials.

4. P.W.15, Inspector of Police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, prepared Observation Mahazar (Ex.P.2) and drew a Rough sketch (Ex.P.20) in the presence of the witnesses and recorded the statement of the witnesses. On 30.03.2002, he received an information that A1 to A3 were arrested in respect of another crime at Annadhanapatti Police Station, Salem and the stolen articles were also recovered. P.W.5 received the stolen articles from the above police station and P.W.1 also identified all those articles. Then P.W.15 took police custody of A1 to A3, and A2 and A3 had voluntarily given confessions. Based on their disclosure statements, P.W.15 recovered a knife. In the meantime, A4 in this case was also arrested in another crime No.42 of 2002 in City Police station, Vellore, for the offences under Sections 454 and 380 IPC. Then, P.W.15 took police custody of A4 and on 10.05.2002. A4 also given a voluntary confession, based on the disclosure statement, he recovered another knife (M.O.3), thereafter, he arranged for test identification parade.

5. P.W.12, the Judicial Magistrate No.I, Erode, conducted test identification parade at Vellore and P.Ws.1 to 3 clearly identified A4. P.W.13 Judicial Magistrate No.II, Erode, conducted a test identification parade for A1 to A3 at Central Prison, Salem and P.Ws.1 to 3 also clearly identified them. Then, P.W.15 recorded the statement of the witnesses and after completion of investigation he laid charge sheet.

6. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 15 witnesses were examined and 20 documents were exhibited, besides 27 material objects were marked.

7. Out of the witnesses examined, P.W.1 is the victim in this case. On the date of occurrence, i.e., on 30.03.2002, when he along with P.Ws.2 and 3 were in their house, all the accused came into his house and had beaten him and tied other inmates with bed sheets and they have stolen the valuable articles from his house, they have also stolen the TATA Indigo car and fled away, thereafter, he had lodged a complaint before the respondent police.

8. P.W.2 is the uncle's son of P.W.1. He was also present in the scene of occurrence. He has also stated that on the date of occurrence at about 8.15 a.m., all the accused came inside the house and all of them having a knife in their hand, threatened P.W.1 to hand over all the valuables and they have also tied the inmates with bed sheets and stolen the articles from their house and they went in a TATA indigo car, then, he along with P.W.1 lodged a complaint. P.W.3 is the mother of P.W.1 and she was also present in the house at the time of occurrence. She had also corroborated the evidence of P.Ws.1 and 2. P.W.4 is a witness to the Observation Mahazar and Rough sketch. P.W.5 speaks about the arrest of A1 to A3 and also recovery of M.Os.5 to 27 at Seelanaiyakanpatti. P.W.6 is the Doctor, who examined P.Ws.1 and 2 and found some swelling in the lips and issued an accident register (Ex.P.7) to P.W.1 and he also found swelling injury on the back side of P.W.2 and issued an accident register (Ex.P.8). P.W.7 has spoken about the confession given by A2 and A3. P.W.8 is a witness to the recovery of a Sony Walkman and watch and ear phone.

9. P.W.9 is a witness to the confession of A4 and also recovery of M.O.3 knife. P.W.10 is the witness to the arrest of A1 to A3 and also recovery of stolen articles M.Os. 5 to 27 under the cover of mahazar. P.W.11, Inspector of Police, Vellore, arrested A4 in connection with another crime in the said police station and also recorded the confession of A4. P.W.12, Judicial Magistrate, Erode conducted test identification parade for A4 and P.Ws.1 to 3 identified A4. P.W.13 is another Judicial Magistrate, who conducted test identification parade for A1 to A3 and they were also identified by P.Ws.1 to 3. P.W.14, Sub-Inspector of Police, registered the

complaint and prepared First Information Report. P.W.15, Inspector of Police, continued the investigation and recovered knives used by all the accused and after completion of investigation, he laid charge sheet against them.

10. 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 examine any witness or mark any documents on their side.

11. Having considered all the above materials, the trial Court convicted the accused as mentioned in paragraph one of the judgment. Challenging the said conviction and sentence, the appellant/A4 is before this Court with this appeal.

12. Earlier the learned counsel appearing for the appellant withdrew his appearance. Hence, this Court ordered notice to the appellant. Eventhough notice was served on the appellant, he did not appear before this Court when the matter was called. In such circumstances, Ms. P.Rajathi, was appointed as legal aid counsel for the appellant.

13. I have heard the Ms. P.Rajathi, Legal Aid Counsel, appearing for the appellant and Mr.R.Sekar, learned Government Advocate appearing for the respondent.

14. The learned counsel appearing for the appellant submits that there are lot of contradictions in the evidence of P.Ws.1 to 3. Even though P.W.1 says immediately after the occurrence, he raised alarm and neighbours came there, P.Ws.2 and 3 did not say so. Apart from that except P.Ws.1 to 3, the interested witnesses, no independent witnesses were examined by the prosecution and all the stolen materials were said to have recovered only from A1 to A3. Nothing was recovered from A4. In the absence of any recovery from A4/appellant, the appellant cannot be convicted. Test identification parade was not properly conducted and there were lot of infirmities in the test identification parade conducted by P.W.12. The learned legal aid counsel further submitted that only a knife alone said to have recovered from A4, and that recovery also not proved by the prosecution. Raising such plea, the legal aid counsel sought to set aside the judgment.

15. Per contra, the learned Additional Public Prosecutor would contend that P.Ws.1 to 3 are victim in this case, their evidence is consistent and reliable and they have also identified all the accused in the test identification parade conducted by the judicial magistrate. Apart from that the stolen articles were recovered and the appellant, who was also involved in another similar crime and he was arrested, where he has given a confession about his involvement in this crime.

Thereafter based on the confession a knife used by the accused has been recovered, apart from a sony walkman and one watch were also recovered and the properties were also identified by P.W.1. Considering all those materials, the trial Court rightly convicted the appellant.

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

17. P.Ws.1 to 3 are the victims in this case. All the 3 witnesses have consistently stated that all the four accused entered into the house at about 8.15 a.m., on 30.03.2002 and A1 attacked P.W.1 with hands and thereafter A3 and A4 threatened him with knife and tied all the inmates of the house with bedsheets and then they have stolen the valuable articles M.Os.5 to 27, thereafter, they fled away from the scene of occurrence in a car belonging to P.W.1 (M.O.19). Thereafter, P.Ws.1 to 2 had given a complaint before the respondent police. P.W.10, Inspector of Police, Annathanapatti Police station, Salem, arrested A1 to A3 in respect of another crime in that police station. P.W.11, Inspector of Police, Vellore South Police Station, arrested this appellant/A4 in respect of another crime In Crime No.42 of 2002 for the offence under sections 454, 380 IPC and on such arrest, he has voluntarily given a confession and also admitted his involvement in the present case. Based on his disclosure statement, some of the stolen articles were also recovered from A4. P.W.8 is the witness to the recovery of the stolen articles. Then P.W.15 has taken police custody of A4 and at that time also given a confession statement, based on the disclosure statement, M.O.3 knife used by the accused has been recovered by P.W.15 under the cover of mahazar and the recovery was also corroborated by P.W.8.

18. Thereafter, a test identification parade was conducted. P.W.12, Judicial Magistrate conducted test identification parade, in which, all the 3 witnesses, namely P.Ws.1 to 3 clearly identified A4. A perusal of all those materials reveals that the prosecution has clearly established that only this accused has involved in this crime and the stolen property was also recovered from him and there is no explanation from A4 for possession of the stolen properties. Hence, the presumption under Section 114-a of Evidence Act come into play. In the said circumstances, I am of the view that the prosecution has clearly established the involvement of the accused in this crime. The trial Court considering the entire materials rightly convicted the appellant and I do not find any illegality or perversity in the order passed by the Court below and the appeal is liable to be dismissed.

19. In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant/A4 are

confirmed. The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence if any. The period of imprisonment already undergone by them shall be set off under Section 428 Cr.P.C.

20. While parting with the case, I appreciate the services rendered by Ms.P.Rajathi, learned counsel who appeared on behalf of the appellant, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mrp

To

1. The Additional District and Sessions Judge,
Fast Track Court No.I, Erode.
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate
No.III, Erode.
4. Do Thro The Chief Judicial Magistrate
Erode.
5. The Superintendent, Central Prison
Vellore.
6. The Inspector of Police
Erode South Police station

+1 CC to Mr.P. Rajathi, Advocate sr 80631.

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Cr1.A.No.831 of 2004

NRL(CO)
SP(12/06/2018)