



Bail Slip

The Appellants/Accused Nos.1 to 3 herein, Namely, 1.Venmani S/O Valavan aged about 28 years, 2.Ayyanar S/O Nagarajan aged about 28 Years, 3.Israel S/O Vijayaranganan aged about 27 Years were directed to be released on bail as per the order of this Court dated 04/08/2003 and in CrI.M.P.No.6861/03 in CrI.A.No.67 of 2003 for the 1st Accused and the order dated 9th April 2003 in CrI.M.P.No.2306 of 2003 in CrI.A.No.67 of 2003 for the 2nd and 3rd Accused on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.67 of 2003

1.Venmani
2.Ayyanar
3.Israel

... Appellants/Accused 1 to 3

Vs.

State by Inspector of Police,
CBCID,
Counterfeit Currency Wing,
K-1, Sembium Police Station,
Chennai (Cr.No.3474/1997)

... Respondent/Complainant

Prayer : Criminal Appeal filed under sections 374 of Criminal Procedure Code against the conviction and sentence passed by the learned Addl. Sessions Judge (Fast Track Court No.3) Chennai in S.C.No.104 of 2001 by his Judgment dated 27.11.2002, convicting the appellants herein.

For Appellants : Mr.S.N.Arun Kumar
Legal Aid Counsel

For Respondent : Mr.J.Karuppiah APP



O R D E R

A1 to A3 are the appellants in S.C.No.104 of 2001 on the file of the learned Additional Sessions Judge (Fast Track Court No. 3), Chennai. They stood charge for the offences under Section 120 B, 457, 380, 489 A and 489 D IPC. A1 convicted stood charged for the offence under Section 489 A and A1 and A3 stood charged for the offence under Section 489 A r/w. 109 IPC, A1 also stood charged for the offence under Section 489 D IPC and A2 and A3 stood charged for the offence under Section 489 D r/w.109 IPC. The trial Court convicted the appellants for the above charges. A1 to A3 were convicted under Section 120 B and sentenced them to undergo 9 years of Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 3 months Rigorous Imprisonment and they were convicted under Section 457 IPC and sentenced them to undergo 6 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment. All the accused were convicted for the offence under Section 380 IPC and sentenced them to undergo 6 years Rigorous Imprisonment and also pay a fine of Rs.1000/-, in default, to undergo 3 months Rigorous Imprisonment. A1 was convicted for the offence under Section 489 A IPC and sentenced him to undergo 9 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment and he was convicted for the offence under Section 489 D IPC and sentenced him to undergo 9 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment and A2 and A3 were convicted for the offence under Section 489 A r/w. 109 IPC and sentenced them to undergo 9 years Rigorous Imprisonment and to pay fine of Rs.1,000/-, and in default, to undergo 3 months Rigorous Imprisonment and they were also convicted under Section 489 D r/w. 109 IPC and sentenced them to undergo 9 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Rigorous Imprisonment. Now, challenging the said convictions and sentences, the appellants are before this Court with this appeal.

2. Earlier, when the Appeal was posted for hearing on 14.11.2017, there was no representation for the appellants. Hence, the Appeal was adjourned to 30.11.2017, on that date also there was no representation for the appellants. In the above circumstances, Mr.S.N.Arun Kumar is appointed as legal Aid Counsel for the appellants.

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

A1, in this case, is a residence of Kodungaiyur, Chennai, A2 and A3 are close friends of A1. A1 was working in a screen printing shop and getting meager salary. In order to



make quick money A1 has decided to print counterfeit currency with the help of A2 and A3. Since they have no money to purchase machinery for this purpose, they have decided to steal a enlarging camera from the shop of P.W.1, where A1 was earlier working. On 05.07.1997 in the mid-night, all the accused went to the shop owned by P.W.1, and stolen the camera, thereafter they have purchased other materials necessary for the purpose of printing counterfeit currency, and they have also prepared a negative film of Rs.10, 50 and 500 currency notes. In the mean time, P.W.1 after coming to know that the camera has been stolen from his shop, he had filed a complaint to the Sembiam Police Station. P.W.5, the Sub-Inspector of Police, Sembiam Police Station, on receipt of the complaint, he registered a case in Crime No.3474 of 1997 for the offence under Section 457, 380 IPC and he prepared the First Information Report Ex.P.6. P.W.7, the Inspector of Police, Sembiam Police Station, on receipt of the First Information Report commenced investigation and arrested the accused. On such arrest, based on the disclosure statement in the voluntary confession, he has recovered a camera and other materials used for the purpose of making negative films of Rs.10, 50, and 500 and also a positive films for the above currency notes, bril ink bottles and empty screens, (Exs.P1 to P42) in the presence of witnesses. Thereafter, on 14.08.1997, he handed over the case diary to CBCID. P.W.8, Inspector of Police, CBCID, Chennai commenced investigation and he produce the seized materials before the Judicial Magistrate Court under Ex.P.7, for the purpose of sending the same for chemical examination and after recording the statement of witnesses and after completion of investigation, he filed a final report.

4. Based on the above materials, the trial Court framed the charges as mentioned in the first paragraph of the judgement and the accused denied the same. In order to prove its case, on the side of the prosecution as many as 8 witnesses were examined and 12 documents were exhibited, besides 42 material objects.

5. Out of the witnesses examined, P.W.1 is the owner of the colour printing unit, from where the enlargement camera was stolen by the accused and only based on his complaint, the crime has been registered. The accused were arrested and all the materials were recovered. P.W.2 is the witness for the recovery of M.O.1 to M.O.49, but he turned hostile. P.W.3 is working as a Scientific Assistant in Forensic Sciences Department, Chennai and he has examined the material objects (M.O.1 to M.O.42) and gave an opinion that with M.O.1 to M.O.46 there is a possibility of printing counterfeit currency notes, he also given a opinion in Ex.P.3. P.W.4 is a Scientific Officer in Forensic Sciences Department, Chennai, he has examined the inks seized from the accused premises and he has given a report Ex.P.5 that, the inks can be used for the purpose of printing currency notes. P.W.5,



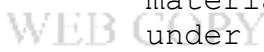
is the Sub-Inspector of Police, registered the case in Crime no.3474/97 under Section 457, 380 IPC and he recorded the statement and he submitted the same to the Inspector of Police, Sembiam Police Station. P.W.6 is working as an Assistant in the Judicial Magistrate Court No.III, George Town, according to him, he received the seized property on 15.05.1998, and the same was marked as Ex.P.7. P.W.7, Inspector of Police, Sembiam Police Station, commenced the investigation and arrested the accused and seized the material object from A1's house and handed over the investigation to P.W.8. P.W.8, Inspector of Police in CBCID, he conduct the investigation and recorded the statement of witnesses and after the completion of investigation, he lodged a final report.

6.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 chose to examine any witness or mark any documents.

7.Considering all these materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Now, challenging the above said conviction the appellants/accused are before this Court with this Criminal Appeal.

8. I have heard, Mr.S.N.Arun Kumar, Legal Aid Counsel appearing for the appellants and Mr.Mr.J.Karuppiah, learned Government Advocate appearing for the respondent and also perused the records carefully.

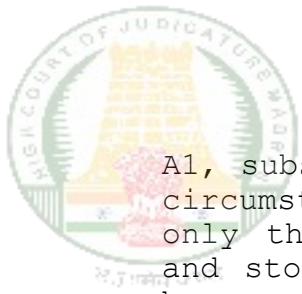
9. The learned counsel appearing for the appellants would submit that the prosecution has failed to prove the seizure of the materials alleged to have been used for the purpose of printing negative currency. P.W.2 is the witness to the seizure of material object has turned hostile. Even the disclosure statement of the accused, they only identified the place where they have stolen the enlarged camera, which belongs to P.W.1 and they have not disclosed anything about the other items alleged to have seized by the respondent police. Apart from that, even though seizure was made on 13.08.1997 and transferred the investigation to the CBCID on 19.08.1997, the seized materials and the articles were sent to the Court only on 15.05.1998 after 9 months and the investigating officer also stated that he was not aware of where the articles were kept and in whose custody for the period more than 9 months. The learned counsel further submitted that to prove the charges under Section 489 A and 489 B, no counterfeit currency had been seized from the accused, what was seized are only the printing materials and camera, which were available in the open market



10. In the above circumstances, by seizing of printing materials, only the accused cannot be charged for the offences under Section 489 A and 489 B IPC, even for offence under Section 380 IPC, as the recovery is not proved by the prosecution, and the appellants cannot be convicted under Section 380 IPC also.

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

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A1, subsequently, the camera also identified by P.W.1. In these circumstances, the prosecution has clearly proved that it is only these accused who have trespassed into the shop of P.W.1 and stolen the camera and hence, all the accused are liable to be convicted for the offences under Sections 457 and 380 IPC.

14. So far as the charge under Section 489 A and 489 D IPC are concerned, it is seen that P.W.7, Inspector of Police, has arrested the accused in the presence of PW2. According to P.W.7, on such arrest, they have voluntarily given the confession, based on the disclosure statement, he has seized the other materials M.O.1 to M.O.42 in the presence of P.W.2, but he turned hostile. According to P.W.7 all those materials which were seized on 13.08.1997 and on the next day is 14.08.1997 materials were handed over to CBCID. P.W.8, Inspector of Police, CBCID, continued the investigation and he send the material objects under Ex.P.7 only on 15.05.1997 after 9 months, and there is no explanation on the part of the prosecution for the delay in sending the material objects to the Court. Apart from that, according to P.W.7, based on the disclosure statement of the accused all the material objects have been seized. But perusal of the Exs.P.9 to P.11 the admissible part of the confession of accused, they have only identified the place where they stolen the camera and they have not identified any other properties. All these circumstances, clearly created doubt regarding the seizure of material objects M.O.2 to M.O.41. Apart from that, so far as the charge under Section 489 A, absolutely there is no material available on record to show that the accused have counterfeit currency notes. P.W.3, spoke about other printing material and ink, and no counterfeit currency notes were seized from the accused, and P.W.5, Forensic expert has also clearly stated that they have not received any printed paper for examination. In the absence of any proof to show that the appellants were involved in the counterfeit currency notes, they cannot be convicted for the offence under Section 489 A IPC. So far as the charge under Section 489 D IPC is concerned, to prove the charge, the prosecution should establish that the accused were in possession of any machinery, or any material for the purpose of being used or intent to use for preparing counterfeit currency. But, as already stated that the recovery itself is very much doubtful. Apart from that, P.Ws.4 and 5, the experts have clearly stated that it is an ordinary printing material and it is available in the open market. Apart from that, no counterfeit currency to have been seized from their house, in that said circumstance mere possession of some printing material alone will not attract the offence.

15. In the above circumstances, I am of the considered view, that the prosecution failed to prove the charge under



Sections 489 A and 489 D IPC against A1 consequently the other accused also cannot be convicted for the offence under Section 109 IPC.

16. Considering all these materials as the prosecution has clearly proved that the accused had stolen M.O.1, camera from the shop belongs to P.W.1 and they are liable to be convicted under Sections 457 and 380 IPC and they are entitled for acquittal for the offence under Sections 489 A and 489 D IPC .

17. So far as the quantum of sentence is concerned. The accused are poor persons and they have family to maintain and they have also undergone nearly 120 days in prison. Considering all those materials, the appellants are sentenced to undergo 1 year Rigorous Imprisonment under Section 457 IPC and to pay a fine of Rs.1,000/- in default to undergo 4 weeks Rigorous Imprisonment and sentenced them to undergo 1 year Rigorous Imprisonment and for the offence under Section 380 IPC and to pay a fine of Rs.1,000/- in default to undergo 4 weeks Rigorous Imprisonment.

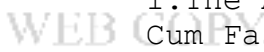
18. In the result, the Criminal Appeal is partly allowed and the appellants are convicted for the offence under Section 457 IPC and sentenced them to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 4 weeks Rigorous Imprisonment and they are also convicted for the offence under Section 380 IPC and sentenced them to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 4 weeks Rigorous Imprisonment. A1 is acquitted from the charges under Sections 489 A and 489 D IPC. A2 and A3 were acquitted under Section 489 A r/w. 109 IPC. The sentences imposed on the appellants are directed to run concurrently and the period already undergone shall be given set off under Section 428 Cr.P.C.

19. While parting with the case, I appreciate the services rendered by Mr.S.N.Arun Kumar, learned counsel who appeared on behalf of the appellants/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar



1.The Additional Sessions Judge,
Cum Fast Track Court No.3, Chennai.

3.The V Metropolitan Magistrate,
Egmore, Chennai-8.

5.The Superintendent,
Central Prison, Vellore.

7. The Public Prosecutor,
High Court, Madras.

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