

BAIL SLIP

The Appellants/Petitioners/Accused namely 1) Jagan (A1), S/o.Murugesan 2) Shankar (A2), S/o.Ramu were released on bail dated 18/03/2011 made in CrI.M.P No.1/2011 in C.A. 115/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

DELIVERED ON : 20.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.115 of 2010

1.Jagan (A1)

2.Shankar (A2)

...Appellants/Accused 1 & 2

Vs

State:

Inspector of Police,

R-7, K.K.Nagar Police Station,

Chennai - 600 078.

(Crime No.68/2007)

...Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed on them by the III Additional Judge, Sessions Court at Chennai in S.C.No.169 of 2008 dated 08.01.2010.

For Appellants : Mr.K.R.Rameshkumar

For Respondent : Mrs.T.P.Savitha

Government Advocate (CrI.Side)

JUDGMENT

The instant Criminal Appeal is preferred by the appellants, who faced the trial in Sessions Case No.169 of 2008 on the file of the learned III Additional Sessions Judge, Chennai and were convicted for the offence under Sections 392 r/w 397 r/w 34 and

506(ii) of IPC for a period of 3 years Rigorous Imprisonment and were imposed a sum of Rs.500/- as fine, in default to undergo 3 months of Imprisonment. Further, for the offence under section 506 (ii) of IPC 6 months Rigorous Imprisonment and fine a sum of Rs.200/- was imposed with a default sentence of two weeks.

2. Feeling aggrieved over the judgment of conviction, the appellants have preferred the instant appeal by raising several grounds.

3. The case of the prosecution is that on 11.01.2007 at about 10.15 a.m., when the Defacto-complainant namely one Dhillip, examined as PW-1, was walking at the junction of Ramasamy Road and Alagarsamy Road, he was intercepted by the accused/appellants and threatened him by showing knife and thereafter the accused/appellants snatched a sum of Rs.250/- from the shirt pocket of the Defacto-Complainant. At that time, when PW1 was raising alarm, one Radha @ Radhakrishnan and Mohan along with Pw-1, tried to nab accused/Appellants, but they were also intimidated by showing knife. However, two Head Constables attached with the Respondent/Police Station when they were on patrolling duty, managed to secure the accused and thereby they were brought to the Police Station along with the properties robbed from the PW1. In the Police Station, the accused/appellants along with the robbed money and watch were entrusted with the Inspector of Police, who is the investigation officer herein. Thereafter the accused were remanded into judicial custody. Subsequently, by completed the investigation, final report was filed before the learned Judicial Magistrate, Saidapet, Chennai, and the final report was taken on the file as P.R.C.No.19 of 2008. Since the final report filed had disclosed that the offence committed by the Appellants/Accused is triable only by the Court of Session, the case was committed after the compliance of the legal process to the learned Principal Sessions Court concerned and subsequently, the case was made over to the file of the learned Trial Court. In order to prove the case, prosecution has examined PWS1 to PW7 and Exhibits-P1 to P9 along with material objects MOs-1 to 4 were produced.

4. That the learned counsel for the appellants would submit that the case of the prosecution has suffered with lack of corroboration and is not supported by any independent witnesses. He has also pointed out that PWs-2, 3 and 4 have turned hostile and the evidence of PW-5 is not believable as he is a Police head-constable attached with the very same Police Station, where the First Information Report, Ex.P-5 was registered. Moreover, the place of the occurrence itself is doubtful and the PW-1 let in contradictory evidence in this regard between his complaint and his evidence. Apart from that by whom the complaint was

written is doubtful as it is admitted by PW-1 himself that he does not aware to write and read. However, there is no evidence as to the fact that by whom the complaint, Ex.P-1 was written. By submitting all the aforesaid points for consideration, the learned counsel for the appellants/accused prays this Court to allow the appeal by giving benefit of doubt.

5.Per contra, the learned Government Advocate (Criminal Side) would submit that the case of the prosecution is supported by cogent and concrete evidence to prove the charges against the appellants/accused. He also brought to the notice of this Court that evidence of Pw-1 is supported by the evidence of PW-5 and moreover this is the case of red-hand arrest of the appellants/accused. He adds further, the act of the accused/appellants paralyzed the traffic and normalcy in that locality where the occurrence had happened. Apart from that the accused/appellants deserve no leniency as they tried to assault even the Police Head-Constables which is evident from the evidence of PW-5. It is also contended by the learned Government Advocate (Criminal Side) that the accused/appellants have not let-in any evidence that they have not committed any such offence as alleged available. Therefore, according to the learned Government Advocate (Criminal Side), that the findings of the learned trial Court need no interference in the appeal proceedings, hence he prays for the dismissal of the appeal.

6.I heard Mr.K.R.Rameshkumar, learned counsel for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side), and the materials available on record are perused.

7.It is the case that the prosecution launched as against two accused/appellants for the robbery committed in day light at knife point. The victim in the instant case is a young man. According to him, when he was walking in the junction of Ramasamy Road and Alagarsamy Road, he was waylaid by the accused/appellants and subjected him under life threat by showing knife and thereafter the accused/appellants snatched wrist watch and a sum of Rs.250/- from the shirt pocket of the Defacto-Complainant. However, it is the case of the appellant that the evidence of PW-1 is not supported by any independent evidence, at the same time, the evidence of PW-5 cannot be taken into consideration as the same is unsafe as he is the most interested witness. Admittedly, the evidence of PW-1 has not been supported by any independent witnesses, at the same time, the evidence of PW-5 corroborated the evidence of PW-1. There is no hard and fast rule to discard the evidence of PW-5 as he is a Police head-constable attached with the respondent Police Station. At the same time, the expectation of this Court is that the presence of the PW-5 at the place of occurrence must be proved by the prosecution by placing documentary evidence. In

the absence of documentary evidence to prove that PW-5 could be in the place of occurrence, it is unsafe to rely on the evidence of PW-5. On the other hand, the presence of the PW-5 must be proved by examining any independent witnesses that PW-5 was available at the scene of the occurrence and he along with the assistance of other constable nabbed the accused/appellants. The absence of such evidence, in the opinion of this Court has deeply affected the root of the case.

8. It is seen from the records that the evidence of PWs 2, 3 and 4 turned hostile. According to the evidence of PW-1, the place of occurrence has been changed from the place of occurrence mentioned in the complaint and in his evidence. Moreover, he has admitted that he does not know how to read and write. When the evidence of PW-1 is in that line, then it is the duty of the prosecution to prove the fact that by whom the complaint was written and on whose instructions the same was prepared. Further, the appreciation of the evidence of PW-1 in its totality is unable to be appreciated for the reason that it is self contradictory and developed version of his complaint. Apart from that PW-1 is not able to ascertain the exact place of occurrence and the prosecution has not examined any nearby residents or shop owners of that locality to prove the occurrence. All these aspects are not taken into consideration by the learned trial judge. In such circumstances, this Court is unable to accept the case of the prosecution, at the same time; the points raised by the counsel for the accused/appellants are having force to consider the appeal in their favour.

9. In the result:

(a) This Criminal Appeal is allowed by setting aside the conviction and sentence imposed on the appellants/accused in S.C.No.169 of 2008 dated 08.10.2010, on the file of the learned III Additional Judge, Sessions Court, Chennai;

(b) The appellants/accused are acquitted from all the charges;

(c) Fine amount if any, paid by the appellants/accused shall be refunded to them;

(d) The bail bond executed by the appellants/accused shall stand discharged.

vs

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The III Additional Judge,
Sessions Court, Chennai.
4. The Principal & District Sessions Judge,
Chennai.
5. The Deputy Commissioner of Police,
T. Nagar, Chennai.
6. The Inspector of Police,
R7, K.K.Nagar Police Station,
Chennai - 78.
7. The District Collector,
Chennai.
8. The Director General of Police,
Mylapore, Chennai - 4.
9. The Superintendent,
Central Prison,
Puzhal, Chennai.
10. The Public Prosecutor,
High Court, Madras.
11. The Section Officer,
Criminal Section (Record),
High Court,
Madras.

+1cc Mr.K.R.Ramesh Kumar, Advocate, SR.NO.78946

SR(CO)
KAK(22/01/2019)

Criminal Appeal No.115 of 2010