

Bail Slip

The Accused/Appellants, namely Selvam(A2), Arumugam (A3) and Paramasivam (A1) were directed to be released on bail as per order of this Court dated 1/8/2006 made in Crl.M.P.No.4057/2006 in Crl.A.No.677/2004, Crl.M.P.No.4056/2006 in Crl.A No.392/2006 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.A.Nos.677 of 2004 and 392 of 2005
& C.M.P.Nos.4970 of 2005, 4056 and 4057 of 2006,
M.P.Nos.1 of 2013, 1 of 2014
and Crl.M.P.No.13055 of 2018

1.Selvam

2.Arumugam

... Appellants/Accused 2 & 3 in
Crl.A.No.677 of 2004

Paramasivam

... Appellant/Accused No.1 in
Crl.A.No.392 of 2005

/Vs/

State, rep. by Inspector of Police,
Udumalpet Police Station,
Coimbatore District.

(Cr.No.96 of 2003).

... Respondent/Complainant in both
Crl. Appeals

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COMMON PRAYER: Criminal Appeals filed under section 374 of the Criminal Procedure Code, against the Judgment and conviction passed by the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore in S.C.No.227 of 2003 dated 25.02.2004.

For Appellants in : Mr.R.Sankarasubbu
Crl.A.No.677 of 2004 for Mr.P.Pugazenthi

For Appellant in : Mr.S.Mohammed Ansar
Crl.A.No.392 of 2005

For Respondent in : Mr.R.Ravichandran
both Crl.Appeals Government Advocate(Crl.Side)

C O M M O N J U D G M E N T

The criminal appeals have been filed by the appellants against the Judgment dated 25.02.2004, made in S.C.No.227 of 2003, on the file of the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore, and prays to set aside the same.

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

On 23.02.2003 at about 1.30 a.m., A1 along with the other two accused persons had entered into the house of P.W.1, situated in UKP Nagar, Udumalpet, with a dangerous weapons and caused grievous injuries on P.Ws.1 and 2. Thereafter, the accused committed robbery of jewels worth about Rs.35,000/- and ran away from the scene of occurrence through front door. Immediately, after the said occurrence, P.Ws.1 and 2 sought help of the other persons by screaming. Further, P.W.1 informed to his brother-in-law - PW4, about the occurrence. Immediately after his arrival, P.Ws.1 and 2 were taken to the Government Hospital, Udumalpet, for first aid. After taking treatment in the Government Hospital, Udumalpet, the Doctor advised them to go for further treatment in the Government General Hospital, Coimbatore. However, instead of taking treatment in the Government hospital, Coimbatore for further treatment, P.Ws.1 and 2 went to Sri Ramakrishna Hospital, Coimbatore.

3.Based on the complaint of P.W.1, a case was registered and the complaint was marked as Ex.P1. The Sub-Inspector of Police, P.W.13, who registered the case for the offence punishable under section 397 IPC in Crime No.96 of 2003 had took up the case for investigation. Further, he went to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2), Rough Sketch (Ex.P.15) in the presence of witnesses. Thereafter, he went to Sri Ramakrishna Hospital, Coimbatore, and examined P.Ws.1 and 2. Further, the Investigating Officer examined other witnesses; marked documents (Exs.P.1 to 16) and material objects (M.Os.1 to 10).

4. Based on the above materials, the trial Court framed the charges for the offences under sections 450 & 394 r/w 397 IPC against the accused. When the trial Court examined the accused under section 313 Cr.P.C., in respect of the materials available against them, they denied the charges. In order to prove the charges, on the side of the prosecution, witnesses P.Ws.1 to 16 were examined and documents Exs.P.1 to 16 were marked and material objects M.Os.1 to 11 were also marked.

5. The Trial Court, after considering the oral and documentary evidence found the accused guilty under Sections 450, 394 r/w 397 IPC and sentenced each of the accused to undergo Rigorous Imprisonment for a period of five years with fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of one year, for an offence under Section 450 IPC and sentenced to undergo Rigorous Imprisonment for a period of seven years and imposed a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for a period of one year for offence under Section 394 r/w 397 I.P.C. The Sentence of imprisonment imposed on the accused are directed to run concurrently.

6. Challenging the said conviction and sentence, A.1 has come up with CrI.A.No.392 of 2005 and A.2 & A.3 have come up with CrI.A.No.677 of 2004.

7. Heard Mr.S.Mohammed Ansar, learned counsel appearing for A.1 and Mr.R.Sankarasubbu for Mr.P.Pugazenthi, learned counsel appearing for A.2 & A.3, and Mr.R.Ravichandran, learned Government Advocate (Criminal Side) appearing for the respondent.

8. The learned counsel for the appellants/A.2 and A.3 in CrI.A.No.677 of 2004 would submit that there is no material whatsoever available on record to prove the charges under sections 450 & 394 r/w 397 IPC, against A.1 and A.2. The evidence of P.Ws.1 to 3 are contradictory in nature. Further, the manner in which the test identification parade was conducted by the respondent creates a suspicion on the case of the prosecution. Though the accused persons viz., A1 was arrested on 26.02.2003; A2 was arrested on 01.03.2003 and A3 was arrested on 10.03.2003, the test identification parade was conducted for A1 on 06.03.2003 and for A2 and A3 on 17.04.2003. Normally, during the test identification parade along with the accused person ten dummy persons would be shown to the witness, in order to identify the correct accused. But it is not explained by the prosecution whether the said course was adopted by the respondent police, during test identification parade. Further, the learned counsel appearing for the appellants would submit

that during the period of 45 days, there are several possibilities on the part of the respondent Police to show the accused persons to the prosecution witnesses, to enable them to identify the correct accused in the test identification parade. Though the conviction was not solely on the basis of the test identification parade, it plays a vital role in implicating the accused in the above said crime. If at all, in order to prove the offence under Section 397 IPC, implicating the accused is unsustainable one and they are not used any deadly weapon as alleged by the prosecution even uruttukattai (wooden log) was not seized under material objects and the prosecution witnesses were sustained with simple injuries only. Further, A2 is in prison for 3 ½ years and he requested to fix a minimum sentence for the above stated offence as alleged by the prosecution. He further requested to set off the period already undergone by him.

9.The learned counsel appearing for the appellant in CrI.A.No.392 of 2005 would submit that there are material contradictions in the evidences of P.Ws.1 and 2. P.W.1 in his evidence has stated that the appellants herein had entered into the house with uruttukkai but, whereas, P.W.2, in her evidence has stated that the appellants had Aruval in their hands. In view of the contradictory deposition of evidences P.Ws.1 and 2, the prosecution has not proved the case beyond all reasonable doubts. Further, A.1 has also undergone for 3 ½ years imprisonment and requested to set off the period already undergone by him.

10.Per contra, the learned Government Advocate (Criminal side) appearing for the State would submit that P.Ws.1 to 3 are eye witnesses. P.W.1 is a practising Advocate in Udumalpet Bar Association. At about 01.30 a.m, all the three accused persons along with one other person broke open the front door of the P.W.1's house and entered with deadly weapons like Urutukattai and Aruval. A2 attacked P.W.1; A1 and A3 attacked PW2, the wife of the P.W.1 and other person A4 tried to attack PW3. The evidences of P.Ws.1 to 3, were corroborated with each other. Further, P.Ws.1 to 3 were taken to the Government Hospital, Udumalpet for treatment. Further, they were taken treatment in the Ramakrishna Hospital in Coimbatore. The Doctor, who gave treatment in the Government Hospital, Udumalpet was examined as P.W.14 and he clearly deposed that the injuries sustained by P.Ws.1 and 2 are grievous in nature they they were attacked with deadly weapons. However, on perusal of the injuries sustained by P.W.1, though it is alleged that the weapon used by A2 is uruttukattai (wooden log), but P.W.1 was sustained with grievous injuries in nature. Hence, the prosecution has proved the case beyond all reasonable doubts, in this aspect. Further the learned Government Advocate (Criminal side) further submitted

that the test identification parade is only a corroborative piece of evidence for implicating the accused persons and if the trial Court convicted the accused solely on the test identification parade, then the appellants contention may hold good. However, in the present case, P.Ws.1 to 3 clearly identified the accused persons and gave Ex.P.1 - complaint before the investigating officer and thereafter, the investigating officer arrested A1 and A2 and further recovery was made from A1 and A2. On 26.02.2003, some of the material objects were recovered from A.1. On 01.03.2003 some of the material objects were recovered from A2. All the recoveries were made from A1 and A2 are on the different dates in the presence of independent witnesses. Apart from the above, test identification parade was conducted in respect of A.1 on 06.03.2003, however, for A.2, it was only conducted on 17.04.2003. Normally, procedure for conducting the test identification parade is not solely rest with the investigating officer - P.W.13 and it based on the availability of the accused and fake persons and the availability of the concerned Judicial Magistrate and the Superintendent of Prison. It may consume sometime for conducting the test identification parade. A mere delay in conducting the test identification parade will not vitiate the prosecution case. The Court has to consider the circumstantial evidence viz., deposition of eye witnesses, recovery of material objects, marking of Wound Certificates, Doctor's evidence regarding the nature of the injuries sustained by P.Ws.1 and 2 and the test identification parade. These are all the incriminating circumstances to arrive at a conclusion in the present case. The trial court based on the above said materials well considered the issue and rightly approached the matter. In support of his contention, he relied on the Judgment of the Hon'ble Supreme Court in Lal Singh and Others Vs. State of Uttar Pradesh reported in (2003) 12 Supreme Court Cases 554. Hence, the Judgment passed by the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore in S.C.No.227 of 2003 dated 25.02.2004, need not be interfered with by this Court.

11.In the light of the above submissions, now it has to be analysed, 'Whether the prosecution has proved the case beyond all reasonable doubts?'. On perusal of the evidence of P.W.1, it is noted that on 20.03.2003 at about 1.00 a.m, unknown accused persons broke open the front door of his house and trespassed into the house with deadly weapons. P.W.1, who is a practising Advocate, in that locality. A1 and A3 went to caught hold of P.W.2 and caused injuries on her left hand and left leg. A2 went to P.W.1's room and caused injuries with urutukattai on his head, mouth, right arm and left leg and the other accused namely A4 went to P.W.3's room and threatened with iron rod and committed robbery of jewels worth about Rs.35,000/- belong to

them and left the house through front door. Immediately thereafter, the injured persons were taken to the Government Hospital, Udumalpet, for treatment. For further treatment, they were advised to go to the Government Hospital, Coimbatore, however, instead, they were taken treatment in private hospital namely Sri Ramakrishna Hospital, Coimbatore. Wound Certificate was marked as Exs.P7 and P9. P.W.2 and P.W.3 have clearly endorsed the evidence of P.W.1, though there was a minor discrepancy in the evidence, in respect of Aruval and Kathi, but, the said Aruval was recovered by the investigating officer from A1 through material object M.O.1. Except the small difference in identifying the weapon used by the accused, other evidences corroborates each other and in respect of the scene of occurrence and there is no discrepancy with regard to the occurrence took place on 20.03.2003 at 01.30 a.m., between the evidences of P.Ws.1 and 2.

12.P.W.4 evidence appears to be hearsay witness and he does not know what actually happened at the midnight. He is the brother in law of PW..1 and brother of P.W.2. On receiving information from them, he reached the place of occurrence and taken them to the hospital. PW5 is the hearsay witness. P.Ws.6 and 7 are attested witnesses for the recovery made from A1. P.W.7 stands as witness for recovery mahazar, however, P.W.6 turned as hostile. P.Ws.8 and 9 are attested witnesses for the recovery made from A2.

13.On the perusal of P.W.10, the medical practitioner who is working in Sri Ramakrishna Hospital, Coimbatore and gave treatment to the P.Ws.1 and 2 had clearly deposed about the injuries sustained by P.Ws.1 and 2. Exs.P.7 and 8 are wound certificates issued in respect of P.Ws.1 and 2. P.W.11, the Judicial Magistrate, who conducted the test identification parade. P.W.13 is the special Sub-Inspector of Police, who recorded the first information report from P.W.1 and P.W.14 is the duty Doctor of the Government Hospital, Udumalpet, who certified that the injuries sustained by P.Ws.1 and 2 are grievous in nature. On perusal of the discharge summary and the evidence of P.W.14 clearly shows that the following injuries were identified and are as follows:

P.W.1 :

1. Fracture Mandible
2. Loss of teeth (a) Left Central Incisor, (b) Lateral Incisor (Upper),
(c) Left Lateral Incisor (Lower)
3. Lacerated injury lower lip and upper lip
4. Lacerated injury over forehead and left parietal region
5. Fracture Right Acromion
6. Multiple Superficial abrasion over right shoulder and right arm.

P.W.2

1. Lacerated injury left ring finger terminal phalanges and left leg posterior aspect.

14. On perusal of the entire evidences of the prosecution, this Court does not find any inconsistent evidences as against the accused and the prosecution evidences corroborates with each other. To the extent of prosecution, it has been clearly proved beyond all reasonable doubts. Involvement of the accused in the said offences, was proved by the prosecution by oral as well as documentary evidences. This Court have no hesitation to arrive at such conclusion.

15. The next issue is, 'Whether the test identification parade conducted by the respondent is legally valid or not?'. In this regard, the learned counsel appearing for A2 relied on the following cases of Budhsen and Another Vs. State of Uttar Pradesh reported in (1970) SCC (Cr) 343, State of Goa Vs. Sanjay Thakran and another reported in (2007) 3 SCC 755, Iqbal and another Vs. State of Uttar Pradesh reported in (2015) 6 SCC 623 and Dilawar Singh Vs. State of Delhi reported in Law Finder Doc Id#132182.

16. On perusal of the above decisions, it clearly held that (i) if the conviction is based solely on the test identification parade and the test parade is not conducted in the manner known to law, then the conviction must be liable to be set aside. (ii) If the suspects were not in similar appearance, colour and age are having vast difference, and the persons produced by the Jail Superintendent is different from the accused person, then it has to be held invalid. (iii) The fake persons, who were put in parade more or less of the same features and age group of the accused and if there is any vast difference, then it has to be held invalid. However, in the present case, the first test identification parade was conducted on 06.03.2003 within 15 days of the arrest of A.1 by presenting 9 fake persons and the second test identification parade was conducted on 17.04.2003 in respect of A.2 and A.3, by producing 10 fake persons. However, the age of the fake persons are similar in nature, except one Marimuthu (33), Chandrabose (27) and Rajendran (30). All other fake persons are in the age group of 18 to 23 years. Further, the learned Magistrate personally seen the fake persons as well as the accused and after satisfaction allowed to conduct the test identification parade, to go on and at the first instance, there are no confusion in the test identification parade. P.Ws.1 and 2 have identified the accused persons correctly. Hence, the argument of learned counsel appearing for the A2 is liable to be rejected.

17.The above cited three issues are crucial to decide the test identification parade as valid. In the present case, though, the first test identification parade was conducted in respect of A1 on 06.03.2003 within 15 days of his arrest by producing 9 persons. However, the second test identification parade was conducted on 17.04.2003 in respect of the identification of A2 and A3 by producing 10 fake persons for identifying the correct accused persons. There is no infirmity or irregularity in conducting the said test identification parades. Further, the delay in conducting the test identification parade is also meager.

18.In the result, both the Criminal Appeals are dismissed. Conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court No.III), Coimbatore in S.C.No.227 of 2003 dated 25.02.2004 is confirmed. The trial Court is directed to secure the custody of the accused to undergo the remaining period of sentence, if any. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District and Sessions Judge
(Fast Track Court No.III), Coimbatore.
- 2.The Principal District Judge,
Coimbatore.
- 3.The Judicial Magistrate No.1,
Pollachi.
- 4.-Do- Thro' The Chief Judicial Magistrate,
Coimbatore.
- 5.The Inspector of Police,
Udumalpet Police Station,
Coimbatore District.

6.The District Collector,
Coimbatore.

7.The Director General of Police,
Mylaore, Chennai-4.

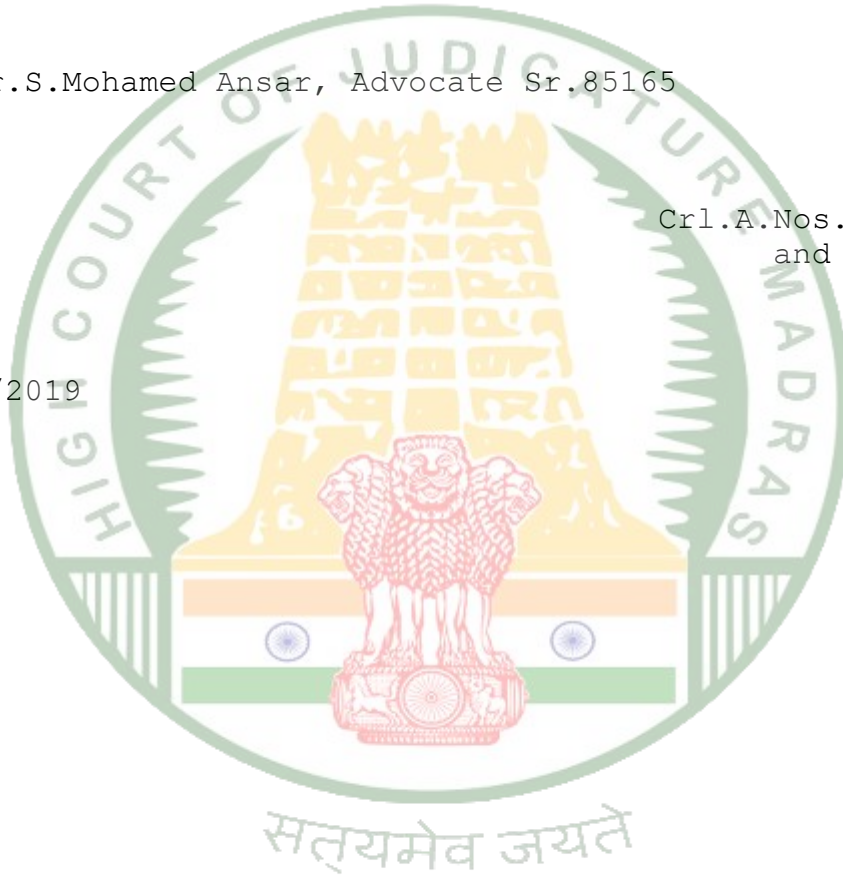
8.The Public Prosecutor
High Court of Madras.

9.The Section Officer, Criminal Section
High Court of Madras.

+1cc to Mr.S.Mohamed Ansar, Advocate Sr.85165

Crl.A.Nos.677 of 2004
and 392 of 2005

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