

Bail Slip

The appellant/accused,namely Chinnaraj @ Chinnan be and hereby was directed to be released on bail vide Court order dated 30/03/2011 in CRL.MP.1/11 IN CRL A 227/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 04.09.2018
PRONOUNCED ON : 18.12.2018
CORAM :
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.A.No.227 of 2011
Chinnaraj @ Chinnan ... Appellant / Accused No.1

-Vs-

State Represented by
The Inspector of Police,
Hogenakkal Police Station,
Crime No.155 of 2008 ... Respondent /
Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence passed in S.C.No.5 of 2009, by the learned Additional Sessions Judge (Fast Track Court) Dharmapuri, dated 29.06.2010.

For Appellant : Ms.M.Jayanthi,
Legal Aid Counsel.
For Respondent : Mrs.V.Saratha Devi,
Government Advocate (Crl.Side).

ORDER

The convicted accused is the appellant herein. He has filed this Criminal Appeal to set aside the conviction and sentence passed in S.C.No.5 of 2009, by the learned Additional Sessions Judge (Fast Track Court) Dharmapuri, dated 29.06.2010.

2.The respondent police has filed final report in Crime No.155 of 2008 on the file of Hogenakkal Police Station, alleging that on 12.09.2008 at about 09.15 Hrs. on the Hogenakkal to Anjetti Road, 3 K.M., on the Western direction of the Alampati Parisil Thurai, within the limits of Hogenakkal Police Station, while the informant Balaji and the witness Kumar proceeding in a Bajaj C.T.100 two wheeler motor cycle bearing Registration No.TN 24 Y 6615

the marginally noted the accused 1 and 2 with the common intention of committing robbery, the said accused 1 and 2 wrongfully restrained the said informant and the witness from proceeding further. After that the first accused voluntarily assaulted the witness Kumar with Koduval aiming on his neck while the said Kumar thwarted the said assault by raising his right hand, he sustained cut injury on his right hand. After the accused 1 and 2 tied both the hands of the witness Kumar with rope and tied the hands of the informant Balaji with tree with help of Lungi cloth piece and robbed cellphone from the said informant and witness Kumar and also robbed Bajaj C.T.100 two wheeler motor cycle bearing Registration No.TN 24 Y 6615 belonging to the said informant and the accused 1 and 2 committed robbery totally to the tune of Rs.29,000/-. Thus on the above said facts the first accused appears to have committed an offence punishable under Section 342, 394 and 392 r/w 397 IPC. The second accused appears to have committed an offence punishable under Sections 342 and 394 IPC. Hence, the Inspector of Police has laid the charge sheet against these accused.

3.On consideration of both oral and documentary evidence, the learned Additional Sessions Judge, Fast Track Court, Dharmapuri, has convicted the accused 1 and 2. Aggrieved by the same, the first accused has approached this Court by way of filing this Criminal Appeal.

4.The learned Legal Aid Counsel appointed by the Tamil Nadu Legal Services Committee for this appellant would contend that admittedly, the appellant and other accused of the case (the second accused) were unknown persons to P.W.1 and P.W.2 and the respondent / police ought to have taken steps to conduct identification parade and this aspect goes to the root of the case. In this case, identification parade has not been conducted and the appellant / accused was identified in the Court by P.W.1 and P.W.2 after a long period.

5.Heard the learned Legal Aid Counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials available on record carefully.

6.Points for determination are whether the conviction and sentence passed by the trial Court for the offences under Sections 342, 394 and 392 r/w 397 IPC is sustainable in law or not? and whether the sentence passed by the trial Court is excessive or not?.

7.After hearing both the parties and after perusing the oral and documentary evidence, the appellant / accused stood charged for the offences under Sections 342, 394 and 392 r/w 397 IPC along with the second accused.

8.In order to prove the charges, the prosecution examined P.W.1 to P.W.6 and Exs.P.1 to P.10 are marked. Based upon the admissible portion of the confession statement given by the accused 1 and 2, M.O.1 to M.O.4 have been recovered.

9.After going through the evidence of P.W.1 and P.W.2, it is seen that P.W.1 has categorically deposed regarding the fact that on 12.02.2008 at about 06.00 A.M, he was going to his sister's house but, missed the relevant bus between Hogenakkal to Natrampalayam. Therefore, he went to his brother-in-law P.W.3 Kumar along with his C.T.100 Bajaj Vehicle having registration No.TN 24 Y 6516 and proceeded towards Natrampalayam road. While so, at the place of 3 K.M., from Alampadi, the first accused stopped them and told that there was an Elephant and should not go further. At that time the second accused came out from the hidden place and attacked the brother-in-law of P.W.1 on his neck and also the accused tied the hands of P.W.1. P.W.1 questioned the accused for which the accused replied if you to do anything, they will murder the brother-in-law of P.W.1. Then, the accused dragged to them to forest area and remove the waist chord from P.W.3 Kumar and tied his hands also. Thereafter, the accused tied P.W.1 and P.W.3 with tree and took away the vehicle, Sony Ericsson and Nokia Cell Phone. Since the accused tied P.W.3 in his front side, he remove the knot with the help of the teeth and also untied P.W.1. Then P.W.1 and P.W.3 boarded the Bangalore Bus, it was coming at the time and went to the Pennagaram Government Hospital. After discharging, they went to back to the scene of occurrence but the vehicle was not available, therefore, on 14.09.2008 went to the Police Station and gave a complaint under Ex.P.1.

10.On combined reading of the oral evidence of P.W1 and P.W.3 coupled with Exs.P.2 and P.3, this Court is of the considered view that the prosecution has proved his part of the prosecution theory that P.W.1 and P.W.3 have been attacked by some unidentified persons and they went to back to the scene of occurrence, the vehicle was not available. Admittedly, the name of the accused were not mentioned in Ex.P.1 complaint. In other words, the accused are unnamed in the Ex.P.1 complaint. If the complaint contains the names of the accused, then the case of the

defence that due to previous enmity they were falsely implicated can be considered, since in such an event, the accused name could have been spelt in Ex.P.1 complaint and hence, the contention of the Legal Aid Counsel appearing for the appellant that due to previous enmity, a false case has been foisted against him cannot stand for reason and the same is hereby rejected.

11.After going through the evidence of P.W.5, Village Administrative Officer, he has categorically deposed about the confession statement given by the accused 1 and 2, which was recorded under Exs.P.5 and P.6. Based upon which, material objects M.O.1 to M.O.4 have been recovered. In the absence of any worthwhile in the cross-examination of P.W.4 to discredit his evidence, the trial Court has categorically given a finding that the evidence of P.W.5, who is the independent person, assumes significance and also lends credence to the prosecution theory. The said finding being well merited and well considered, does not warrant any interference by this Court.

12.Based upon the admissible portion of the accused 1 and 2 and Exs.P.5 and P.6, which let to recovery of new fact, namely, M.O.1 to M.O.4, this Court is of the considered view that the prosecution has proved the complicity of the accused in this crime. Furthermore, even though the accused are identified by P.W.1 in the witness box, it is substantial evidence to support the case of the prosecution. The similar finding was recorded by the trial Court, which does not suffer from any illegality or infirmity. Accordingly, the same is liable to be confirmed.

13.After going through the evidence on record and also the case of the prosecution and the witnesses, the charge under Section 392 r/w 397 IPC has been modified into that of Section 392 IPC alone and accordingly, regarding the quantum of sentence, arguments have been heard.

14.On the quantum of sentence passed by the trial Court, it is seen that for the offence under Section 342 IPC, he was sentenced to undergo 3 months rigorous imprisonment; for the offence under Section 394 IPC, to undergo 7 years rigorous imprisonment and also to pay a fine of Rs.1000/- in default, to undergo 6 months simple imprisonment and for the offence under Section 392 r/w 397 IPC, to undergo 7 years rigorous imprisonment and also to pay a fine of Rs.1000/- in default to undergo 6 months simple imprisonment.

15.Taking into consideration of the gravity of the offence committed by the appellant, the quantum of 7 years

passed under Sections 394 and 392 IPC respectively have been reduced to 4 years respectively and the sentence awarded under Section 342 IPC is confirmed and all the sentences shall run concurrently.

16. In this view of the matter, this Criminal Appeal is partly allowed to the extent as indicated above. Accordingly, the conviction and sentence passed by the trial Court in S.C.No.5 of 2009 is modified as stated supra. The period of sentence already undergone by the appellant shall be given set off under Section 428 Cr.P.C. The fine amount awarded is kept intact.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Myr

To

1. The Judicial Magistrate, Penagaram
2. The Chief Judicial Magistrate , Dharmapuri @ Krishnagiri.
3. The Additional Sessions Judge,
(Fast Track Court) Dharmapuri.
4. The Inspector of Police,
Hogenakkal Police Station,
5. The Superintendent , Central Prison Vellore.
6. The District Collector,
Dharmapuri.
7. The Director General of Police, mylapore, Chennai. 4
8. The Additional Public Prosecutor,
Madras High Court, Madras.
9. The section officer,
Criminal Section,
High court, Madras

+1cc to Mr.S.N.Arun Kumar , Advocate SR.No. 88174

CRL.A.No.227 of 2011

A.SK(23/01/2019)