

BAIL SLIP

Kumar @ Mayakumar, aged 26 years, S/o.Vellaisamy accused in S.C.No.189 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore at Tiruppur was released on bail as per order of this Court dated 25.04.2011 in M.P.NO.1 of 2011 in CRL A No.241 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.11.2018

PRONOUNCED ON : 10.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.241 of 2011

Kumar @ Mayakumar

Appellant

Vs

State by the Inspector of Police,
Palladam Police Station,
Coimbatore District.
Cr.No.982 of 2004

Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the judgment dated 24.10.2008 passed by the Additional District and Sessions Judge, FTC-V, Coimbatore at Tiruppur in S.C.No.189 of 2007.

For Appellant : Mr.S.Ashok Kumar

For Respondents : Mr.G.Ramar, GA (Crl. Side)

J U D G M E N T

This appeal has been preferred challenging the judgment dated 24.10.2008 passed by the learned Additional District and Sessions Judge (FTC-V), Coimbatore at Tiruppur in S.C.No.189 of 2007.

2.Heard Mr.Ashok Kumar, learned counsel for Kumar @ Mayakumar (A1) and Mr.G.Ramar, learned Government Advocate (Crl. Side).

3.The case of the prosecution is that on 09.11.2004, around 00.45 hours, five persons armed with weapons entered the house

of Karuppusamy Gounder (PW3) and after hurting him, decamped with 50 sovereigns of gold and cash of Rs.5,50,000/-. On the complaint (Ex.P1) lodged by Nachimuthu @ Murugesan (PW1), S/o.Karuppusamy Gounder, a case in Crime No.982 of 2004 was registered by the Police and investigation was taken up by C.P.Arumugam (PW12) Inspector of Police. On his transfer, investigation was conducted by Loganathan (PW13) and final report was filed against five accused, of which, two accused viz. Murugan and Vijayan were shown as absconding accused. The final report was taken on file as P.R.C.Nos.5 of 2006 and 21 of 2007 and the case was committed to the Court of Session, Coimbatore in S.C.No.189 of 2007 (S.C.No.41 of 2008 clubbed) and made over to the Additional Sessions Court (FTC-V) Tiruppur for trial. The trial Court framed charge under Section 397 r/w 34 IPC against Kumar @ Mayakumar (A1), Rajini (A2) and Palani @ Palanikumar (A3). When questioned, the accused pleaded 'not guilty'.

4.To prove the case, the prosecution examined 13 witnesses, marked 11 exhibits and 21 material objects.

5.When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances against them, they denied the same.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 24.10.2008 in S.C.No.189 of 2007, convicted Kumar @ Mayakumar (A1) and Palani @ Palanikumar (A3) under Section 397 r/w 34 IPC, but acquitted Rajini (A2). Kumar @ Mayakumar (A1) and Palani @ Palanikumar (A3) were sentenced to undergo Rigorous Imprisonment for 10 years and no fine was imposed on the ground that they have no means to pay.

7.At the outset, Mr.S.Ashok Kumar, learned counsel for Kumar @ Mayakumar (A1), pointing out that challenging the conviction and sentence, Palani @ Palanikumar filed CrI.A.No.856 of 2008, in which, this Court, by judgment dated 23.11.2010, set aside the conviction and sentence under Section 397 IPC r/w 394 IPC and convicted him under Section 394 IPC and sentenced him to undergo 4 years Rigorous Imprisonment, submitted that the same yardstick may be applied to the case of Kumar @ Mayakumar (A1) also.

8.Per contra, learned Government Advocate (CrI. Side) submitted that Kumar @ Mayakumar (A1) has several cases to his credit and therefore, the same indulgence cannot be shown to him.

9.This Court gave its anxious consideration to the rival submissions.

10. At the outset, it is necessary to state that this Court is not bound by the judgment of this Court in CrI.A.No.856 of 2008 and it is always open to this Court to independently appraise the evidence and to arrive at an independent conclusion.

11. Mini (PW2), in her evidence has stated that she was engaged as home nurse by Karuppusamy Gounder (PW3) to take care of his wife Rangathal, who was ailing; on 08.11.2004, at midnight, she heard someone banging the door; when Karuppusamy Gounder (PW3) opened the door, four persons barged in and after tying them with a cloth, they broke open the almirah and took away cash and jewels. She identified the accused in the dock. Similar is the evidence of Karuppusamy Gounder (PW3). Mini (PW2) and Karuppusamy Gounder (PW3) were subjected to extensive cross-examination and the defense was not able to make any serious headway.

12. The Police arrested the accused and recovered cash of Rs.3,30,000/- (MO-3) and gold jewels (MO-4 to MO-18). Jewels were identified by Tamizharasi, D/o. Karuppusamy Gounder (PW3) as belonging to their family. In the cross-examination, she has stated that she does not have the receipt for the purchase of jewels, as the jewels were given for her marriage and that, she had left most of the jewels with her mother, keeping only a few with herself for daily use.

13. This Court has no reason to believe the testimony of Mini (PW2), Karuppusamy Gounder (PW3) and Tamizharasi (PW4). Further, this Court does not find any material to show that the accused had used deadly weapons or caused grievous hurt to any person. Except the ipse dixit of the witnesses that the accused were armed with weapons, there was no other satisfactory material to bring the case within the fold of Section 397 IPC. In such view of the matter, the conviction and sentence imposed on Kumar @ Mayakumar (A1) under Section 397 r/w 34 IPC is set aside and is convicted for the offence under Section 394 IPC.

14. Taking into consideration the fact that Kumar @ Mayakumar (A1) was convicted for a similar offence in S.C.No.188 of 2007 which has been confirmed by this Court in CrI.A.No.12 of 2010, it will be in the fitness of things, if Kumar @ Mayakumar (A1) is imposed the sentence of 5 years Rigorous Imprisonment and fine of Rs.1,000/- in default to undergo 6 months Rigorous Imprisonment and it is ordered accordingly. The sentence imposed in this case will run concurrently with the sentence imposed by this Court, by judgment dated 10.12.2018 in CrI.A.No.186 of 2011 in S.C.No.188 of 2007 in Palladam Police Station Crime No.1112 of 2004. The trial Court shall return MO-3 to MO-18, either to Karuppusamy Gounder (PW3) or Tamizharasi

(PW4), if not already returned. Cash of Rs.3,30,000/- (MO3) shall be exchanged with the Reserve Bank of India under the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017 and return to Karuppusamy Gounder (PW3) or Tamizharasi (PW4).

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Palladam.
2. Do through The Chief Judicial Magistrate, Coimbatore.
3. The Additional District and Sessions Judge,
FTC-V, Coimbatore at Tiruppur.
4. Do through The Principal Sessions Judge, Coimbatore.
5. The Inspector of Police,
Palladam Police Station, Coimbatore District.
6. The Superintendent, Central Prison, Salem.
7. The Director General of Police,
Mylapore, Chennai.
8. The District Collector, Coimbatore.
9. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.S.Ashok Kumar, Advocate Sr.No.84910

SS(CO)
CSL/03.01.2019

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Judgment in
CRL.A.No.241 of 2011