

BAIL SLIP

The Appellant/Accused No.2 was directed to be released on bail as per the order of this Court dated 25.02.2014 made in MP.No. 1 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.Nos.689 & 727 of 2013

1. Murugesan ...Appellant in Crl.A.689 of 2013/Accused-2
2. Rajkumar ...Appellant in Crl.A.727 of 2013/Accused-1

Vs.

State rep. by
The Inspector of Police,
Thiruppur Rural police Station
Tiruppur District.
(Crime No.763 of 2005)

...Respondent in both the appeals

Prayer in both the appeals: These Criminal Appeals are filed under Section 374 of Code of Criminal Procedure to call for the records and to set aside the judgment passed in S.C.No.96 of 2012 dated 25.09.2013 on the file of I Additional District and Sessions Court, Thiruppur, and praying to call for the records in SC.No. 96 of 2012 dated 25.09.2013 on the file of I Additional District and Sessions Judge, Tiruppur and acquit the Appellants.

For Appellant/Accused 1 : Mr.C.P.Palanichamy

For Appellant/Accused 2 : Mr.Franklin

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl.Side)

COMMON JUDGMENT

These Criminal Appeals have been filed by the first and second Accused against the judgment of conviction dated 25.09.2013 passed by the learned I Additional District and Sessions Judge, Thiruppur, in S.C.No.96 of 2012.

2. The case of the prosecution is that PW-1/Saraswathy is running a provisional shop at Thiruppur. On 17.07.2005 around 9.20 am, 1st accused bought Miranda Cool drink from PW-1. After drinking the cool drink, A1 gave hundred rupee note to her for the cool drink. After receiving the hundred rupee note, PW-1 got suspicious about the genuineness of the note and hence she took a original hundred rupee note from her shop and compared it with the note given by 1st accused. After confirming her doubt, she informed the same to her husband/PW-3. He also compared the hundred rupee note with the original note. Then PW-1, PW-3 along with one Dhandapani, caught hold of the accused A1 and produced him at Tiruppur Rural Police station. The police registered a complaint and recorded the confession statement of the accused and seized 10 nos. of hundred rupee counterfeit currency notes from A1. A1 confessed two other accused persons. Based on the confession, Police arrested A2 and seized 3 nos. of hundred rupee counterfeit notes. A3 was absconding. The police, after investigation filed charge sheet against the accused namely Rajkumar/1st Accused, Murugesan/2nd Accused and Easwaran/3rd Accused before the learned I Additional District and Sessions Judge, Thiruppur for the offences punishable under Sections 489 (B) and 489(C) of IPC which was taken on file in C.C. No.96 of 2012.

3. Before the trial Court, in order to prove the case of prosecution, PW-1 to PW-7 were examined and Ex.P1 to 11 were marked along with material objects 3 nos. During the trial, based on the submission made by the learned Government Advocate that the third accused had passed away, the charges against the third accused were abated. The learned Magistrate, after giving due opportunity to both the parties, convicted and sentenced 1st Accused to under go 7 years Rigorous imprisonment and a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for one year for the offence under Section 489(B) of IPC and for Accused 1&2 to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo 1 year of Rigorous Imprisonment for the offence under Section 489(C) I.P.C. by an order dated 25.09.2013.

4. Aggrieved against the judgment dated 25.09.2013, the first and second accused have preferred the present criminal appeal before this Court.

5. The learned Counsel appearing for the appellant/1st accused submitted that PW1 and PW3 are husband and wife and they are interested witness. Further, he submitted that one Dhandapani, who had accompanied with P.W.1 at the time of alleged occurrence, was cited as independent witness by the prosecution but not examined before the Court and therefore recovery has not been proved. The first accused had only one

hundred rupee note, which was given to P.W.1 for the Cool Drink. The first accused was in possession of one hundred rupee note without knowledge of the counterfeit currency note, further, recovery of the other 10 counterfeit notes was not proved. Hence in the absence of any proof for recovery of other counterfeit notes and in the absence of any proof to show that the first accused was in conscious possession with the knowledge, the Court below had wrongly convicted the first accused and hence prays for acquittal.

6. The criminal appeal in Crl.A.689 of 2013 has been filed by the second accused. The learned Counsel appearing for the 2nd accused submitted that 2nd accused was impleaded in this case, based on the confession given by the 1st accused at 10.15 a.m. on the date of alleged occurrence, whereas, in the FIR, which was registered at 10.00 am on the same day, the second accused name and his details also were mentioned, which is not possible. P.W.1/defacto complainant in her complaint/Ex.P1, had not stated anything about the second accused, she only stated about the first accused had come to her shop and bought Mirinda cool drink and gave one hundred rupee note, which is fake note. But, the respondent police, had registered the case against the second accused also, which is doubtful, since after the confession recorded from 1st accused only the second accused came into picture. The respondent police recorded the confession statement from the first accused at 10.15 a.m. whereas, FIR was registered before the confession made by the first accused and hence the FIR itself is a fabricated one. As per the law laid down by the Hon'ble Supreme Court, once registering FIR is doubtful, entire case of the prosecution would collapse.

Further, the respondent police had not recorded confession statement from the second accused, and he was convicted only based on the confession given by the first accused, which is fatal to the case of the prosecution. P.W.5/the Inspector of Police, in her evidence, had not stated anything about the confession of the second accused and she only stated about the recovery of counterfeit notes from the second accused. The trial Court miserably failed to consider the above aspects and erroneously convicted the second accused. Hence the second accused is entitled for acquittal.

7. The learned Govt. Advocate (Crl.Side) appearing for the respondent police submitted that PW1 is a defacto complainant. During the trial, PW-1 to PW-7 were examined and Ex.P1 to P11 have been marked along with material evidences. Counterfeit notes 11 nos. from A1 and 3 nos. from A2 have been seized. It clearly shows that A1 and A2 were in possession of hundred rupee notes with knowledge of the counterfeit currency note. Further, the Chemical Analysis report has confirmed that the notes given by 1st accused is counterfeit notes and hence the recovery has been proved. Based on the evidences and witnesses, the learned

Sessions Judge has rightly come to the conclusion and convicted both the accused which does not warrants any interference of this Court. Further, he submitted that minor contradiction in registering the FIR and recording the confession statement of A1 will not affect the root of the case. Hence, it need not taken for consideration.

8. Heard both sides and perused the materials available on record.

9. It is seen from the records that on 17.07.2005 around 9.20 am, 1st accused bought Miranda Cool drink from the shop of Saraswathy/PW-1. After drinking the cool drink, A1 gave hundred rupee note to PW1 for the cool drink. PW1 and PW2 got suspicious of the note and took him to the police station. The police recovered the hundred rupees notes and subsequently sent the counterfeit notes to Forensic Sciences Department for Chemical Analysis. In Ex.P.2/Chemical Analysis Report, it has been clearly stated that the notes recovered from 1st accused who is the appellant in Crl.A.727 of 2013 are counterfeit notes. Since, the analysis report has confirmed that the notes given by 1st accused is counterfeit notes, hence the recovery has been proved.

10. It has been confirmed by the expert report that the notes which were in the possession of 1st accused are counterfeit notes. Therefore, the appeal filed by 1st accused in Crl.A.727 of 2013 is dismissed and the judgment dated 25.09.2013 passed by the learned I Additional District and Sessions Judge, Thirupur made in S.C.No.96 of 2012 against 1st accused is hereby confirmed.

11. As far as Criminal Appeal No.689 of 2013 is concerned, the learned Counsel for the appellant / 2nd accused submitted that the FIR was registered at 10 a.m. on 17.07.2005. Then only the confession statement has been obtained from the 1st accused at 10.15 a.m. on the same day. But, the names of all the accused were already been mentioned in the FIR before recording the confession statement which creates suspicious. Neither the respondent police nor PW1 and PW3 had stated the names and details of the accused in their written complaint. Then how the prosecution came to know about the details of the 2nd and 3rd accused before starting the investigation and how their names were mentioned in FIR. The prosecution has failed to give explanation as to how the names of the 2nd and 3rd accused were entered in the FIR. Therefore, the contents of the FIR is doubtful. Since, the FIR is doubtful, the case against the appellant / 2nd accused is also doubtful which is not sustainable. Further the PW6/Investigation Officer has not offered any acceptable explanation as to how he entered the

names of the other two accused in the FIR before obtaining the confession statement from the first accused.

12. Therefore, the benefit of doubt should be extended to 2nd accused. In this case, the prosecution has failed to give proper explanations as against 2nd accused. Therefore, the conviction and sentence made in judgment dated 25.09.2013 by the learned I Additional District and Sessions Judge, Thirupur in S.C.No.96 of 2012 is set aside and the appeal in Crl.A.689 of 2013 filed by 2nd Accused is allowed, fine amount if any paid by the 2nd accused shall be refunded to him.

13. In the result, the Criminal Appeal No.689 of 2013 filed by the 2nd accused is allowed and Criminal Appeal No.727 of 2013 filed by the 1st accused is dismissed. The trial Court is directed to secure the custody of the appellant in Crl.A.No.727 of 2013 / 1st accused to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ksa-2/cgi

To

1. The I Additional District and Sessions Judge, Thirupur.
2. The Judicial Magistrate, No.2, Tiruppur.
3. The Chief Judicial Magistrate, Tiruppur.
4. The Superintendent, Central Prison, Coimbatore.
5. The Director of Police, Tiruppur Rural Police Station, Tiruppur District.
6. The Public Prosecutor, High Court of Madras.

Crl.A.689 & 727 of 2013

BS(CO)
GN(21/08/2019)