



Bail Slip

The Appellants/Accused namely 1.Mr.L.Anthony Raj @ Soorapuli S/o.Lakshmanan aged 23 year 2.Kumar @ Maya kumar, S/o.Vellaisamy, aged 26 years are ordered to be released on bail in Crl.Mp.No.1/2011 in Crl.A.11/2011 dated 01/03/2011 and Crl.Mp.1/2011 in Crl.A.No.186/2011 dated 05/04/2011 respectively by this Hon'ble court.

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.Nos.11 AND 186 of 2011

L.Anthony Raj @ Soorapuli

..1st Accused/ Appellant in
Crl.A.11/2011

Kumar @ Mayakumar

..3rd Accused Appellant in
Crl.A.186/2011

Vs

State by the Inspector of Police,
Palladam Police Station,
Coimbatore District.
Cr.No.1112 of 2004

.. Respondent in
both Crl. Appeals

Criminal Appeals filed under Section 374(2) of Cr.P.C. praying to set aside the judgment dated 25.09.2009 passed by the Additional District and Sessions Judge, FTC-IV, Coimbatore at Tiruppur in S.C.No.188 of 2007.

For Appellant : Mr.V.Elangovan
in Crl.A.11/2011

For Appellant : Mr.S.Ashok Kumar
in Crl.A.186/2011



For Respondent : Mrs.P.Kritika Kamal,
in both Crl.As Govt. Advocate (Crl. Side)

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

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Anthony Raj @ Soorapuli and Kumar @ Mayakumar, A1 and A3 respectively in S.C.No.188 of 2007 on the file of the Additional District and Sessions Court (FTC-IV), Coimbatore at Tiruppur have preferred these appeals challenging the judgment dated 25.09.2008 passed therein.

2.Heard Mr.V.Elangovan and Mr.S.Ashok Kumar, learned counsel for the appellants and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side).

3.The factual matrix of the prosecution case is as under :

On 30.11.2004, around 8.15 p.m., while Palanisamy and his wife Deivathal (PW5) were in their house watching television, four persons armed with weapons entered their house. One of them assaulted Palanisamy, they cut the telephone wire, made the couple sit in the bedroom, searched the steel almirah, took away ½ sovereign earring from there and 7 sovereigns of thali chain that was worn by Deivathal (PW5), bolted the door from outside and fled.

3.1.Thereafter, the same gang went to the house of Rajan (PW1) nearby, where Rajan (PW1) and his family members were watching television, they brandished their weapons and demanded the inmates to part with the jewels. Saravanan (PW4), the brother of Rajan (PW1) resisted and hence, one of them attacked him with an Arival (billhook). When Rajan's mother, Kamalam (PW2) intervened, she was also attacked. Rajan's wife Vijayalakshmi (PW3) immediately rushed into the bedroom with her infant and locked herself. On seeing that, the accused broke open the door, entered the bedroom, took away a pair of gold earring and the ring worn by the child. They also took away the thali chain (MO-4) from Kamalam (PW2). After the robbery, they left the place.

3.2.Within a short time, Palanisamy and his wife Deivathal (PW5) came to Rajan's house for help and therefore, they learnt about the robbery there. Since Kamalam (PW2) and Saravanan (PW4) were injured, Rajan (PW1) took them immediately to Rajeswari Hospital at Palladam and thereafter, came to the Palladam Police Station and lodged a complaint (Ex.P1), based on which, G.P.Arumugam (PW13) Inspector of Police, registered a case in Palladam Police Station Crime No.1112 of 2004 under Section 394 IPC and prepared the printed FIR (Ex.P18). He went to the places of occurrence and prepared the Observation Mahazar



(Ex.P2) in the presence of Shanmugam (PW7) and Palanisamy (not examined).

3.3.While investigation was in progress, Arumugam (PW13), the Investigating Officer, received information about the involvement of Kumar @ Mayakumar (A3) in the offence from the Inspector of Police, Manamadurai Police Station. The Inspector of Police, Manamadurai Police Station had arrested Kumar @ Mayakumar (A3) in connection with Crime No.56 of 2005 for the offences under Section 324 and 307 IPC and during the interrogation of Kumar @ Mayakumar (A3), he disclosed about his involvement in the robbery cases.

3.4.Arumugam (PW13) approached the Judicial Magistrate, Palladam and took Kumar @ Mayakumar (A3) into police custody on 24.02.2005 and on the information provided by him, the other accused, viz. Anthonyraj @ Soorapuli (A1), Palani @ Palanikumar (A2) and Nallusamy (A4) were identified and arrested.

3.5.On the disclosures made by the accused, the weapons and gold ornaments were recovered. The recoveries were not only in respect of this case, but also of other cases in which the accused were involved.

3.6.Apart from this case in Crime No.1112 of 2004, the involvement of Kumar @ Mayakumar, Palani @ Palanikumar and one Rajini in a similar incident that had taken place on 08.11.2004 in Palladam Police Station Crime No.984 of 2004 also came to light.

3.7.The Investigating Officer made arrangements for conduct of Test Identification Parade of the arrested accused by the witnesses and accordingly, Mr.Kulasekaran, Judicial Magistrate-I, Tiruppur, conducted the Test Identification Parade at the Central Prison, Kovai on 08.04.2005 and prepared the report (Ex.P16).

3.8.After examining the witnesses including the doctors, who treated the injured, the Investigating Officer filed Final Report before the Judicial Magistrate-I, Palladam, which was taken on file as PRC.No.4 of 2008 against Anthonyraj @ Soorapuli (A1), Palani @ Palanikumar (A2), Kumar @ Mayakumar (A3) and Nallusamy (A4). Kumar @ Mayakumar (A3) and Nallusamy (A4) absconded and therefore, the case against them was split up.

3.9.After complying with the provisions of Section 207 Cr.P.C., the case relating to Anthonyraj @ Soorapuli (A1) and Palani @ Palanikumar (A2) was committed to the Court of Session and was taken on file as S.C.No.188 of 2007. The case was made over to the Additional District and Sessions Court (FTC-IV), Coimbatore, for trial.



3.10.Charges were framed against Anthonyraj @ Soorapuli (A1) and Palani @ Palanikumar (A2) for the offences under Section 452 IPC (2 counts) and 394 r/w 397 IPC (2 counts).

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3.11.When they were questioned, they pleaded not guilty. In the meantime, Kumar @ Mayakumar (A3) was arrested by the Police and produced before the Judicial Magistrate, Palladam and his case was committed to the Court of Session. Therefore, charges for the same offences were framed against him separately and when questioned, he pleaded not guilty.

4.In order to prove the case, the prosecution examined 13 witnesses, marked 19 exhibits and 10 material objects.

5.When the accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. No witness was examined on behalf of the accused nor any document marked.

6.After considering the evidence on record, the trial Court, by judgment dated 25.09.2008 in S.C.No.188 of 2007, convicted all the three accused under Section 452 IPC (2 counts) and 394 IPC r/w 397 IPC (2 counts) and sentenced them to undergo 3 years Rigorous Imprisonment and fine of Rs.1,000/- in default to undergo 3 months Rigorous Imprisonment for each count under Section 452 IPC; 10 years Rigorous Imprisonment and fine of Rs.2,000/- in default to undergo 6 months Rigorous Imprisonment for each count under Section 394 r/w 397 IPC. All the sentences were ordered to run concurrently.

7.Mr.Elangovan, learned counsel appearing for Anthonyraj @ Soorapuli (A1) and Mr.Ashok Kumar, learned counsel appearing for Kumar @ Mayakumar (A3) submitted that Palani @ Palanikumar (A2) filed CrI.A.No.12 of 2010 before this Court and this Court, by judgment dated 23.11.2010, set aside the conviction and sentence for the offence under Section 397 IPC, but convicted him for the offence under Section 394 IPC and sentenced him to undergo 4 years Rigorous Imprisonment and pleaded that the same leniency may be shown to the accused herein as well.

8.Per contra, learned Government Advocate (CrI. Side) submitted that Anthonyraj @ Soorapuli (A1) and Kumar @ Mayakumar (A3) are habitual offenders and were involved in several cases and they deserve no sympathy.

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



10. At the outset, it may be necessary to state here that this Court is not bound to follow the judgment passed by this Court in Crl.A.No.12 of 2010 and it is incumbent on this Court to read the evidence and come to an independent conclusion, de hors the conclusion arrived at in Crl.A.No.12 of 2010.

11. Deivathal (PW5), in her evidence before the trial Court, has stated that four years ago, while her husband Palanisamy and she were watching television on 30.11.2004 around 8.15 p.m., four persons barged into their house, brandished their weapons and cut the telephone wires; on seeing them, she herself handed over her thali chain (MO-6); they searched the steel almirah and took away a pair of earring (MO-7) and also the earrings (MO-8) worn by her; they fled the scene, after locking them in the house. In the cross-examination, she has stated that the accused had locked them in the house. It was suggested to her that a false case has been foisted, which suggestion she denied. She has also stated that a similar incident had taken place in the house of Rajan (PW1). However, the fact remains that the telephone wire was cut by the accused and therefore, Deivathal (PW5) and her husband would have naturally gone to the house of Rajan (PW1) for help. Rajan (PW1), in his evidence, has stated that while he was watching television along with his family members, four persons entered the house, brandished their weapons and attacked his brother Saravanan (PW4) when he resisted, attacked his mother Kamalam (PW2) when she intervened, broke open the bedroom door and took away the jewels of his wife Vijayalakshmi (PW3), the ring (MO-2) that was worn by his child, the thali chain (MO-4) of his mother and fled. He has identified the gold jewels, viz. MO-2 and MO-3.

12. In the Test Identification Parade, Deivathal (PW5) was not able to identify Anthonyraj @ Soorapuli (A1), but identified Palani @ Palanikumar (A2) and Kumar @ Mayakumar (A3) and Nallusamy (A4). In the Test Identification Parade, Rajan (PW1) identified all the four accused in all the rounds. The evidence of Rajan (PW1) finds corroboration from the evidence of his wife Vijayalakshmi (PW3) and brother Saravanan (PW4). These witnesses identified the accused in the Test Identification Parade as well in the dock. Kamalam (PW2), who corroborated the testimony of Rajan (PW1) and Saravanan (PW4) was not able to identify Kumar @ Mayakumar (A3) in the Test Identification Parade, but, was able to identify Anthonyraj @ Soorapuli (A1) only in one round. However, she identified him in the dock.

13. The defense was not able to shake the testimony of PW1, PW3, PW4 and PW5 in the cross-examination. There is no reason for these witnesses to foist a case on the accused. However,



this Court is not satisfied with the evidence regarding the seizure of weapons (MO-1 Series). The evidence of the Investigating Officer with regard to the seizure of weapons is not very clear. On this score, this Court is unable to sustain the conviction under Section 397 IPC. Though this Court has sentenced Palani @ Palanikumar (A2) to undergo 4 years Rigorous Imprisonment in CrI.A.No.12 of 2010, the present appellants do not deserve the same indulgence, in view of the manner in which they had removed the ring (MO-2) that was worn by the child.

14. In the result, these appeals are partly allowed. The conviction and sentence against the appellants passed by the learned Additional District and Sessions Judge (FTC-IV), Coimbatore at Tiruppur in S.C.No.188 of 2007 under Section 394 r/w 397 IPC is set aside, but the appellants are convicted for the offence under Section 394 IPC (2 counts) each. The sentence of 10 years Rigorous Imprisonment is reduced to 5 years Rigorous Imprisonment for each count under Section 394 IPC for each appellant. The fine amount and the default sentence imposed by the trial Court for the offence under Section 394 r/w 397 IPC shall remain the same for the offence under Section 394 IPC. The conviction and sentence for the offence under Section 454 IPC (2 counts) stands confirmed. The sentences shall run concurrently. The bail bonds are cancelled and they are directed to surrender forthwith or in the alternative, the Police shall arrest them and produce them before the trial Court to undergo the remainder period of sentence.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

To
1. Additional District and Sessions Judge,
FTC-IV, Coimbatore at Tiruppur.

2. The Inspector of Police,
Palladam Police Station,
Coimbatore District.

3. The Public Prosecutor,
High Court, Madras.



4.The Superintendent,
Central Prision,
Coimbatore.

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+1cc to Mr.S.Ashok Kumar, Advocate sr.no.84911
+1cc to Mr.S.Doraisamy, Advocate sr.no.85926

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nr 26/12/2018