

Bail Slip

The Petitioner/accused namely Amudhavalli (Accused 35-Female) wife of Nagaraj was directed to be released in bail as per order of this court dated 21/04/2011 and made in MP No.1/2011 in CrI A.No.254/2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.04.2018	Delivered on: 24.08.2018
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CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.A.No.254 of 2011

Amudhavalli

... Appellant

Vs

The State,
Represented by the Inspector of Police,
B-13, Police Station,
Selvapuram,
Coimbatore.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Code of Criminal Procedure order of conviction and sentence in S.C.No.159 of 2010 on the file of the learned Additional District and Sessions Judge [Fast Track Court-I] Coimbatore, dated 28.03.2011.

For Appellant : Mr.Ruper.J.Barnabas

For Respondent : Mr.R.Ravichandran
Government Advocate (Criminal Side)

J U D G M E N T

This Criminal Appeal has been filed by the accused against the Judgment of conviction and sentence awarded by the learned Additional District Sessions Judge [Fast Track Court -I], Coimbatore in S.C.No.159 of 2010 dated 28.03.2011, wherein the appellant herein was convicted for the offence punishable under Section 394 r/w 397 I.P.C., and sentenced to undergo 7 years rigorous imprisonment and it was also ordered that the period of the custody during investigation/Trial shall be set off under Section 428 Cr.P.C.

2. The respondent herein has filed a charge sheet stating that on 14.10.2008 at about 7.45 a.m., the appellant/accused with an intention to commit robbery entered into the house of the defacto-complainant viz., Amirtham in Door No.33/3 of Mullai Nagar, Vellalur Road, Pothanur, Coimbatore,

bolted the front and back doors and snatched 5 sovereigns gold chain from the neck of the said Amirtham. When the same was resisted by the said Amirtham, the appellant/accused took a Poori Wooden Roller (poorikattai) and hit on her face and broke her teeth. Further, she attacked the said Amirtham, with Aruvamanai (Vegetable cutter) on her forehead and hence the appellant/accused is liable to be punished under Section 394 r/w 397 IPC.

3. Based on the said charge sheet, learned Judicial Magistrate-VII, Coimbatore has taken the case on file as P.R.C.14/2009 and after appearance of the accused, he furnished copies of the documents to the accused under Section 207 Cr.P.C and committed the case to the Principal Sessions Judge, Coimbatore. The learned Principal Sessions Judge, Coimbatore, has taken the case on file in S.C.159 of 2010 and made over the same to the learned Additional District and Sessions Judge [Fast Track Court - I], Coimbatore.

4. The learned Additional District and Sessions Judge [Fast Track Court - I], Coimbatore, on appearance of the accused, after hearing both sides and on perusing the records framed the charge under Section 394 r/w 397 Cr.P.C., against the accused and read over the charge and explained the same to the accused. The accused denied the charge and pleaded not guilty. Thereafter, he posted the case for trial and examined the witnesses on the side of the prosecution.

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

(a) PW1 Amirtham is the wife of PW4 Thiru.Chandrasekaran. PW4 is working at SIDCO. Their house is situated in Mullai Nagar, Pothanur at Coimbatore District. They have entrusted the work of laying tiles in the bath room to the contractor PW.7 Thiru.Raju. The said contractor has sent the Mason PW6 Thiru. Senthilkumar and the accused who was working as chithal to do the work of laying tiles in the bath room of PWs 1&2. Accordingly, PW6 and the accused have done the tiles laying work in the bath room of PWs 1 & 2 for ten days prior to 12.10.2008.

(b) On 14.10.2008 morning at about 7.45a.m, Since PW4 went to his office, PW1 was in her house lonely. The accused came there and said that on 12.10.2008, she had left tile cutting knife in PW1's house and hence she came there, to take the same. PW1 gave permission to take the said knife. At that time, the accused asked PW1 to give water to drink. Hence, PW1 went into the house. The accused followed the PW1 and bolted the door. Then she has snatched the gold chain weighing about 2½ sovereign from the neck of the PW1 and took the poori wooden roller (poorikattai) and hit on the face of PW1 and broke 12 teeth. Further the accused took Aruvamanai (vegetable cutter)

and attacked PW1 on her fore head and thereafter, the accused opened the back door and ran away. PW1 chased her. At that time, the PW2 Thiru. Balakrishnan and PW3 Thiru. Jose Prakash came there and they have noticed that the accused was running by jumping over the compound wall and fell down and sustained injuries. PW1 chased her and she also fell down and shouted to catch the accused. On seeing the same, PWs 2 & 3 caught the accused and took the accused and PW1 to the Pothanur Police Station.

(c) PW8 Tmt. Megala, while She was working as Sub Inspector of Police(Crime) at Pothanur Police Station, at 9.a.m. PW's 1 to 3 produced the accused and also a gold chain to her. She recorded a statement(Complaint) from PW1. The said statement(complaint) has been marked as Ex.P1. Then she issued a medical memo directing the PW1 to go for medical treatment. Thereafter, PW8 has registered a case in Crime No.981 of 2008 under Section 394 r/w 397 IPC. She sent the original complaint and FIR (Ex.P4) to the concerned jurisdictional Magistrate and submitted the case file to the Inspector of Police for investigation.

(d) PW1 went to the private hospital namely Balaji Hospital at Sundarapuram for taking treatment. The PW9 Dr.Karthikeya Venkatramanan, when he was working as Doctor in the Balaji Hospital at Sundarapuram on 14.10.2008 at about at 12.30 noon, has seen PW1 and gave treatment. He noticed the following injuries:-

- (1) A cut injury on the fore head;
- (2) 4 teeth broken;
- (3) injuries on the two lips and
- (4) a contusion on the left hand.

He issued a wound certificate(Ex.P5) stating that the injury Nos.1 & 2 are grievous and injury Nos.3 and 4 are simple in nature.

(e)PW10 Thiru Ganesh while he was working as Inspector of Police at Pothanur Police Station, on 14.10.2008 at about 10.30 a.m., received the case file from P.W.8 and took the matter for investigation. He arrested the accused at the Police Station itself and enquired with her. She voluntarily gave a confession and the same has been recorded in the presence of PW5 Thiru.Nerthy and one Palanichamy. The admissible portion of the confession statement has been marked as Ex.P6. The signature of PW5 found in the confession statement has been marked as Ex.P2. He seized the gold thali chain weighing about 2½ sovereign (MO3) in Form-95 and sent the accused and the gold thali chain to the jurisdictional Magistrate for remand. Thereafter, he went to the place of occurrence and prepared an observation mahazar (Ex.P7) in the presence of the witnesses Natarajan and

Sivakumar. He also prepared a rough sketch (Ex.P8) Thereafter, he seized Poori wooden roller (MO1); Aruvamanai (MO2); 5 teeth (MO4 series) and blood stained cement floor for sample (MO5) in a mahazer (Ex.P3) in the presence of PW5 and one Palanichamy. He examined the witnesses and recorded their statements under Section 161(3) Cr.P.C. He also took photograph of the material objects through a Digital Camera. The said photograph has been marked as MO6. After getting wound certificate and examining Dr.Karthickeya Venkataramanan and after completing the investigation, PW10 has filed a charge sheet on 30.10.2008 against the accused under Section 394 r/w 397 IPC.

6. The evidence on the side of the prosecution was closed with P.W.10. Thereafter the accused was questioned under Section 313 Cr.P.C with regard to the incriminatory circumstances exist in the evidence of the prosecution witnesses. The accused denied them as false and stated that she is having witness on her side. But subsequently, she has not examined any witness on her side. The learned Additional Sessions Judge after hearing both sides and considering the materials placed before him found the accused guilty under Section 394 r/w 397 IPC and awarded the sentence as stated above. Aggrieved by the same, the accused has filed the present Criminal Appeal.

7. Heard Mr.Ruper.J.Barnabas, learned Counsel for the Appellant and Mr.R.Ramachandran learned Government Advocate (Criminal Side) for the respondent.

8. Points for Consideration are as follows:-

- i) Whether the prosecution has proved the charge beyond reasonable doubt which was framed against the accused?
- ii) Whether this appeal has to be allowed?

9. Point Nos.(i) and (ii):-

a) On the side of the prosecution, 10 witnesses were examined as PWs 1 to 10; Exs.P1 to P8 were marked as exhibits and MOs 1 to 6 were marked. On the side of the accused, no witness was examined; Exhibits and MOs also not marked.

10) PW.1 is the victim. She has deposed that on 14.10.2008 at about 7.45 a.m she was alone in her house. The accused came there stating that she left the tile cutting knife in the PW1's house when tiles were laying in the bathroom of the PW1 and made a request to permit her to take the said knife. PW1 permitted the accused to take the said knife and at that time, the accused asked her to give water to drink and hence, she went into her house. At that time, the accused followed her and put bolt on the door and snatched gold chain (MO3) and she took the poori wooden roller(MO1) and hit on her face and broke 12 teeth. She also stated that the accused took(MO2) Aruvamanai(vegetable cutter) and attacked on her fore head and thereafter she opened

the back door and ran away. She further stated that she chased the accused and the neighbours caught hold of the accused and thereafter they went to Pothanur police station and there she gave a complaint. Her complaint has been marked as Ex.P1.

11. PW2 is said to be an eye witness. He has deposed in his evidence that on 14.10.2008, he went to Mullainagar along with his friend PW3 and at that time, they have noticed that PW1 came out of her house to the road and fell down. He further stated that PW1 shouted that a lady committed theft and assaulted her and is running by jumping over the compound wall. He further stated that he and his friend PW3 took the PW1 through an auto to the Pothanur police station. PW3 is said to be another eye witness. He has stated in his evidence that on 14.10.2008, in the morning, he went to Mullai nagar along with PW2. to see one Gurusamy and after seeing the said Gurusamy, while returning back at about 7.45 to 8 a.m., they have seen that the accused jumped over the compound wall of the PW1's house and fell down. He further stated that PW1 came to the road through gate and she also fell down and shouted to catch the accused and immediately they caught hold of the accused and found one gold thali chain on her hand. He further stated that they took PW1 and the accused to the Pothanur Police Station.

12. The evidence of PW1 is corroborated by the evidence of PWs 2 and 3. Further the Ex.P1 complaint is also corroborated the evidence of PW1. It is also to be pointed out that Dr.Karthikeya Venkatramanan who gave treatment to the PW1 was examined as PW9. He has stated in his evidence that on 14.10.2008 at about 12.30 noon when he was working in a private hospital namely Balajai Hospital at Sundarapuram, he has seen the PW1 and found a cut injury on the fore head of the PW1. He also stated that he has found that teeth were broken and also noticed injuries on the 2 lips and one contusion on the left hand of PW1. He gave opinion that the injuries 1 & 2 are grievous in nature and other injuries are simple injuries. He has issued wound certificate and the same has been marked as Ex.P5. The evidence of the Doctor (PW9) also corroborated the evidence of PW1.

13. The evidence of PW8 would show that when she was working as Sub-Inspector in Pothanur Police Station on 14.10.2008, at about 9.a.m., PWs 1 to 3 appeared before her and produced the accused and also the gold thali chain and she has recorded the complaint statement(Ex.P1) from the PW1. Her evidence would further show that without any delay, complaint has been lodged before the police station. The evidence of PW10 would show that after receipt of the case file from the PW8, he took the matter for investigation and arrested the accused and also seized the MO3 gold thalichain in mahazer and thereafter,

he proceeded to the place of occurrence and prepared an observation mahazar and rough sketch (Exs.P7 & P8). His evidence also would show that in the place of occurrence, he has noticed the bloodstain and he has seized the poori wooden roller (MO1) and Aruvamanai (vegetable cutter) (MO2) and 5 teeth (MO4 series) from the place of occurrence through a mahazer in the presence of PW5 and one Palanichamy and after investigation, he has filed a charge sheet against the accused. This Court is of the view that through the evidence of PWs.1 to 3 and 8 to 10, the prosecution has proved the charge against the accused beyond reasonable doubt.

14. The learned Counsel for the appellant/accused has submitted that there are contradictions between the evidence of PW1 and the evidence of Pws.2 and 3 with regard to the falling of number of teeth. He further submitted that with regard to the weight of MO3 also, there are discrepancies, but the trial Court failed to appreciate the same in a proper perspective.

15. The PW1 has stated in her complaint (Ex.P1) that since the accused hit on her face with MO1, teeth were broken, but she has not stated how many teeth were broken. In the wound certificate(Ex.P5), it is stated that 4 teeth were damaged. But the investigating officer has seized 5 teeth from the place of occurrence under Ex.P3 Mahazar. But PW1 has stated in her evidence that 12 teeth fell down. The occurrence took place on 14.10.2008. PW1 was examined before the Court on 04.10.2010 i.e., after two years. In the mean while, some more teeth might have fallen and that is why she deposed that 12 teeth fell down. It is not the case of the accused that teeth of the PW1 are not at all damaged. In fact during cross examination of PW1, it was suggested on behalf of the accused that only 7 teeth fell down. That itself shows that the accused has not disputed the falling of teeth of PW1. Further, it is immaterial that how many teeth fell down due to attack made by the accused. For attracting the Section 397 IPC causing grievous injury or using deadly weapon is sufficient. In this case, falling up of teeth is a grievous injury. Further the evidence of P.W.1 would show that at the time of occurrence, the accused used deadly weapon namely Aruvamani(Vegetable cutter) (MO2). Therefore Section 397 IPC will attract.

16. In so far as the weight of MO3 gold Thali chain is concerned that in Ex.P1 complaint itself, P.W.1 has clearly stated that the weight of the said Thali Chain is only 2½ sovereigns. Further the said gold chain itself has been produced before the Court and marked as MO3. During cross examination of PW1, it was not suggested that MO3 is not involved in this case. Evidence of PWs 1 to 3, 8 and 10 would show that MO3 gold chain was recovered from the accused. Under the said

circumstances, it has to be presumed that MO3 was snatched by the accused from the neck of PW1. It is also not disputed that with regard to the injuries sustained by the PW1. It was suggested during cross examination of P.W.1 that there was money transaction between the P.W.1 and one Financier Natarajan and due to the said money transaction, scuffling took place between the said Natarajan and PW1 and in the said scuffling, the PW1 fell down in her kitchen and sustained injuries. If really the said Natarajan caused injuries to the PW1, she would not have leave the said Natarajan and lodged a complaint against the accused. It is to be pointed out that nothing has been suggested that the PW1 gave a false complaint against the accused.

17. As already pointed out that PW1 has categorically deposed that prior to the occurrence, nearly for 10 days, the accused and PW6 have done work of laying tiles in the bath room of the PW1's house. During those days, the accused would have noticed that the PW1's husband going to office and the children going to school and PW1 alone will be there and also would have noticed that PW1 used to wear gold chain and hence, she planned to commit robbery. She wantonly left the tile cutting knife in the house of the PW1 and she went there on the date of occurrence under the pretext of taking back the said tile cutting knife and snatched the gold thalichain and also attacked the PW1 with Mos.1&2 and caused grievous injury.

18. It is true that some minor contradictions are found in the evidence of PWs 1 to 3. But those contradictions would not affect the merits of the prosecution case. As already pointed that there was no motive for giving false case against the accused. It is also to be pointed out that the accused was caught red handed and produced before the police by the Pws.1 to 3. The said fact has not been disputed by the accused. Even while answering to the questions asked under Section 313 Cr.P.C, the accused has not given any explanation as to why a false case has been filed against her.

19. The learned counsel for the appellant/accused further submitted that as per the evidence of PW10, the gold chain (MO3) has been recovered from the accused directly and hence there is no admissible portion of confession. However, the trial Court has marked the said portion as Ex.P6. As per Section 27 of the Evidence Act, a statement leading to discovery of fact alone is admissible. But in this case, even as per the evidence of the PW10, the MO3 has been recovered from the accused directly. Hence there is no admissible portion in the confession given by the accused. But the trial Court has marked the said portion as Ex.P6. The the procedure followed by the trial Court is against the law. Therefore, Ex.P6 cannot be taken into consideration. However, other material evidence are

available to prove the guilty of the accused.

20. For the aforesaid reasons, this Court is of the view that the prosecution has proved the charge against the accused beyond reasonable doubt. As per section 397 IPC, the minimum punishment prescribed is seven years. The trial Court has awarded only the minimum punishment prescribed under the said section. This Court does not find any reason to interfere with the judgment of conviction and sentence passed by the trial Court. Therefore this criminal appeal is liable to be dismissed. Accordingly, these points are answered against the appellant/accused.

21. In the result, this criminal appeal is dismissed confirming the judgment of conviction and sentence awarded by the learned Additional Sessions Judge (Fast Track Court No. I), Coimbatore in S.C.No.159 of 2010 dated 28.03.2011.

22. The trial Court is directed to take steps to secure the accused and send her to jail for serving the remaining period of sentence, if already sentence is not served.

Sd/-

Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

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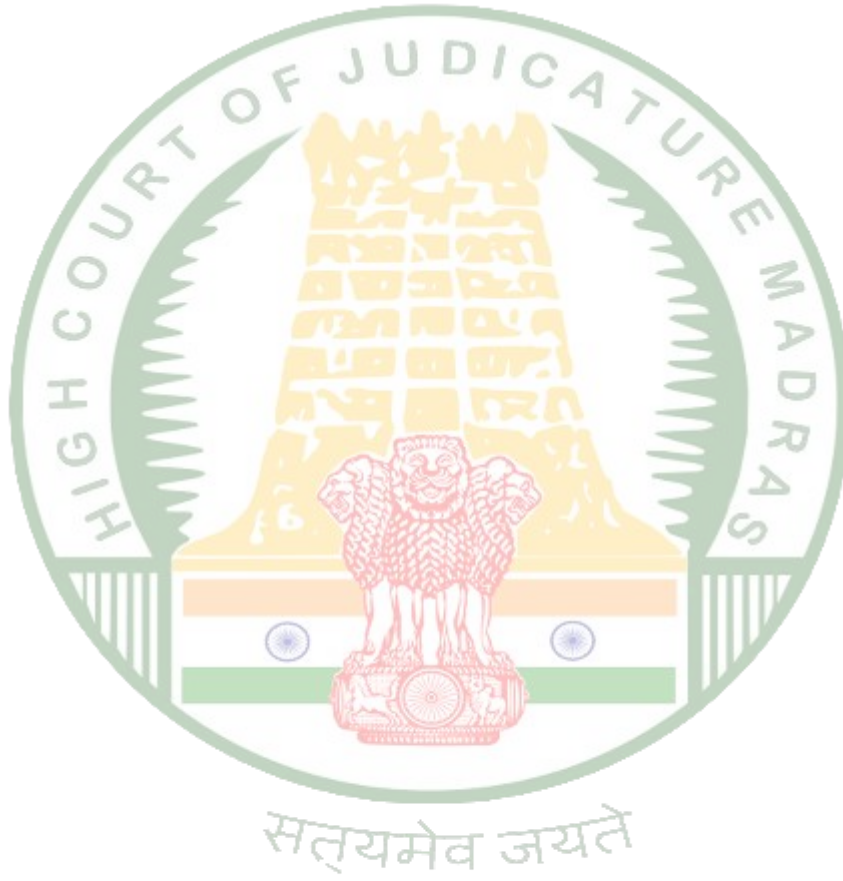
To

1. The State,
Represented by the Inspector of Police,
B-13, Police Station,
Selvapuram, Coimbatore.
2. Additional District and Session Judge and Fast Track Court
No.I,Coimbatore.
3. The Judicial Magistrate VII, Coimbatore.
4. The Chief Judicial Magistrate, Coimbatore.
5. The Superintendent of Police, Coimbatore
- 6.The Public Prosecutor,High Court of Madras, Chennai.

7. The Superintendent, Central Prison, Vellore.

CRL.A.No.254 of 2011

GMV (23/10/2018)



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