



Bail Slip

Murugan @ Kundu Murugan, the above said appellant/Accused was directed to be released on bail as per order of this Court dated 3.2.11 made in MP.NO.1 of 2011 in Crl.A.43 of 2011.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.43 of 2011

Murugan @ Kundu murugan

.. Appellant/Accused

Vs

State, rep. by the Inspector of Police,
Kenathukadavu Police Station,
Coimbatore.
(Crime No.247 of 2010)

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to call for the entire records in connection with the S.C.No.197 of 2010, learned Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore, dated 01.12.2010 and to set aside the conviction and sentence imposed as erroneous.

For Appellant :M/s.V.Paarthiban

For Respondent :Mr.G.Ramar

Government Advocate (Crl.side)

J U D G M E N T

This appeal is directed against the judgment in S.C.No.197 of 2010, dated 01.12.2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore.

2. In the said case, the respondent Police had filed a charge sheet against the appellant herein for the offences punishable under Section 392 r/w 397 of IPC. During the course of the trial proceedings, the learned District and Session Judge framed a charge for the offences under Section 397 of IPC against the appellant. Thereafter, at the end of the trial, he came to the conclusion that the appellant herein has found guilty for the offence under Section 397 IPC and sentenced him



to undergo seven years of rigorous imprisonment, against which, the appeal has been preferred by the appellant.

3. The case of the prosecution is as follows:

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PW.1-Manonmani is a resident of Arasampalayam. On the date of occurrence at about 05.45 onwards when she was going to attend her nature call, an unknown person was standing in the place of occurrence along with one bike, on seeing PW.1, he threatened her by putting the knife on her neck and threatened to give her "Thali Kodi". Due to the threat made by the aforesaid person, PW.1 handed over her "Thali Kodi" and upon receiving the same, he flee away from the scene of occurrence.

4. Immediately, PW.1 shouted by saying " jpUld; jpUld;" . On hearing the shoutings of PW1, PW.2 and PW.3 rushed to the scene of occurrence and enquired about the incident. At that time, PW.1 requested PW.4 viz., Selvaraj for writing a complaint upon explaining about the incident PW.4, wrote the compliant with regard to the occurrence. In turn PW.1 lodged the same before PW.7 viz., Palanisamy, who is working as Sub Inspector of Police, Kinathukadavu Police Station.

5. After receiving the compliant on 18.03.2001 at about 01.45p.m. PW.7 registered a case in Crime No.247 of 2010 under Section 394 of IPC. The complaint given by PW.1 was exhibited as Ex.p1. After the registration of the FIR, the same was placed before PW.8-Inspector of Police, Kinathukadavu Police Station for investigating the case.

6. After receiving the first information report, PW.8-K.Neelakumar, then Inspector of Police went to the scene of occurrence and prepared the observation Mahazar (Ex.P.2) and rough sketch (Ex.P.8) in the presence of PW.4 and one Vellayangiri. During the course of investigation, on 19.04.2010 at about 10.30 hours in Kovai Pollachi main road, Othakalmandapam, on suspicious circumstances, arrested the appellant and recorded his confession statement. In the confession statement, the appellant admitted his guilt. The said confession was recorded by PW.8 in the presence of PW.5-Rangasamy. On the basis of confession statement, they went to the residence of the accused, from where, he handed over the "Thali Kodi"-MO.1 to PW8 and the same was recovered under seizure mahazar (Ex.P4) subsequent to the recovery of "Thali Kodi", the knife MO.2 used to threaten PW1 was seized under Ex.P.5 seizure mahazar.



7. Thereafter PW.8 sent a requisition letter to Chief Judicial Magistrate, Coimbatore, for conducting identification parade, in turn Judicial Magistrate No.VI was ordered to conduct identification parade. Consequent thereto, learned Judicial Magistrate No.VI went to the Central Jail, Coimbatore and conducted the identification parade as per the procedure laid down in the Act. During the course of identification parade PW.1-Manonmani identified the accused for two times. Thereafter, after completing the investigation, PW.8 laid a charge sheet against the accused and after committal, the case was taken up for trial by Additional District and Sessions Judge, FTC No.III, Coimbatore, who on perusing entire material evidence and hearing arguments on both sides, finally sentenced and convicted the accused as stated above.

8. On considering the submissions made by the appellant with the evidence recorded in the trial Court, it is true that PW.1 to PW.3 who are the witnesses to the alleged occurrence has stated in their Chief examination that the occurrence was happened in the early hours, particularly in the daylight, on the other hand, PW.8-Investigation Officer stated in cross examination that the offence had happened in the dark hours by an unknown person.

9. So it is clear, that with respect to time of occurrence, PW.1 gave contradictory statements in the Court. However, on going through the evidence given by PW.2 and PW.3, which clearly corroborated the evidence given by the PW.1, discloses that the occurrence had happened in between the dark hours and the day hours '(முகம் தெரியும் அளவிற்கு வெளிச்சம் தெரிந்தது) '.

10. Further as per the evidence of PW.6, during the time of identification parade, PW.1, clearly identified the appellant in the trial Court. Considering this aspect with the contradiction available in the evidence of PW.1., this Court comes to the conclusion that the arguments advanced by the learned counsel appearing for the appellant is not a ground for allowing this appeal.

11. Secondly, the learned counsel appearing for the appellant submitted before this Court that in the trial Court, in order to prove the recovery of stolen property one witness (PW.5) was examined on the side of the prosecution. When comparing the evidence given by him with the evidence of Investigation Officer it discloses that the property had not been recovered as stated by the Investigation Officer thereby he prays to allow this appeal.



12. On the other hand, the learned Additional Government Pleader made a submission before this Court that the contradictions available in the evidence of the said prosecution witness alone is not a sufficient ground to hold that the entire prosecution case is false.

13. Now, considering the either side submissions with the evidence recorded by the trial Court it is to be noted that as per the evidence of PW.5-Rangasamy, two "Thali Kodi" were recovered from the house of the appellant. On the other hand, as per the evidence of Investigation Officer only one Thalikodi recovered from the accused.

14. Moreover, as per the evidence of PW.8-Investigation Officer only one "Thali Kodi" was mentioned in the confession statement and in the recovery mahazar. As per the case of prosecution the property was recovered on 19.04.2010. On the other hand, the witnesses attested the recovery mahazar gave evidence in the trial Court as "Thali Kodi" was recovered only on 20.04.2010. Further, he admitted in the cross examination that he signed in the recovery mahazar only on 20.04.2010. In the said circumstances, if really if the stolen property was recovered as per the evidence given by Investigation Officer, there is no necessity for giving contradictory evidence by PW.5.

15. The said contradictions create doubt whether the stolen property which was marked as MO.1 in this case was recovered as stated by the Investigating Officer or not. A perusal of the entire judgment rendered by the trial Court reveals the said aspect is not considered. It is necessary for the prosecution to prove the case beyond reasonable doubt. Hence, this Court extends the benefit of doubt in favour of appellant/accused.

16. The Criminal Appeal shall stand allowed. The conviction and sentence imposed by the learned Additional District and Sessions Judge, Fast Track Court No.III, Coimbatore, in S.C.No.197 of 2010, dated 01.12.2010, is hereby set aside. Appellant/accused is acquitted of all charges. Fine amount, if any, paid shall be refunded to the appellant. Bail bonds, if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar



To

1. The Additional District and Sessions Judge,
Fast Track Court No.III, Coimbatore.
2. The Inspector of Police,
Kenathukadavu Police Station,
Coimbatore.
3. The Judicial Magistrate-I Pollachi.
4. The Superintendent, Central Prison, Coimbatore.
5. The Public Prosecutor, High Court, Madras.

Copy to: The Section Officer,
Criminal Section, High Court, Madras.

+ 1 cc to MR. V. Parthiban, Advocate Sr.35242

CRL.A.43 of 2011

GJ(CO)
EU(05/07/2018)