Bail Slip

The Appellants/Accused Nos.3 and 4 namely Manikandan and Cunasekaran were enlarged on bail and in by order dated 29/04/2011 made in Crl.Mp.1/2011 in Crl.Appeal 200/2010 on the file of this Hon'ble Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.A.No.200 of 2010

1. Manikandan
2. Gunasekaran ... Appellants/Accused Nos.3 and 4

Vs.

State represented by
The Inspector of Police,
Mangalamedu Police Station,
Ariyalur District
(Crime No.88 of 99) ... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Cr.P.C. against the Judgment dated 15.11.2007 passed by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur in S.C.No.104 of 2007.

For Appellants : Mr.G.Vinothkumar
(Legal aid counsel)

For Respondent : Mr.T.Shunmugarajeswaran,
Government Advocate (Crl. Side)

JUDGMENT

The appellants are the 3rd and 4th accused in S.C.No.104 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court, Ariyalur. He has been found guilty of the offences punishable under Section 397 read with Section 34 and Sections 401, 402 and 450 of the Indian Penal Code and was convicted and sentenced to undergo Rigorous Imprisonment for a period of 10 years and also to pay a fine of Rs.5,000/- in default to pay the fine amount, to undergo simple imprisonment for a period of 3 months for the offence punishable

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under Section 397 read with Section 34 ; and sentenced to undergo rigorous imprisonment for a period of three years and also to pay a fine of Rs.5,000/- each, in-default to pay fine amount, to undergo simple imprisonment for a period of 3 months each, for offences punishable under Sections 401, 402 and 450 of IPC. Aggrieved over the judgment passed by the Additional District and Sessions Judge, Fast Track Court, Ariyalur, the appellants have filed the present appeal.

2. The case of the prosecution as could be seen from the oral and documentary evidence is as follows. Thirumathi Nallammal (Pw1) is a resident of Agaram Seekor village. Her evidence is that 9 years before the date of her deposition, she woke up during mid-night, on hearing barking of dogs. She and her husband Venkatachalam came out from their house and saw 5 persons coming inside their house. According to her, they stole a sum of Rs.1,000/- from a suitcase and kept their grandson under their custody till the completion of their mission of committing theft. Subsequently, she gave a complaint (Ex.P1) and the Sub Inspector of Police, Mangalamedu police station registered the First Information Report in Crime No.88 of 1999 for the offences punishable under Sections 397 read with Section 34, 401, 402 and 450 of the Indian Penal Code.

3. The other eye witness to the occurrence, namely Selvaraj (Pw3) in his deposition has contended that he heard a loud noise on the main road at about 6.30 p.m. on 09.03.1999 and went over there. He saw some 6 persons with knifes forcibly taking jewels, watch and money from one Veerasamy. According to him, all the culprits attempted to fled away from the scene of offence. However, he along with other villager chased them and caught hold of the accused Thangaraj(A1) and Kolanchi (A2).

4. The Inspector of Police, took up investigation in Crime No.88 of 1999 and went to the scene of occurrence and prepared an observation mahazar (Ex.P2) in the presence of one Selvaraj(Pw3). He also recorded the confessional statement of the accused Manikandan, Palani and Gunasekaran (Ex.P3 to Ex.P5) and recovered a finger ring, mangalsutra with two balls and one ear ring under the cover of mahazar Ex.P6 and Ex.P7. Thiru Balakrishnan (Pw4), who is one of the attestors of the confessional statements of the accused, corroborated the evidence of Pw3.

5. Mr.G.Vinothkumar learned Legal Aid counsel, appearing for the appellants would contend that no identification marks have been furnished by the complainant (Pw1) in the first information report and that the prosecution has failed to conduct an identification parade. He would further contend that based on the confessional statements of the accused No.1 & 2, the present accused were arrested by the police and that the accused are innocent and they did not commit any offence.

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6. Per contra, the Government Advocate (Crl.Side) would contend that all the accused with a common intention, had committed the offence of decoity and two accused were also caught red handed and that the trial court is right in convicting and sentencing the present accused for the offence punishable under Section 397 read with Section 34 and Section 401 and 402 and 450 of the Indian Penal Code.

7. At the outset, it may observed that even as per the versions of the prosecution, the first and 2nd accused alone were caught red handed and were produced before the police. As rightly pointed out by the learned Legal Aid Counsel, appearing for the appellants, no identification parade has been conducted and the trial court has committed an error by convicting the accused for the offence under Section 397 read with Section 34 and Section 401, 402 and 450 of the Indian Penal Code. It is relevant to point out that, when identification marks have not been mentioned in the first information report, it is the duty of the prosecution to conduct an identification parade and in the absence of the same, it cannot be held that the appellants / accused Manikandan (A3) and Gunasekaran(A4) had committed the offences punishable under Sections 397 read with Section 34 and Section 401, 402 and 450 of the Indian Penal Code, as alleged by the prosecution. Apart from this, the trial judge in his judgment dated 15.11.2007, had held that all the accused have confessed before the police officer and on their confession, properties were recovered and therefore, there was no necessity for the prosecution to conduct an identification parade. A perusal of the records shows no material objects were recovered from the present appellants.

8. The learned Government Advocate (Crl. Side) would contend that one Balakrishnan (Pw4), who is one of the witnesses to Mahazar has deposed that based on the confessional statement of the present accused, the Investigating Officer enquired one Suresh son of Veerapa Achari, with whom the accused pledged ear rings. It is pertinent to note that the said Suresh has not been examined as a witness in the instant case and the prosecution has also not produced the receipt for pledging the jewels by the accused with the said Suresh. In the absence of the same, it is difficult to hold that the accused along with other accused have committed the offence punishable under Sections 397 read with Section 34 and Section 401, 402 and 450 of the Indian Penal Code. Inview of all the reasons stated by me, I hold that the prosecution has miserably failed to establish that the accused had committed the offences, beyond reasonable doubts.

9. In the result, the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur District in S.C.No.104 of 2007 dated 15.11.2007 is set

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aside and the accused/appellants are acquitted of the offences under Sections 397 read with Section 34 and Section 401 and 402 and 450 of the Indian Penal Code. The bail bonds, if any, executed by the appellants shall stand cancelled.

10. While parting with the case, I appreciate the services rendered by Mr.G.Vinothkumar, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay Rs.5,000/- (Rupees five thousand) towards his remuneration.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Additional District and Sessions Judge,
Fast Track Court, Ariyalur.

2. The Inspector of Police,
Mangalamedu Police Station,
Ariyalur District.

3. The Public Prosecutor,
Madras High Court.

4.The Judicial Magitrate,
Perambalur District.

5.The Chief Judicial Magistrate,
Perambalur(for information)

6.The Superintendent,
Central Prison,
Trichy.

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7.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.G.vinodh kumar, Advocate sr.no.39733

Crl.A.No.200 of 2010

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nr 19/07/2018

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