

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 201/2010 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.201 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.86 of 1999) ... 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.102 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.102 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court, Ariyalur. The present appellants/accused along with other accused were charged for the offences punishable under Sections 397 read with 511 read with 34 of the Indian Penal Code. All the accused including the present appellants were convicted and sentenced to undergo Rigorous Imprisonment for a period of 10 years and also to pay a

fine of Rs.5,000/-, and in-default to pay the fine amount, to undergo Simple Imprisonment for a period of 3 months. Aggrieved over the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur, the present appeal has been filed by them.

2. The case of the prosecution, as could be discerned from the oral and documentary evidence is as follows. The complainant Thirumeni (PW1), is a resident of Agaram Seekoor Village. On 17.02.1999 at about 12.00 p.m., he saw some one standing with a torch light outside his house. When the complainant asked who he is, the person in response answered that he is ' Ponnai '+. The complainant and his wife came out from their house and the said person immediately fled away from the place of occurrence, which prompted the PW1 to shout and his neighbours pelted stones on that person. On the next day, he went to the Mangalamedu Police Station and lodged a complaint (Ex.P1) with the police. The Sub Inspector of Police, Mangalamedu Police station received the complaint from PW1 and registered a First Information Report (Ex.P7) in Crime No.86 of 1999 of Mangalamedu Police Station.

3. The Pw2 Jayavel, who is the neighbour of PW1, corroborated the versions of PW1. The PW7, the Inspector of Police, Mangalamedu Police Station, who took up investigation in Crime No.86 of 1999, went to the scene of occurrence and prepared a rough sketch (Ex.P8) and an observation Mahazar (Ex.P32). Thereafter, he arrested the accused Manikandan, Gunasekaran and Palani and recorded their confessional statements (Ex.P4 to Ex.P6).

4. Mr.G.Vinothkumar, learned Legal Aid counsel appearing for the appellant contended that the Pw1's evidence does not fit in with his own versions in the first information report and that the present accused is not at all involved in the offence as alleged by the prosecution. He would also contend that the prosecution has failed to conduct a test identification parade, especially, when it is admitted by PW1 that occurrence took place during night hours and that even according to the PW1, he could not see any of the accused, who were present on the day of occurrence. He also drew the attention of this court to the first information report(Ex.P7) registered by the Sub Inspector of Police and contended that the identification marks of the accused have not been mentioned in it and on the contrary, it is alleged that all the accused were wearing a mask .

5. It is relevant to point out that the PW1 in his deposition, has not stated that he saw the accused wearing a mask . In fact, a perusal of the evidence of PW1 and Pw2 clearly shows that both of them have not seen any of the accused. In such circumstances, the investigation officer should have conducted a test identification parade and the failure on the part of the investigation officer is fatal to the case of the prosecution. Apart from this, the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur convicted the accused, based on the confessional statements given by the accused before the police officer, which is unknown to law. The learned Additional District and Sessions Judge, Fast Track Court, Ariyalur has referred some other cases, in which these accused were arrested and observed that all the accused have the habit of committing decoity in various places which is not based on any acceptable evidence.

6. In the absence of any positive evidence to connect the accused with the alleged commission of offence, it is difficult to hold that the prosecution has proved the guilt of the accused, beyond reasonable doubts. Therefore, the judgement passed by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur warrants interference by this court and the accused are acquitted of the offence under Sections 397 read with 511 read with 34 of the Indian Penal Code.

7. In the result, the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur District in S.C.No.102 of 2007 dated 15.11.2007 is set aside and the accused/appellants are acquitted of the offences under Sections 397 read with 511 read with 34 of the Indian Penal Code. The bail bonds if any, executed by the appellants shall stand cancelled.

8. 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

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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 Magistrate,
Perambalur.

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

6.The Superintendent,
Central Prison,
Trichy.

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

+1cc to M/s.G.vinodh kumar, Advocate sr.no.39734

Cr1.A.No.201 of 2010

ak(co)
nr 19/07/2018

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