

Bail Slip

The Appellant/5th accused herein namely palani was enlarged on bail and in by order dated 27.04.2011 made in CrI.Mp.1/2011 in CrI.Appeal 114/2008 on the file of this Hon'ble Court of Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2018

CORAM :

THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

CrI.A.No.114 of 2008

Palani ... Appellant/5th Accused

Vs.

State represented by
The Inspector of Police,
Mangalamedu Police Station,
Ariyalur District
(Crime No.87 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.103 of 2007.

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

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

JUDGMENT

The appellant is the 5th accused in S.C.No.103 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 and 402 of the Indian Penal Code and was convicted and sentenced to undergo Rigorous Imprisonment for a period of 10 years and 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 Section 397 read with Section 34 of the Indian Penal Code; and sentenced to undergo rigorous

imprisonment for a period of three years each and also to pay a fine of Rs.5,000/- each, in default to pay the fine amount, to undergo simple imprisonment for a period of 3 months each for the offences under Sections 401 and 402 of the Indian Penal Code. Aggrieved over the judgment passed by the Additional District and Sessions Judge, Fast Track Court, Ariyalur, the appellant has filed the present appeal.

2. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows. One Ramakrishnan (Pw1) is a resident of Agaram Seekoor village and he is an agriculturist. During the year 1999, at about 4.00 a.m. he came out of his house and saw several persons talking with each other that a thief entered into the house of one Rangarajan of the same village. When he went to the house of Rangarajan, he saw Rangarajan and his wife crying and they also informed him that a thief took away the mangalsutra of one Kumudam, who was staying with them and a finger ring of Rangarajan. According to him, the Sub Inspector of Police, Mangalamedu police station came over to the house of Rangarajan (Pw1) and recorded his statement (Ex.P1) and registered the First Information Report in Crime No.87 of 1999 for the offences punishable under Sections 397 of the Indian Penal Code.

3. The other eyewitness 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 and saw some 6 persons with knives 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 villagers chased them and caught hold of the accused Thangaraj (A1) and Kolanchi (A2).

4. The Inspector of Police, took up investigation in Crime No.87 of 1999 and went to the scene of occurrence and prepared a rough sketch (Ex.P2) and an observation mahazar (Ex.P3) in the presence of the witness Vekatachalam(Pw2). He also discovered a blade in the scene of offence and recovered it under the cover of a mahazar (Ex.P3). Pw4 and Pw8, the other witnesses corroborated the versions of Pw1 and Pw2.

5. Mr.G.Vinothkumar, learned Legal Aid counsel, appearing for the appellant would contend that no identification marks have been furnished by the complainant (Pw1) in the first information report and that the prosecution has also 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 was arrested by the police. According to Mr.G.Vinodhkumar, the accused is innocent and he has not committed any offence.

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 of the Indian Penal Code.

7. At the outset, it may be 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. Though the alleged occurrence took place on 17.02.1999, the first information report was registered only on 18.02.1999. The delay in registering the first information report has not been properly explained by the prosecution. As rightly pointed out by the learned Legal Aid Counsel, appearing for the appellant, 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 and 402 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 appellant /accused No.5 (Palani) had committed the offences punishable under Section 397 read with Section 34 and Sections 401 and 402 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 that a purse containing 5 rupees coin and a knife alone were recovered from the present appellant.

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, and one Sekar s/o Nataraj, with whom the accused pledged ear rings. It is pertinent to note that the said Suresh and Sekar have not been examined as 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 and Sekar. In the absence of the same, it is difficult to hold that the accused along with other accused has committed the offences punishable under Sections 397 read with Section 34 and Section 401, 402 and 450 of the Indian Penal Code. In view 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.103 of 2007 dated 15.11.2007 is set aside and the accused/appellant is acquitted of the offences under Sections 397 read with Section 34 and Section 401 and 402 of the Indian Penal Code. The bail bonds, if any, executed by the appellant 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

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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 Superintendent,
Central Prison,
Cuddalore.
5. The Judicial Magistrate,
Perambalur District.
6. Do Thro The Chief Judicial Magistrate,
Perambalur(for information)

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

+1cc to M/s.G.vinodh kumar, Advocate sr.no.39730

Cr1.A.No.114 of 2008

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nr 19/07/2018



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