

Bail Slip.

The Petitioner viz., Venkatachalam @ Sakthi aged 25, S/o Krishnasamy was directed to be released in bail as per order of this court dated 09.02.2011 in M.P. No. 1/2011 in CrI.R.C. No. 94/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Cr1.R.C.No.94 of 2011

Venkatachalam @ Sakthi ... Petitioner/Appellant/Accused

.Vs.

The State rep.by
The Inspector of Police,
Nambiyur Police Station,
Erode District.

... Respondent/Respondent/Complainant

Cr.No.203 of 2008:

Criminal Revision case filed under Section 397 & 401 of CrI.P.C. To call for the records relating to the conviction imposed in the judgment dated 08.09.2010 made in C.A.No.152 of 2009 on the file of the Additional District and Sessions Court/Fast Track Court No.II, Gobichettipalayam, confirming the conviction imposed in the judgment dated 06.08.2009 made in S.C.No.229 of 2008 on the file of the Principal Assistant Sessions Court (Principal Sub Court), Gobichettipalayam and set aside the same.

For Petitioner : Mr.Roshan Atiq
For Respondent : Ms.S.Thankira
Government Advocate (Cr1.Side)

O R D E R

This Criminal Revision petition has been filed aggrieved by the order of the Additional District and Sessions Judge, Gobichettipalayam, made in C.A.No.152 of 2009 confirming the order of conviction and sentence passed by the Principal Assistant Sessions Court, Gobichettipalayam for an offence under Section 450, 392 and 394 IPC.

2.The case of the prosecution is that on 02.10.2008 at about 12.30 a.m when the de facto complainant [PW-1] was in her house, the accused committed trespass by entering into the house of PW-1 and committed a robbery of cash of Rs.4,900/- [Rupees Four Thousand Nine Hundred Only] and when the same was resisted by PW-1, voluntarily caused simple injuries. On a complaint given by PW-1, an FIR was registered by the respondent Police in Cr.No.203 of 2008 on 02.10.2008 at about 4.30 a.m for an offence under Section 457 and 384 IPC.

3.The petitioner is well known to PW-1 and he is her neighbour. PW-1 is living alone and she was working at Amarjothi Mill. On 01.10.2008, she returned back from work at around 11.00 p.m. At about 12.30 a.m when she was sleeping in a Cot near the door entrance, the accused entered the house of PW-1 and demanded money and starting pressing her neck. PW-1 requested the accused not to harm her and voluntarily handed over a sum of Rs.4,900/- [Rupees Four Thousand Nine Hundred Only] from her house. In the course of events, when she resisted the attempt made by the accused, the accused had bitten her in the right little finger and also pushed her and left the scene of occurrence by threatening her not to tell about the incident to anyone.

4.Thereafter, PW-1 accompanied by PW-2 who is her brother and PW-3 who is the nephew of PW-1, went to the Police Station and gave a complaint at around 4.00 a.m to PW-7 who was the Head Constable. PW-7 on receipt of the complaint Ex.P-1, registered a FIR in Crime No.203 of 2008 for an offence under Section 457 and 384 IPC. PW-7 thereafter sent PW-1 for medical treatment and he had also forwarded the complaint and FIR to the Judicial Magistrate Court. On 02.10.2008, PW-5 who is the Doctor at Gopichettipalayam, Government Hospital gave treatment to Pw-1. Ex.P-6 which is the Accident Register reveals that PW-1 sustained simple injuries.

5.PW-8 who is the Sub Inspector of Police took up the case for investigation, and visited the place of occurrence and prepared an Observation Mahazar [Ex.P-4] and Rough Sketch [Ex.P-9] in the presence of witness PW-6. Thereafter, [PW-9] Inspector of Police took up the case for further investigation and he examined the witnesses. In the meantime on 02.10.2008 at about 4.15 p.m, the petitioner was arrested near Cellipalayam Bus Stop. On his confession, he voluntarily surrendered Rs.4,900/- [Rupees Four Thousand Nine Hundred Only] which he had kept in his house, in the presence of witness PW-6. The admitted portion of the confession was marked as Ex.P-11.

6.On completion of investigation, a Charge Sheet was laid for an offence under Section 450, 392 and 394 IPC. The Trial Court took cognizance of the Final Report and framed charges

against the petitioner and made him stand for a trial for the alleged offences.

7.The prosecution examined PW-1 to PW-9 as witnesses and marked Exs.P-1 to P-11 and also MO-1 and MO-2, which are the currency notes recovered from the accused person.

8.The Trial Court on appreciation of the evidence available on record, came to the conclusion that the petitioner has committed the offence and thereby passed an order of conviction and sentence convicting the petitioner for an offence under Section 450, 392 and 394 IPC and sentenced to undergo 7 years Rigorous Imprisonment for each of the offence and pay a fine of Rs.1,000/- for each of the offence and in default to undergo 6 months Simple Imprisonment. The sentence was ordered to run concurrently.

9.The petitioner aggrieved by the said order of conviction and sentence, filed an appeal in C.A.No.152 of 2009. The Appellate Court on appreciation of the entire materials placed on record, concurred with the findings of the Trial Court and dismissed the Criminal Appeal.

10.The learned counsel for the petitioner would submit that the entire case as projected by the prosecution is totally unnatural. In order to substantiate his argument, the learned counsel for the petitioner would submit that the accused person is not a stranger and he is admittedly a neighbour of PW-1. It is therefore unnatural for a neighbour to enter into the house of PW-1 and commit an offence of robbery. The learned counsel further contended that admittedly there were many independent witnesses who were available in the scene of occurrence. If the incident has really taken place, the accused person would have shouted and many persons would have come out on hearing the sound. The learned counsel further contended that PW-2 to PW-4 were not eye witnesses to the incident and they merely reiterated what PW-1 told them about the alleged incident. He also brought to the notice of the Court about the fact that they did not support the so called confession made by the accused person before the Police pursuant to which the money is allegedly recovered and to that extent they were also treated as hostile witnesses. The learned counsel for the petitioner further contended that the material objects in this case namely; the currency notices was not even identified by PW-1 she has also admitted the same in the course of her evidence. The learned counsel further contended that the fact that no independent witnesses were examined in this case shows that the very incident itself did not happen and except PW-1 no one else has spoken about the alleged incident. The learned counsel for the petitioner also brought to the notice of the Court certain discrepancies that were found in the evidence. The learned

counsel therefore submits that the order of both the Courts below is liable to be set aside.

11. On the other hand, the learned Government Advocate (Crl. Side) contended that the evidence of PW-1 is very cogent and clear and her evidence is enough to prove the case of the prosecution even in the absence of any other independent witness. The learned counsel further contended that PW-1 is an old lady in a village and it is not possible for her to keep an identity of each currency note that was taken from her and the fact that the currency notes were recovered from the house of the accused person will clearly corroborate the allegation made by PW-1 with regard to the evidence of robbery. The learned counsel further contended that both the Courts below have properly appreciated the evidence available on record and have come to a categorical conclusion that the petitioner has committed the offence and have awarded a sentence in tandem with the gravity of the offence. Therefore, the learned counsel would contend that there is no ground to interfere with the findings of both the Courts below and the Criminal Revision has to be dismissed.

12. This Court has carefully considered the submissions made on either side and also the evidence available on record. The entire case of the prosecution hinges on the evidence of PW-1 who is the actual victim in this case. Likewise the evidence of PW-5 also clearly points out the fact that PW-1 did sustain simple injuries. Insofar as the occurrence is concerned, on a careful perusal of the evidence available on record and the findings of both the Courts below, the prosecution has established that the occurrence did happen on 02.10.2008 at 12.30 a.m. Even during the cross examination, the evidence of PW-1 was consistent and the accused was not able to controvert or disprove the statement of PW-1 which she made in the course of chief examination.

13. What becomes important for this Court to consider is to see whether on the facts as projected by the prosecution, a case for robbery has been made out. The case of the prosecution is that early morning on 02.10.2008, the accused who is the neighbour of PW-1 has entered into her house and has taken away Rs.4,900/- after causing simple injuries to her. On the very same day, the Police apprehend him and on his arrest, he is said to have handed over Rs.4,900/- [Rupees Four Thousand Nine Hundred Only] to the Police voluntarily.

14. Section 8 of the Indian Evidence Act specifically deals with previous and subsequent conduct which is a relevant fact which can be taken into consideration when a Court decides a fact in issue. The conduct to be relevant under Section 8 of the Indian Evidence Act must fall within certain time-frame of

proximity as the conduct must either influence, or be influenced by any fact in issue or a relevant fact. In this case the subsequent conduct of the accused assumes significance.

15.If really the accused person had committed an offence as serious as projected in the present case, it is unbelievable that he will keep the money that was robbed in his house which is the next door to PW-1 and will be freely available in and around the place. The natural conduct of a person who commits a robbery, is to flee from the place or to conceal what was robbed by him from a person. In the present case, the theory of robbery as projected by the prosecution is so unnatural and doubtful. The accused person is admittedly known to PW-1 for a long period of time and they are admittedly neighbours. Therefore, to say that the accused person committed a robbery in the house of a neighbour who is a well known person, sounds very unnatural.

16.Section 114 of the Evidence Act also gives an indication as to when a Court may presume the existence of certain facts. While making such a presumption regard must be had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. As the language of the Section indicates, the presumptions are based on practical experience and common sense. For the purpose of reaching one conclusion, the Court can rely on a factual presumption unless the presumption is disproved or dispelled or rebutted. Useful reference can be made to the judgment in State of Madhya Pradesh .Vs. Bhim Mohammed reported in [2002 CrL. 1wJ 1906], the relevant paragraph is extracted hereunder:

"Presumption is an inference of fact drawn from other known or proved facts. It means a rule of law that Courts shall draw a particular inference from a particular fact or from a particular evidence, unless and until the truth of such inference is disproved. Presumptions help in determining the probative force of evidence by bringing the estimation of probative force under some inflexible rules excluding judicial discretion. The presumptions may be raised on the stock of evidence available on the record unless the laws say that the Court shall presume a fact unless and until it is disproved. There may be cases where the burden to disprove the presumption is on the accused. But present is a case where the prosecution is not relieved of its burden of proving the facts and providing a foundation for raising a presumption. Section 114 of the Act says that the Court may presume the existence of any

fact which it thinks likely to have happened regarding being had to the common course of natural events human conduct and public and private business in their relation to the facts of the particular case. The term that presumption of fact is used to designate an inference of affirmative or dis affirmative of the existence of some fact drawn by Court by a process of probable reasoning from some matter of act either judicially notices, or admitted, or established by legal evidence to the satisfaction of the Court. Without inferring the existence of the fact from others, courts of justice do nothing more than apply, under the sanction of law, a process of reasoning which the mind of any intelligent being, would not in similar circumstance, ever apply for itself; and the force of which rests altogether on experience and observation of the course of nature, the constitution of human mind, the springs of human action and the usage and habits of Society."

17.The most important rule as to presumptions is that they must be based upon facts and not upon inferences or upon other presumptions. While inferring the existence of fact from another, the Court is only applying a process of independent reasoning which the mind of a prudent man would do under similar circumstances.

18.It is true that the accused went to the house of PW-1 and it is also true that PW-1 sustained simple injuries caused by the accused person. The theory of robbery has been interpolated into these facts and it sounds absolutely unnatural and artificial. In this case the so called confession made by the accused person and on such confession a sum of Rs.4,900/- [Rupees Four Thousand Nine Hundred Only] being seized from the accused person, has not been established by the prosecution. PW-2, PW-3, and PW-4 have not supported the case of the prosecution insofar as the confession of the accused is concerned.

19.On the facts of the case, this Court is not convinced that the accused person committed the offence of robbery. Therefore, the charges under Section 450, 392 and 394 IPC is unsustainable. However, there are sufficient materials to show that the accused has trespassed into the house of PW-1 and has voluntarily caused hurt and therefore is publishable for an offence under Section 323 and 447 IPC.

20. Even though there is no specific charges under Section 323 and 447 IPC in this case, these are cognate offences which are lesser in degree and the Court in exercise of its powers under Section 222 Crl.P.C always has the power to convict the accused person for a minor offence although he is not charged with it. The accused person in this case had sufficient opportunity to defend himself insofar as the offences of voluntarily causing of hurt as well as criminal trespass that was committed into the property of PW-1. The ingredients in these two offences viz., Hurt and Trespass, formed part of the major offence for which the accused person was charged and had faced trial.

21. In view of the above discussion, the conviction and sentence passed by both the Courts below for an offence under Section 450, 392 and 394 IPC is hereby set aside and alternatively the petitioner shall stand convicted and sentenced for an offence under Section 323 and 447 IPC. For the offence under Section 323, the petitioner is sentenced to undergo 6 months Rigorous Imprisonment and a fine of Rs.1,000/- and in default 1 month Simple Imprisonment and for the offence under Section 447 IPC, there will be a sentence of 3 months Rigorous Imprisonment and a fine of Rs.1,000/- in default to undergo 1 month Simple Imprisonment. The sentence shall run concurrently.

22. If the petitioner has not undergone the entire period of sentence, he shall surrender before the trial Court and undergo the remaining sentence. Similarly, if the petitioner has not paid the fine amount or has paid a fine amount lesser than the amount which has been imposed in this Criminal Revision Petition, he is directed to pay the balance fine amount before the trial Court.

23. The Criminal Revision Petition is partly allowed to the extent indicated above.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

KP
To

1. The Additional District & Sessions Court,
Fast Track Court No. II, Gobichettipalayam,

2. Principal Assistant Sessions Court,
(Principal Sub Court), Gobichettipalayam.
 3. The Judicial Magistrate, Sathyamangalam
 4. The Chief Judicial Magistrate, Erode District
 5. Public Prosecutor,
Chennai.
 6. The Inspector of Police,
Nambiyur Police Station, Erode District.
 7. The Section officer
Criminal Section, High Court, Madras 104.
- +1 CC to Mr. Roshan Atiq, Advocate sr 44987.

Crl.R.C.No.94 of 2011

SSD(CO)
SP(01/08/2018)