

Bail Slip

The Petitioners/Accused Viz., 1)Vadivelu 2)Raja were released on bail as per the order of this Court Dated 02/11/2009 in Crl M.P No.1/2009 in Crl.A.No.522 of 2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM:

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.522 of 2009

1.Vadivelu
2.Raja

... Appellants

Versus

The State of Tamil Nadu,
represented by the
Inspector Vellore North (Crime)
Police Station,
(in Crime No.498 of 2008)

... Respondent

Prayer:

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the order of conviction and sentence dated 23.03.2009 made in S.C.No.258 of 2008 on the file of the Additional District and Sessions Judge Court/Fast Track Court, Vellore and to set aside the same.

For Appellants : Mr.T.R.Radhakrishnan

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl. Side)

J U D G M E N T

The present appeal has been filed against the conviction and sentence awarded by the learned Additional District and Sessions Judge [Fast Track Court], Vellore in S.C.No.258 of 2008, dated 23.03.2009.

2. The appellants herein are arrayed as A1 and A3 in S.C. No. 258 of 2008 on the file of the Additional District and

Sessions Judge, Fast Track Court, Vellore. They stood charged for the offence punishable under Section 392 read with 398 of Indian Penal Code. After conclusion of trial, the trial Court found them guilty of the offence punishable under Section 392 read with 398 of Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of ten years for each offence together with fine of Rs.500/-, in default to undergo six months rigorous imprisonment. Against the said conviction and sentence imposed by the trial Court, the present appeal has been preferred by the appellants.

3. The case of the prosecution in the Trial Court, is as follows:

[i]. PW1 [Murthy] is a cobbler and he is running a petty shop in a platform near to the old bus stand, Vellore. On 01.05.2008 at about 11.00 am, when he was walking in the back side of Court building, the appellants herein along with one more accused came there and by showing the knife towards the PW1, they attempted to take the cellphone from his bag. Further, the appellants attempted to take the watch from the hands of PW1. At the same time, Police occasionally came to the occurrence spot, and after seeing the threat caused by the accused, the Police personnel secured them and taken PW1 as well the accused to the police station in an autorickshaw. On reaching the police station, PW1 [Murthy] lodged a complaint before the respondent police under Ex.P1.

[ii]. PW5 [Chinnathambi], the then Sub-Inspector of Police, Vellore on receipt of the complaint given by PW1 registered a case in Crime No.498 of 2008 under Section 398 IPC r/w 392 and r/w 511 IPC. Ex.P6 is the printed First Information Report. After the registration of the case, PW5 [Chinnathambi] the then Sub-Inspector of Police took up the case for investigation on the same day at about 13.00 hours, he arrested the appellants and recorded their confession statements. The said confession statements were recorded in the presence of PW4-Raja Mohammed and Jayaraman. On the basis of the confession statement, the accused were taken to the scene of occurrence from where they produced the knife alleged to have been used in the commission of offence and the same was recovered by PW5 through Form-95 in the presence of same witnesses. The said Form-95 was marked as Ex.P2 to P4, After making recovery, he prepared an Observation Mahazar [Ex.P5] in the presence of the same witnesses who attested in the Form-95. Further, he draw Rough Sketch [Ex.P7]. Further, he examined the witnesses and recorded their statement. He also made arrangement for sending the appellants to judicial custody. Thereafter, he handed over the case records to PW6 for further investigation.

[iii]. PW6, the then Inspector of Police, after receipt of the case records, perused the correctness of the records and filed a final report against the accused for the offences punishable under Sections 341, 392 read with 398 of IPC.

[iv]. In order to prove the case against the accused, 6 prosecution witnesses were examined as P.W.1 to P.W.6 7 documents were marked as Exs. P1 to P7 and 3 Material Objects were marked as M.O.1 to M.O.3 respectively.

[v]. Out of the prosecution witnesses, P.W.1 is the victim in the case and he gave evidence with regard to the previous enmity with the appellants and about the treatment given to them in the Government Hospital. Further he stated about the lodging of complaint before the police officers.

4. P.W.2 was the Sub-Inspector of Police who said to have witnessed the occurrence when he occasionally came to the place of occurrence along with Head Constables Mahalingam and Govindaraj. However, the Head Constables, who said to have accompanied PW2 were not examined before the trial court on the side of the prosecution. PW3 was the Auto Driver who has deposed that on the date of occurrence, his autorickshaw was engaged by PW2 and he dropped the occupants of the autorickshaw in the police station. PW4 was running a watch shop in the Old Bus Stand at Vellore and he had deposed that he saw PW1 and also the accused 1 to 3 in the police station

5. PW5 was the Sub-Inspector of Police, who registered the first information report in the case and who recorded the confession statement of the accused. PW6 was the Inspector of Police, who filed final report against the accused.

6. Today, when the appeal is taken up for hearing, I have heard the arguments of Mr.T.R. Radhakrishnan, the learned counsel appearing for the appellants and Mrs. T.P.Savitha, the learned Government Advocate (Criminal Side) appearing for the State and also perused the records carefully.

7. The first and foremost contention raised by the learned counsel appearing for the appellants is the charge framed against the appellants itself vitiates the entire case of the prosecution inasmuch as the offence of robbery has not been completed. Even as per the deposition of PW1, victim, the accused only attempted to take his mobile phone from his bag so also the watch. Further, PW4, Auto Driver in his deposition has stated that his autorickshaw was engaged by PW2, Sub-Inspector

of Police and there were 7 occupants in the autorickshaw. Such a statement of PW4 cannot be believed. Further, PW6, Inspector of Police, deposed that after receipt of the case records, he did not cause any further investigation or recorded the statement of the witnesses, which would indicate the shoddy manner in which the investigation was conducted.

8. The learned Government Advocate would contend that the trial Court, on appreciation of the prosecution witness and evidence made available has come to a correct conclusion that the offence as against the accused have been proved by the prosecution beyond any reasonable doubt. Therefore, such a conclusion of the trial court need not be interfered with by this Court.

9. On considering the arguments of the learned counsel for the appellants, it is true that in the charge framed in the trial court, it was alleged that the appellants have committed robbery of the mobile phone and wrist watch from the possession of PW1. But, as per the deposition of PW1, he had not stated anything about the robbery of the mobile phone and wrist watch from his possession by the accused. At the best, his deposition can be taken to conclude that there was an attempt to commit robbery. Whether such an act on the part of the accused has been proved by the prosecution or not has to be seen.

10. In the chief examination of PW1 he had stated that he was running a petty shop in a platform as a Vendor and doing shoe repair work. On the other hand, PW4 in his deposition has stated that he is running a watch repair shop in the Old Bus Stand at Vellore. On comparison of the evidence of PW1 and PW5, PW5 in his evidence has stated that he saw PW1 in the Police Station and he did not witness the occurrence. Further, PW2, Sub-Inspector of Police has stated that at the time of occurrence, he along with Head Constables Mahalingam and Govindarajan have surrounded the accused and arrested them and the said Mahalingam and Govindarajan, Head Constables also accompanied PW1, PW2, accused 1 to 3 to the police station. However, for the reasons best known, the prosecution has not examined Head Constables Mahalingam and Govindarajan as a prosecution witness and it creates a doubt as regards the manner in which the occurrence was committed.

11. Further, on going through the evidence of PW3, he has stated in his chief examination that his autorickshaw was engaged from Navaneethamman Temple to the police station and there were 7 occupants travelled in the car namely PW1, accused 1 to 3, PW2 - Sub-Inspector of Police and two Head Constables namely Mahalingam and Govindarajan. As rightly pointed out by

the counsel for the appellants, in an autorickshaw, it is highly impossible for 7 persons to travel at a time and this deposition of PW3 appears to be exaggerated. Further, PW3 in his cross-examination has stated that his autorickshaw was engaged by PW2 and others when he was standing near the Railway track. The said deposition of PW3 creates a doubt as regards the theory put forth by the prosecution relating to the manner in which the occurrence had taken place and the arrest of the accused soon after the alleged commission of offence.

12. In this context, it would be useful to refer the case of Chinnadurai v. State of Tamil Nadu, reported in AIR 1996 SC 546, wherein it has been held as follows:

"Section 398 IPC, gets attracted if at the time of attempting to commit robbery or dacoity, the offender is armed with a deadly weapon which will attract an imprisonment not less than seven years. When no robbery or dacoity has been committed as such, in the sense that no property was removed from the house of the complainants and nothing said to be belonging to the complainants was recovered, it would be difficult to hold that there was any attempt in regard to the commission of robbery or dacoity. Scattering of articles in the house may cause a scene as if ran-sacked, but that does not prove the charge. We thus feel that on the evidence, the conviction of the appellant under Section 398, IPC is not sustainable. Accordingly, the same is set aside."

13. Therefore, applying the principles laid down by the Hon'ble Apex Court in the above case, in this case also the fact that PW1 has not stated anything about the loss of his personal belongings at the instance of the accused during the course of occurrence, this Court is not in a position to hold that the accused have committed an offence of robbery, as contemplated under Section 392 of IPC.

14. In a criminal proceedings, it is the duty of the prosecution to explain the nature of offence committed by the accused, the place of occurrence and all other incidental circumstances beyond reasonable doubt without which it would be difficult to base an order of conviction against the accused. In

this case, the above circumstances have not been proved by the prosecution beyond reasonable doubt, however, the learned Additional District and Sessions Judge/Fast Track Court, Vellore, without considering the above lapses on the part of the prosecution, has erroneously accepted the case of the prosecution and convicted the appellants, therefore, interference of this Court has become necessary.

15. In the result, this Criminal Appeal is allowed, the conviction and sentence imposed upon the appellants by the learned Additional District and Sessions Judge [Fast Track Court] Vellore in S.C.No.258 of 2008, dated 23.03.2009 are hereby set aside and the appellants are acquitted. Bail bonds executed by the appellants, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

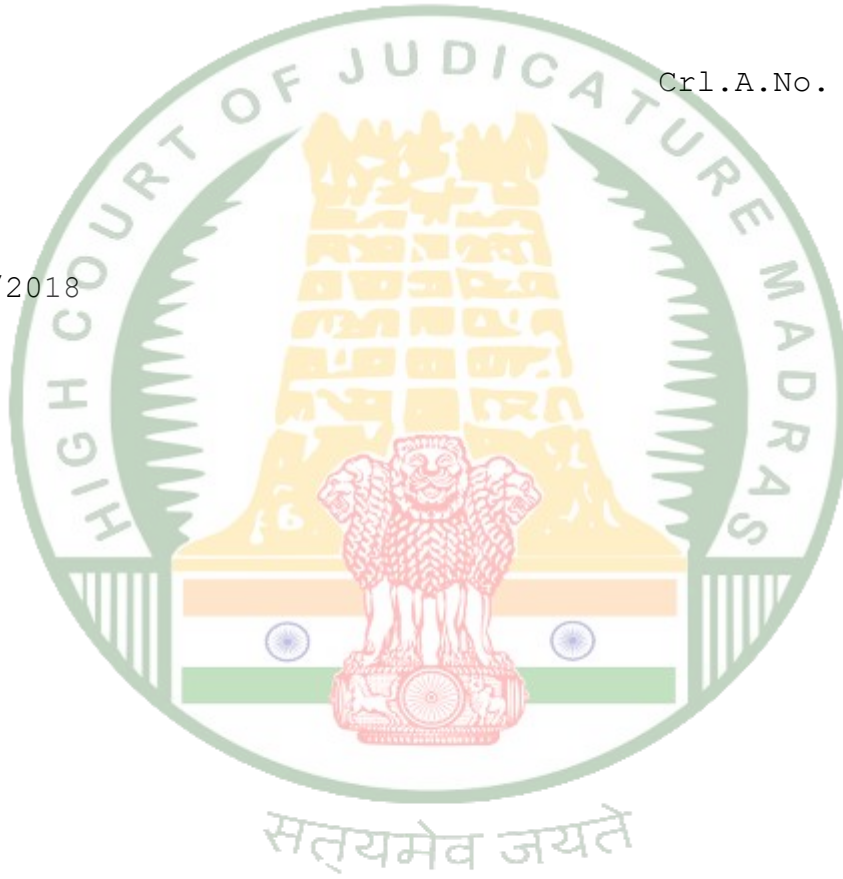
- 1.The District Collector,
Vellore, Salem.
- 2.The Director General of Police,
Mylapore, Chennai.
- 3.The Additional District and Sessions Judge
[Fast Track Court], Vellore.
- 4.The Chief Judicial Magistrate,
Vellore.
- 5.The Judicial Magistrate No.4,
Vellore.
- 6.The Superintendent,
Central Prison,
Salem.
- 7.The Public Prosecutor,
High Court, Madras-104.
- 8.The Inspector of Police,
Vellore North(Crimes) Police Station.

9.The Section Officer,
Criminal Section,
High Court, Chennai-104.

+lcc to Mr.T.R.Radhakrishnan, Advocate Sr.47239

Crl.A.No. 522 of 2009

rsk[co]
srg 02/11/2018



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