

Bail Slip

The Appellants/Accused Nos.1 & 2 Viz., 1.Dinesh @ Dinesh Kumar, aged 21 Years, S/o Harikrishnan, 2.Saravanan @ Saravana kumar aged 25 years, S/O Elumalai, were directed to be released on bail as per order of this Court dated 13/8/2010 in MP.1 of 2010 in Crl Appeal 420/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.420 OF 2010

1.Dinesh @ Dinesh Kumar

2.Saravanan @ Saravanakumar

... Appellants/Accused 1 and 2

Vs

State: Rep by
Inspector of Police,
R-6, Kumaran Nagar Police Station,
Chennai.
(Crime No.427/2009)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C, praying to set aside the conviction and sentence imposed by the Additional District and Sessions Judge, IV Fast Track Court, Chennai, in S.C.No.85 of 2010 dated 29.06.2010 and acquit the appellants.

For Appellants :Mr.V.Parthiban
and Mr.M.Rajavelu

For Respondent :M/s.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

This appeal arises against the the judgment in S.C.No.85 of 2010 dated 29.06.2010, on the file of Additional District and Sessions Judge, IV Fast Track Court, Chennai.

2. The appellants are the first and second accused in S.C.No.85 of 2010 on the file of the learned Additional District and Sessions Judge, IV Fast Track Court, Chennai, they stood charged for the offence under Sections 326 r/w 34, 394 r/w 397 by judgment dated 29.06.2010, the Trial Court convicted them under Section 397 r/w 394 of IPC and sentenced to undergo seven years rigorous imprisonment each and to pay a fine of Rs.1,000/- each i/d to undergo six months simple imprisonment. Now challenging the said conviction and sentence, the appellants before this court.

3. From the materials available in the case records, the case of the prosecution is as follows:

PW.1-Bharathi Raja is the resident of 56th Street, Ashok Nagar, Chennai, he was working as a Software Engineering in Infosys Company. On 22.05.2009 at about 11.30 p.m., after finishing the regular work when he was returned to his home two unknown persons followed him and demanded to give the Cell phone, one person forcibly took the cell phone from his pocket. After taking the Cell phone, another one person assaulted the PW.1 by using the concrete stone (M.O.1). Due to the assault made by the accused, he sustained injury in his nose and in the lip, further one teeth was broken and another one teeth was damaged. Immediately, he went to the Appollo Hospital for getting treatment. The said incident was witnessed by PW.2 Ashok Kumar.

4. PW.7-Dr.Mohammed Kareem Basha, attached with the Appollo Hospital, on 23.05.2009 at about 01.00 a.m., when he was on duty, treated the PW.1 and during the time of treatment, he found following injuries:

1. Right upper missing teeth;
2. Deep cut injury over both lips (both upper and lower lips);
3. Pain swelling over the face.

5. According to the medical opinion PW.1 sustained grievous injuries. While so, PW.8-Kumara Doss, who is the retired Sub Inspector of Police, on 23.05.2009, when he was working as a Sub-Inspector of Police in Kumaran Nagar Police Station, received an intimation from the Appollo Hospital and thereafter he examined PW.1. After getting the statement from PW.1, he registered a case in Crime No.427 of 2009 for the offences punishable under Sections 397 and 326 of IPC. The statement given by PW.1 was marked as Ex.P1. After the registration of the case, he handed over the case records to the Inspector of Police for further investigation. On the same day, PW.10-Charless Samraj Durai, when he was working as a Inspector

in the above said Police Station, received the FIR and took up the same for investigation. On the same day, at about 16.00 hours he went to the scene of occurrence and in the presence of PW.4 Venkatachalam and one Gandhi Raj, he prepared an observation mahazar (Ex.P15). He drawn the rough sketch. Further, he recovered concrete stone under the recovery mahazar (Ex.P17) in the presence of the same witness. After recovery, he examined the witnesses and recorded the statements. On 24.05.2009 at about 11.00 a.m., near Kasi Theatre Palam, Karikalan Street, near Indian Bank ATM Centre, both the appellants were arrested in the presence of PW.3-Prakash and PW.5-Kuppusamy. After arrest, the second appellant viz., Saravanan gave the confession statement, in which he admitted the guilt alleged in this case. The statement was recorded in the presence of above said witnesses. After recording the confession statement, the vehicle which was used by the appellants at the time of occurrence bearing registration No.TN-09-AL-1653-Pulsor-Motorcycle, was recovered under the recovery Mahazar Ex.P18. Further, the stolen property namely Sony Ericson Cell phone has also been recovered under Ex.P9. Subsequent to that, the property and the appellants were sent to the judicial custody, thereafter, he laid a final report against the appellants for the offences punishable under Sections 397, 326 r/w 34 of IPC.

6. In the trial Court, based on the above materials charge have been framed for the offence 397,326 r/w 34 I.P.C. Both the accused denied the same. In order to prove the case of prosecution, ten witnesses were examined on the side of the prosecution viz., P.W.1 to P.W.10. Besides twenty two exhibits were marked, as Ex.P.1 to Ex.P.22 and three material objects, are shown as M.O.1 to M.O.3.

7. Out of the said witnesses PW.1, is the victim, who is the eye witness to the occurrence stated in his evidence that the accused are initially asked about the one address and thereafter the first accused took the cell phone from his pocket. Further he stated with regard to the assault made by the other accused.

8. PW.2 is the Manager of one Anjaneya Temple situated in K.K.Nagar, who is the eye witness to the occurrence had deposed about the assault made by the accused. Further he identified the vehicle used by the accused. Pws.3 and 5 are the witnesses to the confession statement recorded by the Investigating Officer and for recovering the stolen property from the custody of the accused.

9. Pws.7 and 9 are the Doctors working in a Appollo Hospital gave evidence with regard to the injuries sustained by PW.1.

10. Pws.8 and 10, are the Police Officers, deposed in their evidence about the recording of confession statement from PW.1, particulars of investigation and about the filing of the final report. When the appellants were questioned under Section 313 Cr.P.C about the incriminating materials available in the prosecution evidence, they denied the same. However, they had not chosen to examine any witness on their side.

11. After concluding the trial, the learned Additional District and Sessions Judge, came to the conclusion that both the appellants are found guilty for the offences under Sections 394 r/w 397 and imposed a punishment as already stated.

12. Today, when the appeal is taken up for hearing, I heard the arguments advanced by Mr.V.Parthiban for Mr.M.Rajavelu, learned counsel appearing for the appellants and Ms.T.P.Savitha, learned Government Advocate appearing for the respondent.

13. The first and foremost point raised by the learned counsel appearing for the appellants is in the trial Court till the examination of PW.1, both the appellants are not identified by the defacto-complainant. Without identification of the appellants, it is unknown that on what basis the Investigation Officer laid a charge sheet against the appellants. Further he added that without considering these aspects, the trial Court convicted the accused/appellant which is erroneous one.

14. It is true Ex.P1 is a statement given before the Police Officer by PW.1. In which he mentioned as only two unknown persons, committed the offence. Further, at the time of getting treatment he told to the Doctor as three unknown persons, assaulted him at the time of occurrence. In the said circumstances, PW.10-Investigation Officer stated in his cross examination as no identification parade is conducted during the time of investigation. Only during the time of Trial both the accused were identified by PW.1.

15. According to the evidence given by PW.10, the confession statements are recorded in the presence of PWs.3 and 5, but in the trial court they had not supported the case of prosecution and they are treated as hostile witnesses. The said

circumstances show that in the trial court, the factum of recovering material objects were not properly proved through the examination of relevant evidence.

16. In such circumstances, the learned Counsel appearing for the Appellants denied the occurrence and submits that there is no such occurrence had happened as stated by PWs.1 and 2. In general, in order to prove the case of prosecution, in respect of the case registered under Sections 394 r/w 397 IPC, prosecution shall prove the factum of recovery. The evidence given by PW.10 creates a suspicion as to whether the stolen properties are recovered as stated by him or not. But the trial Court, without considering those aspects, came to the conclusion that the appellants are found guilty which is nothing but erroneous.

17. Therefore, the Criminal Appeal shall stand allowed. The conviction and sentence imposed by the Additional District and Sessions Judge, IV Fast Track Court, Chennai, in S.C.No.85 of 2010, dated 29.06.2010, is hereby set aside. The Appellants/accused are acquitted of all charges. Fine amount, if any, paid shall be refunded to the appellants. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Metropolitan Magistrate,
No.XXIII Saidapet, Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Additional District and Sessions Judge,
IV Fast Track Court, Chennai.
- 4.The District Collector,
Chennai.

5.The Director General of Police,
Mylapore, Chennai.

6.The Superintendent,
Central Prison, Puzhal,
Chennai.

7.The Inspector of Police,
R-6, Kumaran Nagar Police Station,
Chennai.

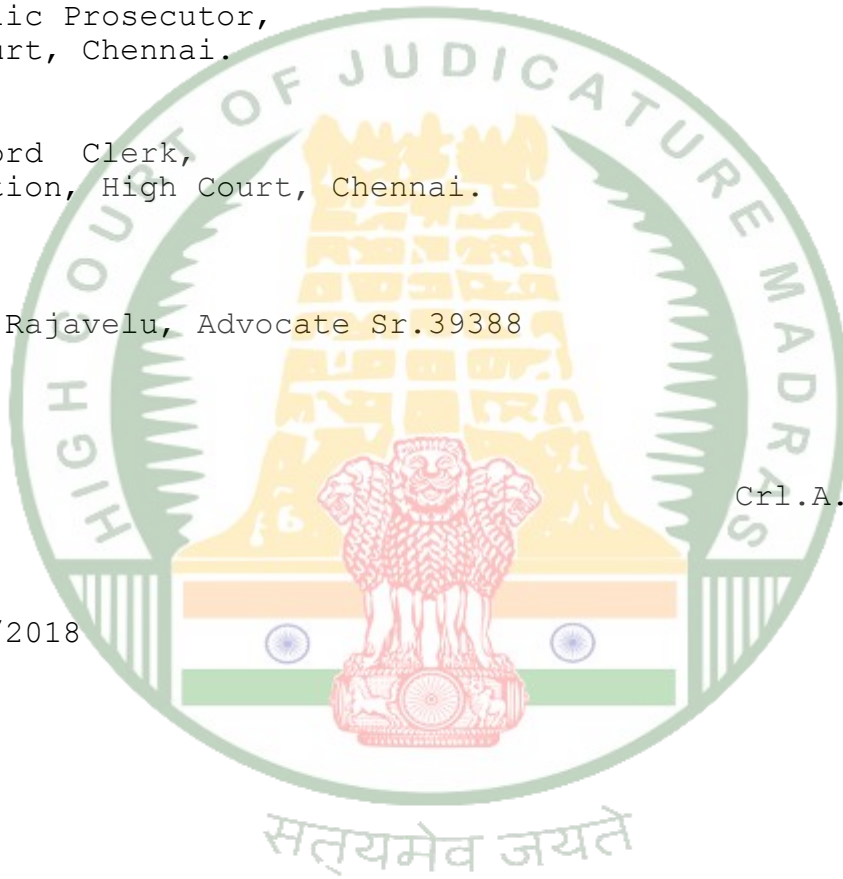
8.The Public Prosecutor,
High Court, Chennai.

9.The Record Clerk,
Crl.Section, High Court, Chennai.

+1cc Mr.M.Rajavelu, Advocate Sr.39388

Crl.A.420 of 2010

ca[col]
srg 29/08/2018



WEB COPY