

BAIL SLIP

The Appellant/Accused namely Mr.Sampath Kumar, S/o.Chinnathambi (First Accused in S.C.No. 83/2007 dated 11/04/2008 on the file of the Principal Assistant Sessions Judge, Erode) was directed to be released on bail as per order of this Court dated 24/11/2008 made in CrI.Mp.No. 2 of 2008 in CrI.A.490/2008 (in SC.No. 83 of 2007) on the file of the Principal Assistant Sessions Judge, Erode.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.07.2018

CORAM

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

CrI.A.No.490 of 2008

Sampath Kumar ...Appellant

vs

State, represented by
Inspector of Police,
Velladu Police Station
Crime No.72/2006

... Respondent

Prayer: Appeal filed under Section 374 (2) Cr.P.C., challenging the Judgment of conviction and sentence dated 11.04.2008 in S.C.No.83 of 2007 on the file of the learned Principal Assistant Sessions Judge, Erode.

For Appellant : Mr.L.Baskaran

For Respondent : Mr.G.Ramar
Government Advocate (CrI.Side)

JUDGMENT

The appellant is the first accused in S.C.No.83 of 2007 on the file of the learned Principal Assistant Sessions Judge, Erode. He stood charged for the offences under Sections 450, 292 r/w 397 and 394 of IPC. By judgment dated 11.04.2008, the trial Court convicted him and sentenced to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.100/-, in default

to undergo 1 week Rigorous Imprisonment for the offence under Section 450 of IPC. Further, he was sentenced to undergo 7 years Rigorous Imprisonment for the offence under Section 392 r/w 397 of IPC. Apart from that, he was convicted and sentenced to undergo of 5 years Rigorous Imprisonment and to pay a fine of Rs.100/-, in default, to undergo 1 week Rigorous Imprisonment for the offence under Section 394 of IPC. Challenging the conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

2. The case of the prosecution in brief, is as follows:

(i). P.W.1 (Poongothai) and P.W.2 (Rajagopal) are the husband and wife, residing in Kanagapuram near to Perundurai, Erode District. P.W.2 running a Jewellery Mart in the name and style of "Dhara Jewellers" in Erode. On 29.05.2006, in the midnight at about 1 to 1.30 hours, when P.W.1 and P.W.2 are in their bedroom, some unknown persons entered into the room and attempted to remove the thali from P.W.1. Immediately, she shouted as "Thirudan Thirudan". After hearing the hue and cry, P.W.2 woke up and restrained them from removing the thali from P.W.1. During that time, the second accused Udayakumar attacked P.W.2 on his wrist and in both legs, after seeing the assault made by the second accused, P.W.1 was stunned. Immediately, the appellant removed the thali and one chain from the P.W.1 and ran away from the occurrence place.

(ii). After hearing the sound from the house of P.W.1 and P.W.2, P.W.3 Samiyappan, who is the neighbour to the P.W.1 rushed to the scene of occurrence, while he entered into the P.W.1's house, he saw the occurrence as stated by P.W.1 and P.W.2.

(iii). In the early morning, after hearing the news P.W.4 (Kuppusamy) who is the brother-in-law of P.W.2, came to the house of P.W.1 and immediately took the P.W.1 and P.W.2 in a car and admitted them in the Government Hospital, Erode for necessary treatment. In the said circumstances, after receiving the information, P.W.9, the then Sub Inspector of Police, Vellodu came to the Hospital and recorded the statement of P.W.1. After recording the statement, he registered a case in Crime No.72 of 2006 for the offence under Section 394 of IPC. Ex.P.1 is the statement given by the P.W.1 and Ex.P.5 is the First Information Report.

(iv). In the meantime, P.W.11 Dr.V.Rajkumar attached to the Erode Government Hospital examined the P.W.2 and found the following injuries:

- "1. A lacerated injury in the right hand palm in the size of 4x3x2 cm.
2. A lacerated injury in the left hand palm

in the size of 5 x 3x 1 cm.

3. A cut injury in the left leg foot in the size of 3 x 2 x 3 cm."

(v). He issued the Accident Register copy under Ex.P.7. Further, on the same day, the relatives of the P.W.2 made arrangements and shifted the P.W.2 to the Coimbatore K.M.C.H. Hospital for further treatment. In the said Hospital, P.W.10 Dr.Kesavamuthu treated the P.W.2 and found the following injuries on P.W.2:

- "1. Cut wound over ulnar aspect of Right wrist, extending over one half of the wrist. Ulna exposed, flexor tendons cut, ulnar nerve and artery cut. X-rays - Fracture distal third shape of right ulna.
2. Cut wound over left thenar eminence (open type III c) c cut FPL, thenar muscles and digital nerve to thumb.
3. Cut would 4 x 2 cm over dorsal aspect of right upper forearm c undisplaced o/c cranon fracture right ulna. (open type II).
4. Cut would 5 x 1 cm over medical aspect of lower third of left leg."

He opined that the first and third injuries are grievous in nature. Ex.P6 is the wound certificate issued by him. Further, he took x-ray to injury No.1 and 3 under Ex.P7.

(vi). In continuation of the investigation, after registering the case, P.W.9 handed over the copy of FIR to the Inspector of Police [P.W.14] for investigation.

(vii). On receipt of FIR, P.W.14, R.Dhanaraju, the then Inspector of Police, on 30.05.2006, at about 6.30 a.m., visited the scene of occurrence and in the presence of P.W.5 Nataraj and one Devasigamani, he prepared an Observation Mahazar under Ex.P.2. Further, he drawn the rough sketch under Ex.P.16. After preparation of those documents, he recorded the statement from the neighbours of P.W.2 and thereafter, he went over to the Erode Government Hospital and recorded the statement from P.W.1 and P.W.2. On 28.06.2006, at about 3.30 a.m., when P.W.14 was in night rounds, he found the present appellant and the other accused in this case, who riding in a scooter bearing Registration No.TN-33-C-0329. After seeing the P.W.14, all the accused in this case were attempted to ran away from the spot. But P.W.14 secured the accused and informed to P.W.13 (VAO) and to his Assistant. Further, he requested them to stand as a witness for enquiry made before the accused.

(viii). In the presence of P.W.13 and his Assistant, P.W.14 examined the appellant and recorded the confession statement given by the appellant and from other accused. In the confession statement, the appellant admitted the guilt and made a statement that he is willing to identify the house, in which, he looted the thali and one chain, he is also willing to produce the stolen jewel as well as the object which was used to attack P.W.2. After recording the confession statement from the other accused at about 8.00 a.m., the Investigation Officer, accused, P.W.13 and his Assistant, all are went to the house of one Devaraj (P.W.6). Pursuant to the confession statement and on identification by the appellant, P.W.6 handed over the thalikodi weighing about 7 sovereigns and a chain weighing about 4 sovereigns by saying that the accused entrusted the jewels to him for safe custody. Further, the appellant took the said team to his house and handed over the aruval, which was used for the commission of offence. The stolen property and the aruval handed over by the appellant was recovered in the presence of same witnesses under the cover of mahazar. The admitted portion of the confession statement given by the appellant was exhibited as P.10. The seizure mahazars prepared by P.W.14 were marked as Ex.P.13 to Ex.P.15. After recovering the stolen properties, P.W.14 made arrangements for sending the appellant to remand. Further, he made arrangements for taking photographs and as per the request of Investigation Officer, P.W.7, Arivarasu took the photographs in the scene of occurrence. He took photographs in 5 angles and the same was marked as Ex.P.4 series.

(ix). After sending the accused to the judicial custody, P.W.14 submitted a requisition letter before the learned Chief Judicial Magistrate, Erode, for conducting Identification Parade, for identifying the suspected accused by P.W.1 and P.W.2. Thereafter, as per the order passed by the learned Chief Judicial Magistrate, P.W.12, J.Radhika, the then Judicial Magistrate, Bhavani went to the Salem Central Prison and conducted the Identification Parade in which P.W.1 and P.W.2 stands as witness. Previously, she issued a summon to the P.W.1 and P.W.2 for their appearance in the Central Jail, Salem. During the course of Identification Parade, P.W.1 identified the present accused. After completion of Identification Parade, she submitted her Report under Ex.P.9.

(x). During the time of investigation, P.W.1 identified the stolen property in Erode Police Station. Thereafter, P.W.14 recorded the further statement from the witnesses, who were participated in the Identification Parade. Further, he recorded the statements of the Doctors, who treated P.W.2 and after completing the investigation, he filed a Final

Report.

3. Based on the above materials, the Trial Court framed the charges as detailed in the first paragraph of this judgment and for which, the accused denied the same. In order to prove the case, on the side of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14, besides, 16 documents were exhibited as P.1 to P.16. Further, 8 material objects were marked as M.O.1 to M.O.8.

4. Out of the above witnesses, P.W.1 and P.W.2 are husband and wife residing in Kanagapuram. P.W.2 running a Jewellery Mart in the name and style of "Dhara Jewellers" in Erode. They have stated in the Trial Court as on 29.05.2006, in the midnight between 1 to 1.30 hours, when they were in their bedroom, some unknown persons were entered in the room and attempted to remove the thali from P.W.1, for which, she shouted as "Thirudan Thirudan". As soon as P.W.2 woke up, he restrained the accused from the attempt made by them. Immediately, the another accused Udayakumar attacked the P.W.2 on his wrist and in both legs, consequentially, both the accused snatched the thali chain from the custody of P.W.1 and went away from the occurrence place.

5. P.W.3 Samiyappan, who is the neighbour to P.W.1 has stated in his evidence that while he entered into the house of P.W.1, he saw the occurrence as stated by P.W.1 and P.W.2.

6. P.W.4, Kuppusamy is the brother-in-law of P.W.2 has stated on the next day morning, he heard the news and went over to the house of P.W.1. Further, he has stated that he made arrangements for taking the P.W.1 and P.W.2 in a car and for admitting them in the Government Hospital, Erode for necessary treatment.

7. P.W.5, Nataraj is the resident of Kanagapuram, he was working in a Rice Mill. He deposed that on the next day morning, Investigation Officer in this case came to the scene of occurrence and prepared an Observation Mahazar.

8. P.W.6, Devaraj is the resident of Velampalayam, he was working in Pazhaniappa Jewellers, Erode. He has stated about the entrustment of jewels by the accused. He do not know that the jewel entrusted him is a stolen property.

9. P.W.7, Arivarasu is the Photographer. At request of Police Officials, he went to the scene of occurrence and took

photographs in 5 angles.

10. P.W.8, Shanmugam is working as a Police in Dog Squad, Erode. He went to the scene of occurrence with a dog named as 'Tiger'.

11. P.W.9, the then Sub-Inspector of Police, Velladu, on receipt of information, went over to Government Hospital, Erode and recorded statement from P.W.1. After recording the statement, he registered a case in Crime No.72 of 2006 under Section 394 of IPC.

12. P.W.10, Dr.Kesavamurthi is the Doctor working in K.M.C.H. Hospital has stated about the treatment given to P.W.2 and about the X-Ray taken to the injuries sustained by P.W.2. He issued a wound certificate under Ex.P.6. According to him, the first and third injury mentioned in Ex.P.6 are grievous in nature and the other injuries are simple in nature.

13. P.W.11 Dr.V.Rajkumar attached to the Erode Government Hospital has stated about the injury found on P.W.1. Ex.P.7 is the Accident Register copy issued by him.

14. P.W.12, J.Radhika, the then Judicial Magistrate, Bhavani has stated as per the request of P.W.14, she went to the Salem Central Prison and conducted the Identification Parade and filed a Report under Ex.P.9. According to her, P.W.1 identified the appellant.

15. P.W.13, Pazhanisami is the Village Administrative Officer now working in Karumandi Sellipalayam. On 28.06.2006, when he was in-charge of Perundurai Village, at about 3.30a.m., P.W.14 requested him to come to the Perundurai bus stand. He has stated when he was went over to the Perundurai bus stand along with his Assistant, the appellant and the other two accused in this case are present near to the Inspector of Police. On interrogation, the present appellant gave a confession statement in which he admitted the guilt. Further, he gave statement that he is willing to identify the stolen property. The said confession statement was recorded by the Inspector of Police in which they signed as witnesses. Subsequent to the recording of confession statement from the appellant, the confession statement given by the other accused are also recorded. On the same day at about 7.00 a.m., the present appellant handed over the Bajaj Scooter bearing Registration No.TN-33-C-0329. The said vehicle was recovered by the Inspector of Police under the cover of mahazar [Ex.P.13]. The scooter was marked as M.O.8. On the same day at about 8.00a.m., all the accused identified one Devaraj, who is the resident of Azhankattuvalasil. On enquiry,

the said Devaraj, handed over the Thali weighing about 7 sovereigns and a chain weighing about 4 sovereigns. Both the properties were recovered under the cover of mahazar [Ex.P.14]. The admitted portion of the confession statement given by the appellant is Ex.P.15.

16. P.W.14, R.Dhanaraju, is the Inspector of Police, deposed about the investigation done by him and filing of charge sheet against the accused.

17. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. and for which, he denied the same as false. However, he did not choose to examine any witnesses nor did he mark any documents on his side.

18. Today, when the appeal is taken up for consideration, I have heard Mr.L.Baskaran, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent.

19. The first and foremost contention raised by the learned counsel for the appellant is that as per the evidence of P.W.14, finger print were collected from the scene of occurrence. Consequently, the Investigating Officer did not say anything about the Report received from the finger proof expert, which shows some thing was suppressed by the prosecution.

20. In this regard, it is necessary to see the evidence given by the Investigating Officer in the cross-examination. According to him, it is true the finger prints are collected from the scene of occurrence, but based on the said finger print, no clue is obtained. Thereby, considering the evidence given by the Investigating Officer, the submission made by the learned counsel is no way helpful to decide the case of accused in his favour.

21. The next submission made by the learned counsel appearing for the appellant is as per the evidence of P.W.6, the stolen properties were handed over to him in the month of May, 2016. Thereafter, on 28.06.2006, the property was recovered by P.W.14, after recording the confession from the appellant and from the other accused. He would further contend that it is unbelievable that the person, who is working in the Jewellery Mart keeping the stolen property without any changes in the intervening period. So, the said recovery indicate that he is a stock witness for the Police officers. Thereby, the factum of recovery is under suspicious one and hence, he prayed to allow this appeal.

22. In this regard, in the cross-examination, P.W.6

himself admitted that he is having one criminal case against him, even presuming the said evidence is a stock witness, the evidence given by P.W.1 in identifying the stolen property in the Police Station and the evidence given by P.W.13 with regard to the recovery of the stolen property are not having any major contradiction upto the level to affect the case of prosecution. Moreover, in the course of entire trial proceedings on the side of the appellant and other accused, it was not suggested that the property recovered by P.W.14 in this case are belongs to him. Since, the evidence given by P.W.13 with regard to the recovery is convincing one, the second submission made by the learned counsel for the appellant is not having any merits for allowing this appeal.

23. The third and final submission is at the time of intimating the details of occurrence to the Doctor by P.W.2 in Erode Government Hospital, he told to him that during the time of occurrence, 4 persons were attacked them and committed this offence. As per the case of prosecution, only 3 persons were participated in the occurrence. It shows the evidence given by the P.W.1 and P.W.2 is false one. In this regard, it is true when at the time of admitting the P.W.2 in the Hospital, P.W.2 told to the Doctor that 4 persons were assaulted him. On considering the other circumstances in this case, it is to be noted that the alleged occurrence had happened during the night hours. According to the case of prosecution, only P.W.1 and P.W.2 alone were present in the scene of occurrence.

24. Considering the circumstances, it is probable that in the night hours, P.W.1 and P.W.2 will not be in a position to look into the persons particularly about the number of persons, who committed the offence. Further, the said statement was given to the Doctor immediately on the next day morning within 5 hours from the time of occurrence. However, since the factum of recovery which is the crucial area in the theft cases has been proved in this case beyond reasonable doubt, the other area now indicated by the learned counsel is not sufficient to disbelieve the case of prosecution.

25. Accordingly, in the light of the above discussion, I am of the opinion that the submission made by the learned counsel for the appellant is not sufficient to hold that the case of prosecution is false one.

26. In the result, the Criminal Appeal is dismissed. The Judgment dated 11.04.2008 made in S.C.No.83 of 2007 by the learned Principal Assistant Sessions Judge, Erode is confirmed. The learned Principal Assistant Sessions Judge is directed to make arrangements for securing the appellant and make necessary steps to sent him back to prison for serving the remaining

period of sentence, if any. It is ordered to run the sentences concurrently. It is also directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msv

To

1. The Judicial Magistrate, Perundurai.
2. The Chief Judicial Magistrate, Erode (For Information).
3. The Principal Assistant Sessions Judge, Erode.
4. The Superintendent, Central Prison, Coimbatore.
5. The Inspector of Police, Velladu Police Station Crime No.72/2006.
6. The District Collector, Tiruvannamalai.
7. The Public Prosecutor, Madras High Court, Madras.
8. The Section Officer, Criminal Section, High Court, Madras-104.

+1cc to Mr. D.Balachandran, Advocate, S.R.No. 46281

Cr1.A.No.490 of 2008

NRL (CO)
GN (28/09/2018)