

Bail Slip

that the Appellants/Petitioners namely 1.Arjunan, S/o.Venkatesan, 2.Krishnan, S/o.Venkatesan were released as per the order of this court dated 17.06.2009 in MP.1/2008 in CrI.A.No.659/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.659 of 2008

1.Arjunan
2.Krishnan

... Appellants

Versus

The State of Tamil Nadu rep. By
Inspector Sathuvachari Police Station.

... Respondent

Criminal Appeal filed under Sections 374 (2) of the Code of Criminal Procedure, to set aside the judgment dated 02.05.2008 in S.C.No.17 of 2008 on the file of the Additional District and Sessions Court cum (Fast Track Court) at Vellore and acquit the accused.

For Appellant : Mr.T.R.Radhakrishnan

For Respondent : Ms. T.P.Savitha

Government Advocate (CrI.Side)

JUDGMENT

The appellants herein are the accused Nos.1 and 2 in S.C.No.17 of 2008 on the file of the Additional District and Sessions Court (Fast Track Court) at Vellore. They stood charged for the offences under Sections 458, 392, 394 r/w Section 397 of IPC. Both the accused denied the charges. After full fledged trial, the learned Additional Sessions Judge found them as they were guilty of the offences under Section 394 r/w Section 397 of IPC. Accordingly both the accused convicted and sentenced to undergo imprisonment for 10 years with a fine of Rs.500/- in default, to undergo rigorous imprisonment for a period of one month, they were acquitted

for offences under Section 458 of IPC. Challenging the conviction and sentence both the accused is before this court with the present criminal appeal.

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

P.W.1 Kunasundari, P.W.2 Vijayalakshmi, P.W.3 Menakha are close relatives. On the date of occurrence they are residing at door No.2/727, Athiamman Street, Sathuvachari. On 23.06.2006 at about 02.00 hours, when P.Ws.1 to 3, grand-daughter and grand-son of P.W.1, Priya, Emachandran were sleeping inside the house, both the accused with one unknown accused unlawfully entered into the house of P.W.2 and after showing the knife to P.W.1, they took the key and opened the wardrobe. Further they took the gold ornaments weighting about 45 sovereigns. When, the said act of the accused was resisted by P.Ws.1 and 2. Both the accused assaulted them and causing simple injuries on their back side. Consequently, both the accused went away from the house of P.W.1. Thereafter, P.W.1 came out from her house and sought for the help of neighbours. After knowing the occurrence one Venkatesan and Manokaran came there and searched the accused in nearby places but the efforts made by them are ended in vain. So, P.W.1 lodged a complaint before the Police under Ex.P.1.

3. On receipt of the complaint given by P.W.1, on the same day P.W.11, Krishnan, the then Sub Inspector of Police, Sathuvachari Police Station, registered a case in Crime No.387 of 2006 under Sections 392 and 394 of IPC. Ex.P.7 is the printed FIR. In the mean time, P.Ws.1 and 2 were admitted in the Hospital for the injuries sustained by them at the time of occurrence.

4. On 23.06.2006 on receipt of FIR, P.W.12, Mathivanan, the then the Inspector of Police visited the scene of occurrence and in the presence of P.W.6 Shanmugam he prepared an observation mahazar under Ex.P.4. Further he drawn a Rough Sketch under Ex.P.8. He examined the witnesses and recorded their statements.

5. While so, on 09.08.2006, the Inspector of Police, Latheri Police Station, under the suspicious circumstances, arrested the both accused in the presence of P.W.10 Radhakrishnan and one Karthick. In the confession statement, both the accused admitted the guilt and willing to hand over the stolen property. The admitted portion of the confession statement given by the first and second accused are marked as Exs.P.9 and 11 respectively. Pursuant to the discloser statement, the Inspector of Police went to the pawn broker's shop run by P.W.7 Murali situated in Selliamman Kovil Street, Thiruvannamalai along with accused and witness. On enquiry, the said Murali admitted that the stolen properties are received from the accused and resultantly handed over the same to the Inspector of Police which was recovered through the

seizer Mahazar. M.Os.1 to 19 in this case are the stolen properties. After recovering the stolen properties pertaining to this case, both the accused remanded to judicial custody in a another one case registered by the Inspector of Police, Latheri Police Station. After the arrest and recovery, the Inspector of Police, Latheri has intimated the same to P.W.13.

6. Immediately, after receiving the indimation given by the Inspector of Police, Latheri, P.W.13, the then Inspector, Sathuvacheri submitted a requisition letter before the jurisdiction Court for arresting the appellants in this case. Subsequently, he has submitted another application for conducting identification parade in the Central Jail, Vellore. Based on the order passed by the Chief Judicial Magistrate, P.W.9 Thirunavukarasu, the then Judicial Magistrate, No.2, Vellore, after issuing summons to P.Ws. 1 to 3 went over to Central Prison for completing the process of Identification parade. In the said Parade, P.W.1 and P.W.2 has not identified the both accused. P.W.3 identified the first accused three times and she has not identified the second accused. After completing the said process, the learned Magistrate submitted his report and the same was marked as Ex.P.5 before the trial Court.

7. Meanwhile, after the occurrence, on 23.06.2006, P.W.4 Anitha when she was working as Doctor in Vellore Government Medical College, Hospital treated P.W.1 and P.W.2 and issued wound certificates under Exs.P.2 and 3 respectively. According to her, P.Ws.1 and 2 sustained simple injuries. Subsequent to that P.W.13, after examining all the witnesses and after completing the investigation, filed a final report under Sections 358 and 394 r/w section 397 of IPC.

8. Based on the above materials, the trial Court framed charges under Sections 394 r/w Section 397 of IPC. The prosecution in order to prove its case has examined 13 witnesses as P.Ws.1 to 13 and marked 11 documents and produced 19 material objects.

9. Out of the said witnesses P.W.1 is the injured as well as the defacto complainant in this case has stated in his evidence as at the time of occurrence. Both the accused unlawfully entered into her house and made a threat for giving the wardrobe key. According to her, the stolen property which was marked in this case are stolen away by the accused from the wardrobe situated inside her house. She has further stated, a complaint has been lodged before the Police and on 19.02.2006 she identified the accused in Centrla Jail Vellore. Further, she identified the stolen properties in the Police Station.

10. P.W.2, Vijayalakshmi is the daughter of P.W.1 in the trial court. She corroborated the evidence given by the P.W.1

relating to the offence committed by the accused. She has also stated in her evidence that she identified the stolen property in the police station and about the identification of accused in a Central Jail.

11. P.W.3 is the daughter-in-law of P.W.1, who is also a witness to the occurrence depose that at the time of occurrence, the accused assaulted P.Ws.1 and 2 and committed the offence. She has further stated about the material objects marked in this case were taken away from wardrobe kept in her house and with regard to identification of the accused in Central Jail, Vellore.

12. P.W.4 is the Doctor, attached with Government Medical College, Vellore has stated in her evidence as on 23.06.2006 she examined P.Ws.1 and 2 for the injuries sustained by them. On examination she found that P.W.1 sustained contusion on her shoulder and P.W.2 complained a pain on her shoulder. According to P.W.4, both P.W.1 and P.W.2 sustained simple injury. She issued a wound certificate to that effect.

13. P.W.5 is the neighbour to the P.W.1 deposed that on the date of occurrence, after hearing hues and cries of P.W.1, he searched the accused in and around the occurrence place. P.W.6 is the witness has stated about the preparation of Observation Mahazar by the Investigating Officer.

14. P.W.7 is the Pawn Broker, receiving the stolen property from the accused, he has not supported the case of the prosecution. P.W.8 is the officer in charge of Vellore Central Jail has stated in his evidence that, as per the request made by the Judicial Magistrate No.2, Vellore, he made arrangements and produced 17 prisoners for conducting identification parade.

15. P.W.9 is the then Judicial Magistrate No.II, Vellore, has stated about the process of identification parade conducted in Central Jail. P.W.10 is the witness to the arrest and recovery has stated in his evidence about the arrest and confession statement given by the both accused and about the recovery of stolen property from P.W.7. P.Ws.11 to 13 are the police officers has stated about the registration of the case, manner of investigation conducted in this case and about the filing of final report.

16. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the complicity of the offence. However, they did not choose to examine any witness on their side. But the paper publication made in Thinathanthi dated 10.08.2006 alone marked as Ex.R.1.

17. After analysing the evidence and materials available on record, the learned Additional District and Sessions Judge (Fast Track Court), Vellore, found the accused that they were committed the offence of robbery and accordingly, convicted as stated in the first paragraph of the judgment. Aggrieved by the conviction and sentence, both the accused are come up with the present criminal appeal.

18. I have heard the learned counsel for the appellants/accused and learned Government Advocate for the respondent/state and also perused the records carefully.

19. The learned counsel for the appellants during the time of his arguments projected the case of defence on the following points:-

(i) The person who arrested the accused, recovered the stolen properties has not been examined on the side of the prosecution;

(ii) The formal arrest have not been intimidated to the relative of the accused;

(iii) The receiver who handed over the stolen property to the Investigating Officer had not supported the case of prosecution.

(iv) In the Central Prison, Vellore before the Magistrate, P.Ws.1 to 3 have not properly identified the accused.

20. On the other hand, the learned Government Advocate would submit that the above points projected by the learned counsel for the appellants are not at all necessary for proving the case of prosecution. The lapses now indicated by the learned counsel are not at all relevant for allowing the present appeal.

21. Now on go through Section 397 I.P.C It contemplates certain aggravating circumstances, when the commission of robbery has been committed which read thus:-

- (1) use of a deadly weapon
- (2) causing grievous hurt
- (3) attempting to cause death or grievous hurt.

22. Now, applying the legal embargo with the facts of the present case, the case could be decided whether the appellants have committed simple injuries to P.Ws.1 and 2 and thereafter, they had committed robbery. To prove the said offence the following two main ingredients are necessary which read thus:-

- (1) recovery of stolen ornaments.
- (2) causing her in attempting to commit robbery.

23. Now, coming to the evidence given by the prosecution witnesses, P.Ws.1 and 2 have clearly stated in their evidence that during the time of occurrence both the accused have been assaulted them and thereby caused simple injury. The said evidence was corroborated through the evidence of Doctor who treated them.

24. In this regard, on close scrutiny of the said evidence, it appears that P.W.1 has stated that she was assaulted by using the knife. On the other hand, P.W.2 has stated that she was assaulted through a iron rod. No doubt, the said evidence given by P.Ws.1 and 2 with regard to weapons used by the accused is entirely different in nature. Considering the circumstances that the alleged offences had happened in the mid-night when P.Ws.1 and 2 are at the stage of sleep the accused herein entered into the house of P.W.1 and committed the offence. So being the ladies in the dark hours, they are unable to see the nature of weapons. In this case excepting the said contradiction the other evidence given by them is entirely cogent and convincing. After the occurrence, both of them were treated by the Doctor who also gave evidence corroborating the evidence given by P.W.1. Hence, the said lapses stated in the evidence of P.Ws.1 and 2 will not affect the entire case of prosecution.

25. With regard to the deficiencies, it is true that the Inspector of Police, Latheri, who arrested the accused has not been examined as witnesses on the side of the prosecution. In this regard, P.W.13 who is the Inspector of Police who filed the final report in this case has stated in his chief examination as, the Inspector of Police, Lokanathan who is the person arrested the accused is not examined. Further, he stated that he is not known about the hand writing of the said Inspector of Police. In the said circumstances based on the records created by the Inspector of Police, Latheri alone P.W.13 has conducted his investigation. In the said circumstances non examining the Inspector of Police Latheri is nothing but fatal to the prosecution. P.W.13 is not the competent person to say about the arrest and recovery.

26. Secondly, the learned counsel appearing for the appellant would contend that after making the formal arrest of the accused, particulars of arrest has not intimidated to the relatives of the appellants. So the said aspect also created a doubt as whether the accused was arrested as stated by the Investigation Officer or not. Now on going through the copy of the arrest memo prepared by P.W.13 both the accused in this case were produced before the trial Court only on PT Warrant. The said intimation has been served to the accused only through the Additional Superintendent Police Central Prison, Vellore. So, it is not necessary for the P.W.13, to intimating the same to the relatives of both accused. Therefore, the said

submission made by the learned counsel for the appellants is not legal and not justifiable.

27. Coming to the point of identification parade it has been conducted only for identifying two accused. According to the evidence given by P.W.8, he had arranged 17 under trial prisoners for participating in the identification parade. In fact there is no rule is available to regulate that how many persons were necessary for conducting identification parade. In the said circumstances, participation of 17 trial prisoners is no way prejudice the right of the accused. In this aspect in a report submitted by the Judicial Magistrate he clearly mentioned that during the time of parade, P.W.1 Identified the first accused alone. Except that both accused have not been identified by any one of the remaining witnesses. In the said circumstances, the evidence given by P.Ws.1 to 3 does not stand in favour of the prosecution with regard to the identification of the accused. However, in these type of cases in order to accept the case of prosecution in its entirety, the prosecution should prove the recovery of stolen properties through cogent and convincing evidence.

28. In the said circumstances, according to the evidence given by the Investigating Officer, the stolen properties which were marked in this case were all recovered from P.W.7 under the cover of Mahazar. In the Mahazar, P.W.10 and one Karthik were shown as a witness to the documents. P.W.7 alleged to be the receiver of the stolen property in his evidence clearly stated that he has not received any stolen property from the accused.

29. So, the next crucial point to be decided in this case is whether the recovery mahazar prepared by the Investigating officer is properly proved or not. In this regard P.W.10 is the witness to the seizer mahazar has clearly stated in his chief examination about the arrest and about the recovery of material objects. But, on going through the whole evidence of P.W.10 and in the cross examination, he specifically stated that the signature found in the seizer mahazar and in the confession statement were obtained by the police only in the Katpati Police station.

30. In the said circumstances, on going through the specific evidence given by P.W.10 will creates a doubt whether the accused were arrested by the Latheri Police and whether the properties are recovered in the presence of P.W.10 and one Karthick. Unfortunately, the said Karthick is not examined as witness in this case. Therefore, on culling out the entire circumstances will show that the prosecution has not proved the factum of recovery. Further the identification of the first accused has also not proved through cogent and convincing evidence. Therefore, this Court is of the view that the prosecution has not proved the case beyond resonable

doubt. In the result, the criminal appeal is allowed and the conviction and sentence imposed upon the appellant in S.C.No.17 of 2008 dated 02.05.2008 on the file of the Additional District and Sessions Court cum (Fast Track Court) at Vellore is set aside and the appellant/accused are acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsg1

To

- 1.The Judicial Magistrate No.5, Vellore
- 2.Do Thro The Chief Judicial Magistrate, Vellore
- 3.The Additional District and Sessions Court cum (Fast Track Court), Vellore.
- 4.The Inspector of Police, Sathuvachari Police Station.
- 5.The Superintendent, Central Prison, Vellore
6. The Public Prosecutor, High Court, Madras.

+1cc to Mr.Radhakrishnan, Advocate Sr.No.52259

MG(CO)

sm:23.10.2018

Cr1.A.No.659 of 2008

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