

Bail Slip

The Petitioner/Accused Viz., (1) Akram Khan (A1-Crl.A 260/2009 (2) Gundamani (A4) Crl A 273/2009 and (3) Prakash (A6-Crl.A.377/2009) were released on bail as per the order of this Court dated 29/04/2008, 30.06.2008 & 13/10/2008 in M.P.Nos.1 of 2008 in Crl.A.No.260 of 2009, M.P.No.1 of 2008 in Crl.A.No.273 of 2008 and M.P.1 of 2008 in Crl.A 377/2008, respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 09.09.2019

JUDGMENT DELIVERED ON : 19.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A.Nos.260, 273 and 377 of 2008

1.Akram Khan .. Appellant/A1 in Crl.A.260/2009
2.Gundamani .. Appellant/A4 in Crl.A.273/2009
3.Prakash .. Appellant/A6 in Crl.A.377/2009

Vs.

State Rep.by

The Inspector of Police,

E-2. Royapettah Police Station,

Chennai

Crime No.1804/2001

Respondent / Complainant
in all Criminal Appeals.

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COMMON PRAYER: Appeals filed under Section 374(2) of the Code of Criminal Procedure, against the Common Judgment, dated 24.11.2007, passed in S.C.No.613 of 2005, by the Additional District and Sessions Judge, Fast Track Court-V, Chennai.

For Appellant : Mr.R.C.Paul Kanagaraj
(in CrI.A.260/08)

For Appellant : Dr.G.Krishnamurthy
(in CrI.A.273/08)

For Appellant : Ms.P.Priya Premkumar
(in CrI.A.377/08)

For Respondent : Ms.M.Prabhavathy
(In all CrI.As) Additional State Public
Prosecutor

COMMON JUDGMENT

The appellants / Accused Nos.1, 4 and 6 have preferred these Criminal Appeals, aggrieved by a Common Judgment passed by the learned Additional District and Sessions Judge, Fast Track Court-V, Chennai, in S.C.No.613 of 2005, dated 24.11.2007, convicting and sentencing the appellants / accused as follows:-

Sl. No.	Rank of the Accused	Offence under which convicted	Sentence of imprisonment	Fine amount
1.	A1, A4 and A6	Under Section 395 IPC	Five years Rigorous imprisonment	Rs.1,000/-, in default, to undergo six months Rigorous Imprisonment
2.	A4 & A6	Under Section 397 IPC	Seven years Rigorous imprisonment	Total fine of Rs.4,000/-.

2. In S.C.No.613 of 2005, there were totally 6 accused, A3 and A5 died during trial, the case against them abated.

3. So far as A2/ Bakrudheen @ Sirajudheen is concerned, he is convicted for offence under Section 395 IPC and sentenced to undergo 5 years R.I., and to pay a fine of Rs.1000/- and convicted for offence under Section 397 IPC., sentenced to undergo 7 years R.I. He had not preferred any appeal and had undergone the sentence.

4. For the sake of convenience, accused are referred to, according to their ranks, as mentioned in the charge.

5. The facts and issues involved in all these appeals are similar in nature and arising out of Common Judgment, all these appeals are taken up together for final disposal.

6. The case of the prosecution:

On 17.12.2001, at about 7.30 p.m., the accused persons entered into the Jewellery shop viz., "Palsani Jewellers", belonging to the complainant, with an intention to rob the jewels. A3 & A4 entered into diamond section of the shop. A3 and A4 armed with pistol and knife, entered into the diamond section, A3 pointed the gun on Vanaja, an employee of the shop, A4 with long knife threatened P.W.3 / employee of P.W.1, made them to sit on the floor. Accused started removing the diamond jewels and put them in their pockets. At that time, the minor children of P.W.1 came in. A3 attempted to catch them. P.W.1 pleaded not to harm his children, but A3 advanced towards them. P.W.1 pushed A3, he fell over a showcase. A3 fired a gun shot. There was commotion. A2 who was on the passage sensing some trouble entered in and attacked P.W.1 on hand and shoulder. P.W.3 caught hold of the knife and sustained cut injury on his left hand. Sensing trouble, all the three accused viz., A2, A3 and A4 ran out, joined by A5 and A6, who were in the silver Section and took the mobile of P.W.1 and P.W.2, cash of Rs.40,000/- along with jewels. A1, who was standing guard joined them. A2 attempted to start M.O.16 / bike. P.W.3 hit him with a brick. A2 fell down, he then started running away towards eastern side and the other accused viz., A1 and A3 to 6 ran towards western side, towards Anna Flyover. P.Ws. 1 and 3 chased him, but unable to catch A2, they returned back. Therefore, P.W.1, P.W.2 and P.W.3 lodged a complaint to the respondent. Thereafter, P.W.1 and P.W.3 were referred to

Government Hospital, Royapettah, for treatment. On registration of case, the respondent rushed to scene of occurrence, sought the service of finger print expert and sniffer dog.

7. On receipt of Ex.P1/ Complaint, P.W.13 / Investigation Officer, registered a case in Crime No.1804 of 2001, under Section 397 of IPC and Section 25 of the Arms Act and prepared Ex.P10 / printed FIR. P.W.13 went to the place of occurrence, on the same day, prepared the observation mahazer (Ex.P.11) and rough sketch (Ex.P.12). He examined the witnesses and recorded their statements under Section 161(3) of Cr.P.C. He arrested A2, on the same day at about 9.30 p.m. On his confession, A1 was arrested on the early morning on 18.12.2001. Based on the confession given by A2 and A1, part of jewels were recovered and other accused persons were arrested and based on their confession, the material objects were seized.

8. After completion of investigation, the Investigating Officer filed a charge sheet before the trial Court, which was taken on file as P.R.C.No.120 of 2002, on the file of 15th Metropolitan Magistrate, Saidapet, Chennai. During pendency of PRC proceedings, A3 and A5 died.

9. As the offences under Section 395 r/w 397 IPC and Section 27(1) of Indian Arms Act are exclusively triable by the Court of Sessions, the learned Magistrate, committed the same to the Principal Sessions Judge, Chennai, who in turn made over the same to the file of Additional District and Sessions Judge, Fast Track Court-V, Chennai-1.

10. In order to prove the case of the prosecution, on the side of the prosecution as many as 14 witnesses were examined as P.Ws.1 to 14 and 24 documents were marked as Exs.P1 to P24 and M.Os.1 to 41 were marked. On the side of the accused, no witness was examined and one document was marked as Ex.D1.

11. When the appellants were questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against them, they denied the same.

12. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid. Challenging the legality of the said conviction and sentence, the present appeals have been filed by the appellants.

13. The learned counsel appearing on behalf of the Appellant / A1 in CrI.A.No.260 of 2008 made the following submissions:-

The respondent Police initially registered an FIR against unnamed accused and according to the prosecution, the appellant had not entered into the shop and he was only standing outside keeping watch over the place. P.Ws.1 to 3, who are the eyewitnesses to the occurrence, had not identified the appellant. There is no recovery from this appellant. There are two FIRs in this case viz., Ex.P10 and Ex.D1. Ex.P10, is the English version and Ex.D1 is the Tamil version, thus, the genesis of the case itself is highly doubtful. The appellant is implicated in this case on the basis of confession of A2. The appellant, being a public personality, is known to every one. P.W.s1 to 3 had identified him in the Police Station and during test identification parade at the instance of the respondent. In view of no recovery and non identification, the appellant could not be convicted. Hence, prayed for acquittal of this appellant.

14. The learned counsel appearing on behalf of the Appellant / A4 in CrI.A.No.273 of 2008 made the following submissions:-

In Ex.P1 / Complaint, there is no mention of the list of articles, which have been robbed from the shop of P.W.1. The arrest and recovery of this appellant is highly doubtful and there is no witness. The evidence of P.W.10 / witness for arrest and recovery is highly artificial and therefore, the same cannot be relied upon. The appellant was identified by the witnesses in the Police Station, which is admitted by P.Ws.1 to 3. The photographs was published and telecasted in news papers and TV. Hence, much reliance could not be placed on the identification parade. The recovery is highly artificial. The lower Court had merely convicted the appellant on surmises and conjectures and given a moral conviction. Hence, prayed for acquittal of the appellant.

15. The learned counsel appearing on behalf of the Appellant / A6 in CrI.A.No.377 of 2008 made the following submissions:-

The appellant has been falsely implicated in this case and he had been roped in only on the confession of co-accused. P.W.1 admitted in his evidence that appellant was shown to him in the Police Station, on 08.02.2002. Thereafter, test identification parade was conducted on 28.02.2002. Hence, the test identification parade is of no consequence. It was also admitted by P.W.1 that he had come to Court earlier on several occasions, when the appellant was produced during trial, he had

occasions to see him. P.W.7 / Head Constable, who is the witness for arrest and recovery, admitted that the place of arrest and recovery was a crowded place, shops were around and there were lot of public witnesses but none have been examined in this case. P.Ws. 4 and 5, who are the witnesses to the recovery, have not supported the case of the prosecution. In view of the fact that appellant's name and description not found in the FIR and recovery was also not proved, the appellant ought not to have been convicted. But the trial Court without proper analysis of evidence, had convicted the appellant. Hence, prayed for acquittal of the appellant.

16. Per contra, Ms.M.Prabhavathy, learned Additional State Public Prosecutor, appearing on behalf of the Respondent made the following submissions:

(i) The prosecution has proved the case beyond reasonable doubt. The accused persons were identified by P.W.s. 1 to 3, before the trial Court and also prior to it in the identification parade and therefore, the identity of the accused persons has been sufficiently established by P.Ws.1 to 3 and no more proof is required insofar as the identity of the accused are concerned.

(ii) The contention of the accused that there are two FIRS viz., Exs.P10 and D1, is a material contradiction. This contention cannot be countenanced for the reason that Ex.D1 is the translated Tamil version of Ex.P1, which necessitated when the accused were detained under Goondas, as the documents were supplied in Tamil in that proceedings.

(iii) The non-mentioning of the name of accused in the complaint is not fatal to the case of the prosecution, P.Ws.1 to 3 did not know the name of the accused, when the complaint was given. They are eyewitnesses to the occurrence who identified them in the Court. P.W.1 and P.W.3 are injured eyewitnesses.

(iv) On the arrest of the accused material objects were recovered. Further, they have clearly identified the weapons used by each of the accused.

(v) All these accused persons were identified by P.Ws.1 to 3. There is absolutely no prior enmity or ill-will to rope in these accused persons by P.Ws.1 to 3. Hence, prayed for dismissal of the appeals.

17. I have heard the learned counsels appearing on either side and perused the materials available on record.

18. Having carefully considered the submissions made on behalf of the respective appellants and the respondent and on perusal of records it is seen that P.Ws.1 to 3 are eyewitnesses to the occurrence of which P.Ws.1 and 2 are injured witnesses. On 17.12.2001, at about 7.30 p.m., the accused persons entered into the Jewellery shop viz., "Palsani Jewellers", belonging to the complainant, with an intention to rob the jewels. A3 and A4 armed with pistol and knife, entered into the diamond section, A3 pointed the gun on Vanaja, one of the employee, A4 with long knife had threatened P.W.3 / employee of P.W.1, made them to sit on the floor and they started removing the diamond jewels and putting them in their pockets.

19. At that time, the minor children of P.W.1 came in. A3 attempted to catch them. P.W.1 pleaded not to harm his children, but A3 advanced towards them. P.W.1 pushed A3 and he fell over a showcase. Immediately, A3 fired a gun shot. There was a commotion. A2 who was standing in the passage, sensing trouble entered in, attacked P.W.1 on his hand and shoulder with knife. P.W.3 caught hold of the knife and sustained cut injury on his left hand. Sensing trouble, all the three accused viz., A2, A3 and A4 ran out, joined by A5 and A6, who were in the silver Section and took the mobile of P.W.1 and P.W.2; cash of Rs.40,000/- along with jewels. A1, who was standing guard joined them. A2 attempted to start M.O.16 / bike, at that time, P.W.3 hit him with a brick. A2 fell down, then started running away towards eastern side and the other accused viz., A1, A3 to 6 ran towards western side, towards Anna Flyover. P.Ws. 1 and 3, thereafter chased him, but unable to catch A2, they returned back. Thereafter, at 8.30 p.m., went to the respondent Police, lodged the complaint, on receipt of the complaint, P.W.1 and P.W.3 injured were referred to Royapettah Government Hospital, for treatment.

20. On receipt of Ex.P1 / Complaint, P.W.11 / Inspector of Police visited the scene of occurrence, recovered M.O.16 / Bike; M.Os.38 & 39 / one gun pallet & 8 gun pallets. Prepared observation mahazar and rough sketch. A2 was arrested at about 9.30 p.m., on the same day and given a voluntary confession. Based on his confession, the co-accused were arrested and recoveries were made in the following manner.

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Sl. No.	Rank of the accused	Date of arrest	Seizure Mahazer	Material Objects
1.	A1	18.12.2011	Ex.P16 Ex.P17	Two sovereigns gold chain; White stone studded dollar chain M.Os.5
2.	A2	17.12.2011	Ex.P15 Ex.P7 Ex.P13 Ex.P14 (Under Form-95)	M.Os.9, 12, 18, 21, 23 & 27 M.os. 10, 15 & 8 M.Os.38 & 39 Yamaha Bike
3.	A3	(Died Charges abated)	- Ex.P18	Mos.40 , 22 & 23 -
4.	A4	25.12.2001	Ex.P.19 Ex.P.20	M.Os.11, & 2 M.Os.1, 2, 4, 7, 11, 20, 2 Mos.40
5.	A5	08.02.2002	died	M.Os. 5 & 38
6.	A6	08.02.2002	Ex.P23 Ex.p24 Ex.P3	M.Os.35, 37& 13, M.Os. 24 to 33 & 41 M.Os.35 to 37

21. P.Ws.11 and 12 are Magistrates, before whom test identification parade had taken place. On 13.01.2002, P.Ws.1 to 3 identified A1 to A4. Likewise, P.Ws.1 to 3 identified A5 and A6. Thus, there is no dispute with regard to identification of the accused. M.Os.9, 12, 18, 20, 21, 23 and 27 had been recovered from A1 & A2.

22. P.W.9 is the Doctor, who examined P.Ws.1 and 3, issued Exs.P3 and P4 / A.R. Copy, in which, the nature of injuries and the manner of injuries sustained by them are clearly mentioned. Thereafter, P.W.1 after verification on the next day furnished the particulars of the jewels robbed.

23. The evidence of these witness are certain, clear and inspire confidence. P.Ws.4 and 5 admitted their signatures, but were unable to identify the accused due to passage of time. It is to be seen that the trial had commenced five years after the occurrence. Likewise, P.W.7 identified his signature in the Mahazar, but could not identify the person. P.W.13 is the Investigation Officer, who had immediately rushed to the scene of occurrence, prepared observation mahazar, seizure mahazar, enquired the persons present in the scene of occurrence, arrested A2 on the same night, made recoveries, seized the bike from the scene of occurrence and the magazines and bullets.

24. From the confession of A2, the role of other accused was disclosed and subsequently, the other accused were arrested and on their arrest, recoveries were made, from them jewels and Material Objects were identified by P.Ws.1 to 3, P.W.9 / Doctor recorded the place and reasons for injuries sustained by them. The accused are identified by the witnesses and their evidence are corroborated with each other, which have been confirmed by recovery of material objects. From the above it is clear that Robbery is being committed by the accused who were armed with deadly weapons and was within the vision of the victim creating a terror in the minds of victim and also shooting during the commission of offence by the accused. P.Ws.1 to 3 evidence are natural, cogent, inspire confidence.

25. It is seen from the complaint Ex.P1 though the names of the accused were not given, their age group, their physical description, colour and dialect have been mentioned. In Ex.P7, the seizure of 8 gold articles from A2, on the same day, i.e., on 17.12.2011, at 9.40 p.m., had been proved and the same has been sent to the Court on 18.12.2019. Through Ex.P13, M.Os.38 and 39 had been seized from the scene of occurrence on 17.12.2001, at about 9.00 p.m., the seizure of M.O.16 / vehicle (Yamaha Bike) from the scene of occurrence has been proved. On arrest of A2 and A1, they had given confession Ex.P15 and Ex.P16. Based on the confession, recoveries were made. Confession Mahazar had reached the Court on the next day i.e., on 18.12.2019. The seizure of two sovereigns of gold dollar chain from A1 is also recorded. Seizure made from A3, through Ex.P18. Seizure from A4 had been proved, through Ex.P.20. Handing over of jewels to Senthilkumar has been disclosed from the confession of A6 and from him, recoveries were made. The confession of A6, disclosed of handing over the jewels to Senthil and Selvakumar and from them, recoveries have been made. A5 is deceased Baskar and from him, M.Os.5 & 38 have been recovered. A5 and A6 were arrested while in custody in a case at Madurai and on their confession, the property in the above case were recovered through Ex.P24 (Form-95).

26. Thus, from the confession statement of the accused leading to recovery of gold jewels and other articles recorded by way of Mahazar and Form-95 and sent to the Court then and there, the involvement of the accused in the above crime and recoveries are conclusively proved. This Court on perusal of the materials and the documents and on evidence comes to irresistible conclusion about the involvement of the accused in the above crime.

27. The Court below has taken into consideration the entire facts and circumstances of the case and the totality of the evidence has come to the correct conclusion that the prosecution has proved its case beyond reasonable doubt and there is absolutely no ground to interfere with the judgment of the trial Court.

28. In the result, these Criminal Appeals are dismissed, confirming Judgment and conviction, dated 24.11.2007, passed in S.C.No.613 of 2005, by the learned Additional District and Sessions Judge, Fast Track Court-I, Chennai. In view of the dismissal of the appeals, the trial Court shall take appropriate steps to secure the appellants and to commit them to prison to serve the remaining period of sentence, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

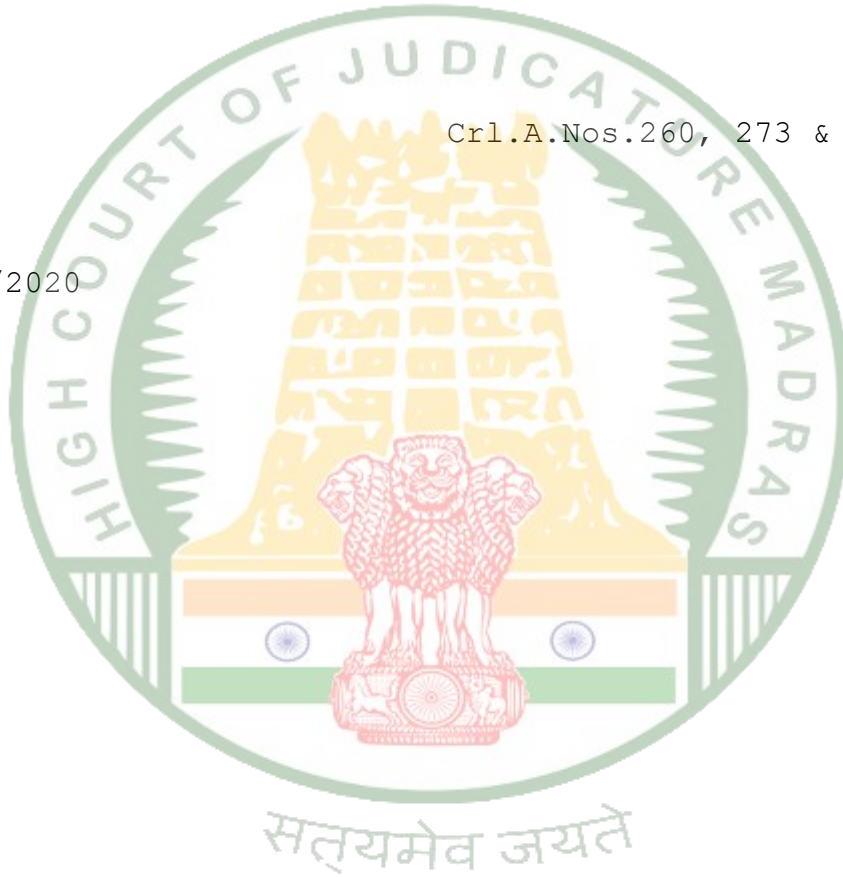
To

1. The Additional District and Sessions Judge,
Fast Track Court-V,
Chennai.
2. The Inspector of Police,
E-2. Royapettah Police Station,
Chennai
3. The Public Prosecutor,
High Court, Madras.

- 4.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
- 5.The VII Metropolitan Magistrate,
George Town, Chennai.
- 6.The Superintendent, Central Prison,
Puzhal, Chennai.
- 7.The Chief Metropolitan Magistrate,
Egmore, Chennai.

Crl.A.Nos.260, 273 & 377 of 2008

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