

BAIL SLIP

The Appellants / Accused 1,3,4,5,6 namely 1) Charlesraj S/o.Xavier, 2) Marimuthu S/o.Bose, 3) Saravanan S/o.Sekaran, 4) Samson S/o.John Paul, and 5) Saravanan @ Sevittu Saravanan S/o.Annamalai (Accused 1 to 5 in S.C.No.315/2006 dated 22/07/2008 on the file of the II Additional Sessions Judge, Chennai) were directed to be released on bail as per the order of this Court dated 06/08/2008 in Crl.M.P.No.1/2008 in CRL.A.No.556/2008 on the file of this Court.

The Appellant / Accused namely S.Seenivasan S/o.Subramaniam, was directed to be released on bail as per the order of this Court dated 13/08/2008 in Crl.M.P.No.1/2008 in CRL.A.No.568/2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2018

DELIVERED ON : 21.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal Nos.556 and 568 of 2008

1.Charlesraj
2.Marimuthu @ Mari
3.Saravanan
4.Samson
5.Saravanan @ Sevittu Saravanan ..Appellants in Crl.A.No.556/2008
S.Seenivasan .. Appellant in Crl.A.No.568/2008

Vs

State Rep. by
The Inspector of Police,
N-1, Royapuram Police Station,
Royapuram, Chennai - 600 013.
Crime No.470/2005

..Respondent in both the Crl.A.s

Prayer in Crl.A.No.556 of 2008: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to allow this Appeal and set aside the Judgment dated 22.07.2008 in S.C.No.315 of 2006 on the file of II Additional Sessions Judge, Conviction all the appellants under Sections 341, 395, r/w 397 506(2) IPC and sentenced under Section 341 IPC to pay fine of Rs.200/- in

default to undergo one week Simple Imprisonment and under Section 395 r/w 397 IPC to undergo Seven Years, Rigorous Imprisonment and to pay fine of Rs.1000/- in default to undergo two months Simple Imprisonment and under Section 506(ii) IPC and to undergo one year Rigorous Imprisonment and to pay fine of Rs.500/- in default to undergo two months Simple Imprisonment.

Prayer in Crl.A.No.568 of 2008: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records relating to the Judgment dated 22.07.2008 in S.C.No.315 of 2006 on the file of the II Additional Sessions Court, Chennai, set aside the same and acquit the appellant herein.

For Appellants : Dr.G.Krishnamurthy
in Crl.A.No.556 of 2008

For Appellant : Mr.M.Deivanandam
in Crl.A.No.568 of 2008

For Respondent : Mrs.T.P.Savitha
in both the Crl.As. Government Advocate (Crl.Side)

COMMON JUDGMENT

These Criminal Appeals were filed against the final judgment and order dated 22.7.2008 passed in S.C.No.315 of 2006 on the file of learned II Additional Sessions Court, Chennai, wherein the learned trial judge convicted the appellants/accused A1 to A6 under section 341,395, r/w 397,506(2) IPC and sentenced them to undergo seven years rigorous imprisonment for the offence under section 395 r/w 397 of IPC and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for two months, to undergo one year Rigorous imprisonment for the offence under section 506(ii) of IPC and to pay a fine of Rs.500/- in default to undergo two months simple imprisonment and imposed fine of Rs.200/- for the offence under section 341 of IPC in default to undergo one week simple imprisonment.

2.Brief case of the prosecution:

The case of the prosecution is that PW 1 was working in AKS Alloys Private Limited, as office boy doing the work of collection of money and on 4.3.2005 at around 8.30 PM, he collected a sum of Rs.11,14,094/- from Kanchi Steels situated at Sembudass Street and kept the money in a cloth bag in the front box of the Scooter bearing Number 3296 owned by the company and when he was heading towards his office situated at Tandiarpur at around 9.00 PM, when he was on the Royapuram old bridge, a motorcycle Suzuki Max 100 and an Auto TN 20 U 1072 intercepted and six persons, who came in those vehicles threatened him with sword and knife and attacked him with their hands and PW1

sustained injury on his forehead and the accused sprinkled chili powder on his eyes and robbed his Scooter with money a wayfarer helped him to wash his face and then he informed his owner about the robber and his owner came to the occurrence place and gave complaint to the police station. At 9.05 PM, PW 9 SI of Police attached with N1 Royapuram Police Station was informed by a wayfarer about four persons attacking a person in the road and PW 9 informed through his VHF to control room about the occurrence. PW 10 SI of Police attached to control room received information in VHF from PW 9 and transmitted the information and altered the Beat Police. At about 9.15 PM PW 11 Inspector of Police H1 Washermenpet Police Station (L&O) got the information in VHF about the auto fleeing after committing robbery and apprehended Auto and secured A4 and A5, recovered knife MO1 and informed control room. FIR was registered in Crime Number 470 of 2005 on the file of the N1 Royapuram Police Station under Section 397 of IPC at about 9.45 PM. The complainant marked as Exhibit P1 and FIR was marked as Exhibit P8. PW 17 Inspector of Police went to the scene of occurrence and in the presence of witnesses PW 16 and Nithyanandam prepared observation mahazar marked as Exhibit P7 and rough sketch marked as Exhibit P9. At 10.00 PM, PW 11 handed over the accused and auto M.O. 1 to PW 17 and he arrested A4 and A5 in the presence of witnesses PW 12 and one Dhanaraj. During the course of investigation A4 and A5 gave confession statements. On the basis of confession given by A4 knife was recovered. The admitted portion of confession of A4 marked as Exhibit P10. On the basis of confession of A5 Auto bearing number TN 20 U 1072 was secured in the presence of witnesses, PW 13 and Dhanraj. The admitted portion of confession of A5 was marked as Exhibit P11. The auto was seized under mahazar Exhibit P12. The accused A4 and A5 identified A3 and he was arrested. A3 gave confession in the presence of PW 12 and Dhanraj. The admitted portion of confession of A3 marked as Exhibit P14. On the basis of confession of A3 Aruval was seized at his house and it was marked as M.O.2 under mahazar Exhibit P15 and seized Rs.1 Lakh under mahazar Exhibit P16. The above said accused identified A2 and he was arrested in the presence of witnesses PW 12 and Dhanaraj. On the basis of confession of A2, Rs.9,04,094/- and a scooter was seized from his house under mahazar Exhibit P17 and P18. At about 4.00 AM, the above said accused identified A1 in the presence of the above said witnesses. On the basis of his confession, Rs.60,000/- cash and motorcycle was seized under mahazar Exhibit P19 and Exhibit P20. The motorcycle was marked as M.O.5. Thereafter, the above accused identified A6 and he was arrested. On the basis of his confession, Rs.50,000/- cash was seized under mahazar Exhibit P21. At about 8.00 AM, all the accused were arrested and the seized properties were brought to the Police Station and kept in custody. PW1 was sent to hospital for treatment and his torn T.Shirt was seized. During the course of investigation, PW17

recorded statement of all the witnesses and produced the seized properties before the Learned XVI Metropolitan Magistrate. On 15.3.2015 PW 17 gave requisition to CMM to conduct identification parade and on 1.4.2005, the Learned XVII Metropolitan Magistrate, Saidapet conducted identification parade in Central Prison Chennai. After completing the investigation, final report was filled under Sections 341, 427, 336, 395, 506(ii) r/w 34 of IPC.

3.The case in P.R.C.No.65 of 2005 was committed to the IInd Additional Sessions Judge, Chennai and the learned trial judge framed 3 charges under sections 341, 395 r/w 397 and 506(ii) of IPC. During trial, the prosecution examined PWs 1 to PW 17 and marked Exhibits P1 to P24 and M.Os. 1 to 7. The accused denied the statement of the witnesses under Section 313 of Cr.P.C. No witness was examined on the side of accused.

4.On completion of the trial, the learned trial judge convicted the appellants/accused A1 to A6 under section 341, 395, r/w 397, 506(2) IPC and sentenced them to undergo seven years rigorous imprisonment for the offence under section 395 r/w 397 of IPC and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for two months, to undergo one year Rigorous Imprisonment for the offence under section 506(ii) of IPC and to pay a fine of Rs.500/- in default to undergo two months simple imprisonment and imposed fine of Rs.200/- for the offence under section 341 of IPC in default to undergo one week simple imprisonment.

5.Aggrieved over the same, the appellant/accused Nos.1, 3 to 6 filed criminal appeal in C.A.No.556 of 2008 before this Hon'ble Court and the appellant /accused No.2 filed separate criminal appeal in C.A.No.568 of 2008. During the pendency of the criminal appeals, accused No.1 Charlesraj died.

6.Rival Submissions:

The learned counsels for the appellants submit that the Lower Court ought to have disbelieved the evidences of PWs1 to PW17 and rejected the Exhibits P1 to P14 and acquitted the appellants.

7.The learned counsels for the appellants submit that the Lower Court ought to have acquitted the appellants because of the contrary evidence of PW1 to PW3.

8.The learned counsels for the appellants submit that the Lower Court ought to have rejected the evidence of M.O.1 to M.O.17 and acquitted the appellants.

9.The learned counsels for the appellants submit that the Lower Court ought to have acquitted the appellants because according to Exhibit P8 to Exhibit P15 one lakh rupees was seized from the house of the A3 and as per Exhibit P17 Rs.9 Lakh four thousand ninety four rupees was seized from A2 and according to Exhibit P19, Rs.60,000/- was seized from A1 and according to Exhibit P2 Rs.50,000/- from A6 whereas according to PW1 to PW 3 the entire amount was recovered at one stroke and all the accused were arrested and where kept at Tiruvettriur Police Station on 4.3.2005.

10.The learned counsels for the appellants submit that the lower Court ought to have rejected the evidence of Indentification parade because all the accused have been identified at the police station before the arrest.

11.The learned counsels for the appellants submit that the lower Court ought to have acquitted the appellant because the PW 1 deliberately improved his version after unexplained delay.

12.The learned counsels for the appellants submit that the Lower Court ought to have acquitted the appellants because it is absolutely not possible for the appellants/accused to reach at 9 PM on 4.3.2005 from scene of occurrence namely Royapuram over bridge and the place where they have been arrested within the distance of 0.25 kilometer.

13.The learned counsels for the appellants submit that the scene of occurrence was commenced at 8.30 PM on 4.3.2005 and the accused were arrested on the same day at 9.05 PM by PW 10 within the distance of 0.25 KM but stolen cash was recovered at various other places.

14.The learned counsels for the appellants submit that the lower Court failed to appreciate the inordinate and unexplained delay in examination of PW 1 about injuries sustained and according to PW14, PW 1 was sent for Medical examination only on 5.3.2005 at 11.30 AM.

15.The learned counsels for the appellants submit that the lower Court ought to have acquitted the appellants seized property was not described the seizer mahazar by PW 17 and the cash was produced before the Court.

16.The learned counsels for the appellants submit that the lower Court ought to have rejected the identification parade because he admitted that he identified the accused at the police station.

17.The learned counsels for the appellants submit that the appreciation of evidence at paragraph 20 is illegal and unsustainable and not known to the criminal jurisprudence.

18.The learned counsel for the respondent supported the conviction and sentence imposed against the appellants and sought for dismissal of the appeals.

19.I heard Dr.G.Krishnamurthy, learned counsel for the appellant in Crl.A.No.556 of 2008, Mr.M.Deivanandam, learned counsel for the appellant in Crl.A.No.568 of 2008 and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

20.Whether the persons who have committed dacoity are the appellants/accused or not is the crucial question to be answered. The learned Sessions Judge has accepted the evidence tendered by the prosecution against all the 6 accused and has convicted all the accused under Section 395 r/w 397 of the Indian Penal Code.

21.I wish to emphasise that in most of the cases where an offender obtains a property during theft and which the victim or witnesses try to catch him the offender tries to run away and if armed with a weapon assaults them, both the facets namely:-

(a) in attempting to carry away property obtained by theft the offender causing hurt to the person who is trying to foil his attempt; and

(b) the normal instinct of self-preservation on account of which the offender tries to run away and foil the bid of the person who endeavours to thwart it by assaulting the said person, may co-exist.

22. There can be no quarrel that knife is a deadly weapon within the ambit of expression "deadly weapon" as used in Section 397 of I.P.C .

23. It is significant to point out that Section 397 of I.P.C. only provides that if the offender while committing robbery or dacoity is armed or uses a deadly weapon etc. he shall not be awarded a sentence of less than seven years R.I. It deals with robbery/dacoity of a more serious nature than that referred to in Sections 394 and 395 of I.P.C. respectively.

24. In the case of dacoity or robbery, when the persons are unknown to the witnesses, identification of the accused is a key issue and evidence tendered by the eye witnesses is the most material evidence. All the eye witnesses in the present case have stated that at the relevant time, the persons who committed dacoity, neither put any mask nor covered their faces in any manner. The incident had taken place in the night at 8.30 pm. It appears that the incident of dacoity occurred nearly for 8 to 10 minutes and thus, they had an opportunity to see the faces of the offenders. Keeping these circumstances in the background, the evidence of all the eye witnesses is to be assessed.

25. The eye witnesses in this case are PW1, PW4, PW5, PW7 and PW8 to the above said occurrence. PW5, PW 6 and PW7 turned hostile. PW1 in his chief examination neither spoken about A2 nor identified A2 in the Court. PW4 neither identified A2 in the Court nor spoke about A2 in his chief examination. PW4 identified A6 as motorcycle rider and spoke about the pillion rider attacking PW1 and narrated about the incident and helped PW1 in washing his face. PW8 identified A1 and spoke about the presence of A1 in the scene of crime and spoke about the injury sustained by PW1 and PW4 helping PW1 to wash his face.

26. ARREST OF A1 TO A6 NOT PROVED:

A4 and A5 were secured by PW 11 during vehicle check and were handed over to PW 17 who arrested the accused in the presence of PW12. Since PW 12 turned hostile the arrest of all the accused was not proved beyond reasonable doubt.

27. CONFESSION OF A1 to A6 NOT PROVED

On the basis of confession A1, A2, A3, A6 were arrested and M.O's used in the commission of offence were recovered and the robbed money a sum of Rs.11,14,094/- were recovered from A1, A2,

A3, A6 in the presence of PW 12. Since PW 12 turned hostile, the confession leading to recovery was not proved beyond reasonable doubt.

28. IDENTIFICATION PARADE IS FARCE:

The identification parade was conducted by PW15 the XVII Metropolitan Magistrate Saidapet, Chennai.

In the identification parade, PW1 identified all the accused. But when the Learned Magistrate asked all the accused whether they wish to say anything about identification parade, all the accused informed the Learned Magistrate that they were shown to PW1 after their arrest on the next day.

A2 has specifically informed the Learned Magistrate that when he was kept in Royapuram Police Station, his photograph was taken in the presence of PW1.

29. From the statement of all the accused before the Learned Magistrate, who conducted identification parade, the identification of accused by PW1 in the parade and in the Court cannot be relied for convicting them in the above case. As stated above, PW 1 neither identified A2 nor spoke about A2 in the chief examination during trial. None of the eye witnesses neither spoke about A2 nor identified A2 in their chief examination during trial. Further in the cross examination of PW 1 he has very clearly stated that at 11.00 AM on 6.3.2005 at N1 Royapuram Police Station, he has seen all the six accused. Therefore, the identification of the accused in the identification parade is meaningless.

30. With all these flaws, infirmities and inconsistencies in the case of the prosecution in store, now the question is, would it be safe to sustain the conviction of these appellants/accused? The answer is an emphatic no. It is not as though there were paucity of materials collected during investigation for the purpose of proving the guilt of the appellants/accused. As I have elaborated supra, the records would only go to show that the materials collected during investigation were not properly brought on record by way of evidence.

31. In the result:

(a) both the Criminal Appeals are allowed and the conviction and sentence imposed by the learned Assistant Sessions Judge, Chennai in S.C.No.315 of 2006 dated 22.07.2008 against all the accused is set aside;

(b) the appellants/accused are acquitted from all the charges;

(c) the bail bond, if any, executed by them shall stand cancelled and the fine amount, if any paid by the appellants/accused shall be refunded to them.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

- 1) The Metropolitan Magistrate,
No.XVI, George Town, Chennai.
- 2) The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3) The II Additional Sessions Judge,
Chennai.
- 4) The Superintendent,
Central Prison, Puzhal, Chennai.
- 5) The Inspector of Police,
N-1, Royapuram Police Station,
Chennai.
- 6) The District Collector,
District Magistrate,
Chennai.
- 7) The Director General of Police,
Mylapore, Chennai - 4.
- 8) The Public Prosecutor,
High Court, Madras.
- 9) The Section Officer,
Criminal Section - Records,
High Court, Madras.

+1 cc to Mr.M.Deivanandam, Advocate, in CC S.R.No.4139

judgment made in
Criminal Appeal Nos.556 & 568 of 2008

BR(CO)
SSM(05/03/2019)