

Bail Slip

The Appellant/Accused No.1 & 2 namely Murthy @ Karunamurthy S/o.Karuppusamy, aged 27 years and 2.Muthukumar S/o.Subbain, aged 26 years were directed to be released on bail vide order dated 09/07/2009 made in MP.No.1 of 2009 in CrI.A.No.207 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.207 of 2009

1.Murthy @ Karunamurthy
2.Muthukumar

Appellants/Accused 1 & 2

Vs

State by Inspector of Police
Perumanallur Police Station, Coimbatore

Respondent

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 16.02.2007, made in SC.No.170 of 2006, by the Additional Sessions Judge, FTC NO.4, Coimbatore at Tiruppur.

For Appellants : Ms.Jayasri Baskar

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 16.02.2007, made in SC.No.170 of 2006, by the Additional Sessions Judge, FTC NO.4, Coimbatore at Tiruppur, convicting and sentencing each of the Appellants, (a) for the offence under Section 457 of IPC to undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/- each, in default to undergo three months Rigorous Imprisonment, (b) for the offence under Section 392 of IPC to undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/- each, in default to undergo three months Rigorous Imprisonment and (c) for the offence under Section 397 read with 34 of IPC, to undergo seven years Rigorous Imprisonment and ordering the

sentences to run concurrently.

2. There are three accused persons/A1 to A3 in this case and the Appellants herein are A1 and A2 and all of them were convicted by the impugned judgement of conviction and sentence. A3, Ramesh has filed a separate appeal in CA.No.497 of 2007, against the conviction and sentence imposed on him, by the impugned judgement and since A3 had undergone the entire period of sentence and out of prison, the said CA.No.497 of 2007 was dismissed, on 30.01.2012, as infructuous.

3. The case of the Prosecution, in a nutshell, is that there are three accused persons, namely, Murthy @ Karunamurthy/A1, Muthukumar/A2 and Ramesh/A3. On 27.12.1999 at about 7.45 p.m. with an intention to commit robbery, A1 to A3, armed with stick and knife, entered into the house of PW.1. A3 stood outside the house and A1 and A2 went inside the house and intimidated PW.1 and PW.2, who is the relative of PW.1, and robbed 2 ½ sovereigns of chain, ¾ sovereign of 2 pairs of ear stud from PW.1 and PW.2 and a sum of Rs.2,500/- from the house of PW.1. Hence, on the complaint, Ex.P1 given by PW.1, the Respondent Police, after investigation, has laid a charge sheet, against the Appellants/ accused under Sections 457, 392 and 397 read with 34 of IPC.

4. The case was taken on file in SC.No.170 of 2006, by the Additional Sessions Judge, FTC NO.4, Coimbatore at Tiruppur, Coimbatore and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.12 and also marked Exs.P1 to P8 and Mos.1 and 2.

5. PW.1 gave the complaint, Ex.P1. PW.2 is the relative of PW.1. PW.3 is a resident in the place of occurrence. PW.4 is the neighbour of PW.1. PW.5 is also a resident in the place of occurrence. PW.6 is also a resident in the place of occurrence. PW.7 is a resident of S.V.Colony, Tiruppur. PW.8 is a resident of Pandian Nagar, Tiruppur. PW.9 is the Sub Inspector of Police, who on receipt of Ex.P1, registered a case in Cr.No.318 of 1999 under Section 392 of IPC and prepared the printed First Information Report under Ex.P6 and sent the same to the Higher Officials. PW.10 is the Jewel Shop Owner, who bought the robbed chain from A2. PW.11 is the Inspector of Police, Annur Police Station, who conducted further investigation in Cr.No.231 of 2000 under Sections 457 and 380 of IPC and sent the case papers to Perumanallur Police Station. PW.12 is the Inspector of Police, Perumanallur Police Station, who conducted further investigation and filed the final report on 24.11.2000 against the accused under Section 457, 392 and 397 read with 34 of IPC.

6. Ex.P1, dated 27.12.1999 is the complaint, given by PW.1. Ex.P2, dated 11.9.2000 is the admissible portion of the confession of A1. Ex.P3, dated 11.9.2000 is the copy of the observation mahazar, for having seized MO.2. Ex.P4, dated

25.10.2000 is the admissible portion of the confession of A2. Ex.P5, dated 25.10.2000, is the observation mahazar, for having seized MO.1. Ex.P6, dated 27.12.1999, is the printed First Information Report in Cr.No.318 of 1999. Ex.P7, dated 27.12.1999 is the observation mahazar and Ex.P8 dated 27.12.1999 is the rough sketch. MO.1 is the piece gold chain, weighing 08.00 gm. MO.2 is the one pair of ear stud, weighing 04.00 gm.

7. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused have come with the version of total denial and stated that they has been falsely implicated in this case.

8. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

9. This court heard the submissions of the learned counsel on either side.

10. The learned counsel for the Appellant would submit that the Prosecution has not proved the charges against the accused, by cogent evidence and that though the alleged occurrence was said to have happened on 27.12.1999, a case in Cr.No.231 of 2000 was registered for the offence under Sections 457 and 380 of IPC on 11.8.2000 and thereafter, on 25.10.2000, the Appellants were arrested on PT Warrant. He would further submit that admittedly, though the Appellants/A1 and A2 were absolute strangers to the witnesses, the Respondent did not take any steps to conduct a test identification parade, whereas they were shown to the accused at the Police Station and that while taking into consideration the evidence of PW.1 and PW.2, there is no clarity as to which Appellant used which weapon and none of the witnesses have stated that the Appellants had threatened them before the commission of the offence or that they had caused any grievous hurt to the witnesses. He would further submit that for convicting the accused for the offence under Section 397 of IPC, the Prosecution should prove the ingredients of the offence, namely, the accused had committed robbery and while committing the robbery, the accused used a deadly weapon to cause grievous hurt to any person or attempted to cause death of grievous injury to any person.

11. The learned counsel for the Appellants would further submit that though it is the categoric case of the Prosecution that only two persons entered into the house and one person was waiting outside the outside, watching the movement, PW.1 and PW.2 have spoken as if three persons entered into the house and committed the offence and thereby, creating a great doubt in the case of the Prosecution. He would further submit that the recovery itself is doubtful since PW.1 has stated that

the chain, which was snatched from her, was three sovereigns, whereas the properties, which was produced before the Trial Court was one sovereign and moreover, the ear studs, which were said to have been taken away from PW.2, were not recovered by the Respondent Police and that the alleged weapons were also not recovered after arrest of the Appellants, thereby causing a doubt in the case of the Prosecution and in view of such infirmities in the case of the Prosecution, the Appellants are entitled for acquittal.

12. The learned Additional Public Prosecutor for the Respondent would submit that the Appellants were rightly identified by the witnesses in the Court and would further submit that after arrest of the Appellants, they were identified by the witness at the Police Station and the witnesses have affirmed that the Appellants are the persons who were involved in the crime.

13. The learned Additional Public Prosecutor would further submit that the witnesses have identified the accused before the Court and there is nothing wrong in the witnesses identifying them for the first time in the Court, however, he would fairly submit that the none of the witnesses were injured and even according to the evidence, at the time of the offence, the witnesses have not stated that an attempt was made to cause injury or death to them, however, while running away from the place of occurrence, the Appellants/ accused have threatened the witnesses and hence, the Trial Court was right and justified in convicting and sentencing the Appellants.

14. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

15. The perusal of the entire records shows that the witnesses have identified the Appellants/ accused. It is the evidence of PW.1 that while the Appellants were running out of the house, after the occurrence, they have threatened her. However, her evidence is not clear as to which Appellant used the weapon and further there is no clarity as to the weapon used. Further, the weapons have not been recovered and identified.

16. Further, PW.3 has identified only A3, who was standing outside the house. PW.4, a neighbour is said to have seen the accused while they were going out. PW.5 has corroborated for having known about the incident and he has attested the observation mahazar. The evidence of PW.6 is also not clear as to the identity of the accused and the weapons said to have been used by them.

17. The other witnesses are PW.7 and PW.8, regarding arrest, recovery and confession. PW.9 is the Sub Inspector of Police, who on receipt of Ex.P1, registered the First Information Report under Ex.P6. PW.10 is the Jewellery Shop

Owner, from whom MO.1, chain was said to have been recovered. PW.11 is the Inspector of Police, Annur Police Station, who had originally arrested the accused, in Sevur Police Station, in Cr.No.231 of 2000. PW.12 is the Inspector of Police, Perumanallur Police Station, who conducted further investigation and filed the final report.

18. While analysing the overall evidence, this Court finds no material to suggest that the accused had committed offence under Section 397 read with 34 of IPC and hence, conviction and sentence under Section 397 read with 34 of IPC is liable to be set aside. However, the witnesses have stated about the accused entering into the house and committing the offence of robbery of their jewels. Hence, the conviction and sentence under Sections 457 and 392 of IPC is liable to be confirmed.

19. In the result, this criminal appeal is allowed in part. The impugned judgement of conviction and sentence under Section 397 read with 34 of IPC against the Appellants/A1 and A2 is set aside, however, the conviction of the Appellants/A1 and A2 under Sections 457 and 392 of IPC are confirmed and the Appellants/A1 and A2 are convicted and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.500/- each for the offence under Sections 457 and 392 of IPC, in default to undergo three months Simple Imprisonment. The period already undergone is directed to be set off.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.The Judicial Magistrate,
Tiruppur.

2.The Chief Judicial Magistrate,
Coimbatore.

3.The Additional District and Sessions Judge,
Fast Track Court No.4,
Coimbatore at Tiruppur.

4.The Superintendent,
Central Prison,
Coimbatore

5.The Inspector of Police, Perumanallur Police Station,
Coimbatore

6.The Public Prosecutor, High Court, Madras

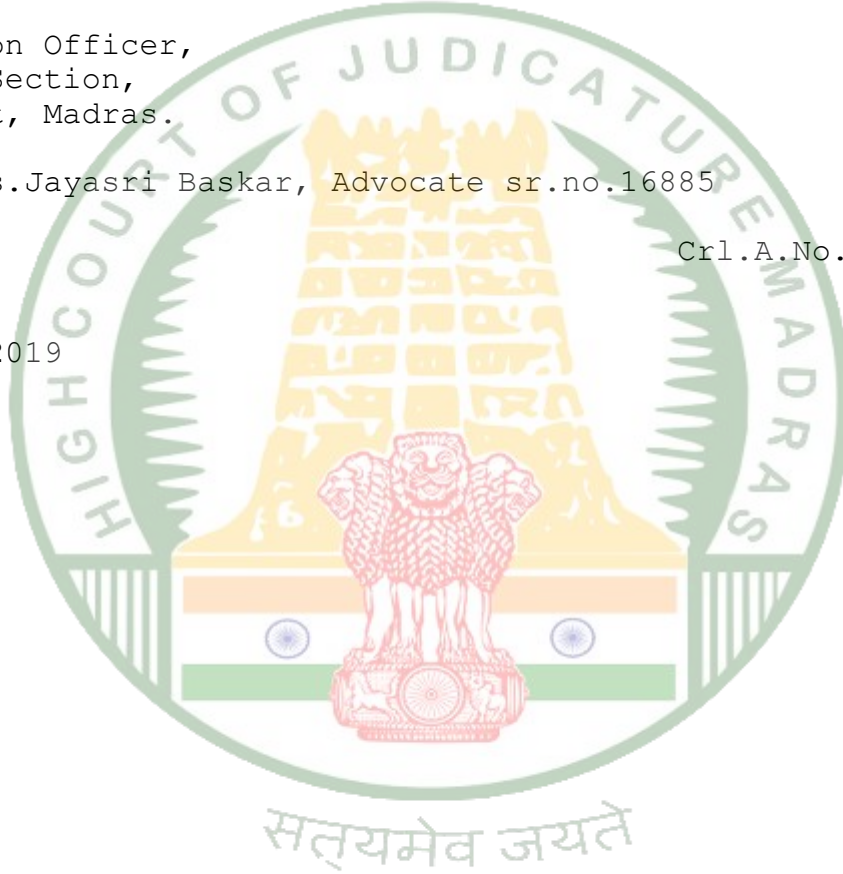
copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Ms.Jayasri Baskar, Advocate sr.no.16885

Crl.A.No.207 of 2019

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