

BAIL SLIP

The Appellants 1.Jagadeesan @ Kumar @ Annachi, S/o. Sudalaimani Nadar, (A-1), and 2. Senthil Kumar, S/o.Velusamy, (A-2) were directed to be released on bail as per the orders of this Court dated 27.08.2010 in CrI.M.P.No.1 of 2010 and 14.07.2011 in CrI.M.P. No.1 of 2011 in CrI.A.No.584 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No. 584 of 2009

1.Jagadeesan @ Kumar @ Annachi
2.Senthil Kumar
3.Saravanan @Sakthi Saravanan ..Appellants /Accused 1 to 3

/Vs/

State rep. By
Inspector of Police
Palladam Police Station
Coimbatore District.
Crime No.989 of 2007. ..Respondent/Complainant

PRAYER: Criminal Appeal filed under sections 374 (2) of the Criminal Procedure Code, against the Judgment dated 05.08.2009 made in S.C.No.252 of 2008 on the file of the Additional Sessions Court (Fast Track Court No.5), Coimbatore @ Tiruppur.

For Appellants : Mr.V.Paarthiban
Amicus Curiae

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

J U D G M E N T

This appeal has been filed against the Judgement and conviction passed by the Additional Sessions Court (Fast Track Court No.5), Coimbatore @ Tiruppur in S.C.No.252 of 2008 dated 05.08.2009 wherein the trial Judge found the 1st appellant/1st

accused guilty for offence under Section 392 r/w 397 IPC and sentenced him to undergo Rigorous Imprisonment for 7 years and under Section 506 (ii) IPC and sentenced to undergo Rigorous Imprisonment for 2 years and directed both the sentences should run concurrently and found the 2nd and 3rd appellants/2nd and 3rd accused guilty for offence under Section 392 IPC and sentenced them to undergo Rigorous Imprisonment for 5 years each.

2.The case of the prosecution in brief is that, on 24.12.2007 at 12.30 hours, when P.W.4 was standing on the road side, near Mahalakshmi Bakery, Arulpuram, accused persons had come in a motor cycle bearing No.TN 38 F 0717, and the 1st accused by brandishing a deadly weapon knife threatened and demanded money and when P.W.4 had stated that he does not have money, the 2nd and 3rd accused have caught hold of him and 2nd accused had taken away Rs.300/- and Nokia watch from him and when P.W.4 had raised an alarm, immediately public had come near that place and at that time the 1st accused had threatened the public stating that if anyone comes near them they will be done to death. Against which, P.W.4 lodged a complaint before the respondent police which was registered Crime No.989 of 2007 for the offences punishable under Sections 392 r/w 397 and 506(ii) IPC against the A1 and under Section 392 IPC against A2 and A3.

3.Final report was filed before the learned Judicial Magistrate, Palladam, and copies of the documents relied on by the prosecution were furnished to the accused under Section 207 Cr.P.C., by the learned Magistrate and thereafter finding that the offences were to be tried by a Court of Sessions and had committed the case to Principal District Court, Coimbatore and from there it was made over to the Additional Sessions Court (Fast Track Court No.5), Coimbatore @ Tiruppur, for trial.

4.On appearance of the appellants/accused, the substances of the offences were put before the accused and they were questioned. They denied the offences and sought for trial. Thereafter, charges under Sections 392, 392 r/w 397 and 506(ii) IPC were framed, read over and explained to the accused on Tamil. The accused pleaded "not guilty".

5.In order to prove the guilt of the accused, prosecution had examined 7 witnesses, P.W's.1 to 7 and during the course of their examination, Exhibits. P.1 to 7 were filed and Material Objects M.O's.1 and 4 were marked. On the side of the defence D.W.1 was examined and Exs.D. 1 to 3 were marked.

6.After questioning the appellants/accused under Section 313 Cr.P.C., and after hearing both sides and perusing the oral and documentary evidences adduced, the Additional Sessions Court (Fast Track Court No.5) Coimbatore @ Tiruppur, convicted the appellants/accused for the offences under sections 392, 392 r/w 397 and 506(ii) IPC and sentenced them as stated above.

Challenging the said conviction and sentence, the appellants/accused had preferred the present criminal appeal.

7. At the outset learned counsel for the appellants would submit that the reading of the First Information Report would ex facie show that it is a case foisted for the purpose of detaining the petitioners under the Act 14 of 1984. He would submit apart from that there are several contradictions and infirmities in the evidences in the case creating doubt on the prosecution and thereby would submit that the trial Court erred in convicting the appellants. He would submit that as per the evidence of P.W.4, he had stated that at around 12.30 pm, after the said occurrence he went to the police station and gave the complaint and that afterwards he has gone back to his home. Thereafter, on the same day around 5.30 pm., he went to the police station and there he had seen the accused persons in custody. Whereas, it is contrary to the statement of P.W.7, who has stated that the accused were arrested during the vehicle check up and at that time P.W.4 also identified the accused to him. He would further submit that it is highly strange that though, P.W.4 stated that he knows only the 1st accused and he does not know the other accused persons, whereas he has given the names of all the three accused persons, at the time of giving complaint, creating a doubt with regard to the initial registration of the case. Further, it is the categorical evidence of P.W.7 that the accused were arrested in the presence of P.W.4, 5 and one Balasubramaniam and the accused persons were identified by P.W.4. But the said Balasubramaniam has not been examined as witness before the trial Court. Further, P.W.5 is a common witness in the connected cases C.C.Nos.13 of 2008 and 90 of 2008, pending on the files of the learned Judicial Magistrate, Ooty, and learned Judicial Magistrate, Kothagiri, registered by the respondent police against the appellants. Strangely, the evidence of P.W.5 is self contradictory with each other thereby creating doubt on the prosecution case with regard to arrest and recovery in the present case. He would further submit that in order to prove that evidence and materials regarding arrest, recovery and confession are fabricated and concocted, the appellants have marked the depositions given by the P.W.5, in various cases viz., C.C.Nos.13 of 2008 and 90 of 2008 and the statement recorded under Section 161 (3) Cr.P.C., as defence documents, viz., Exs.D.1 to 3. He would also submit that the evidence of P.W.7 cannot be believed that since, it is the specific case of P.W.4, that he had seen the appellants on the same day at the station around 6.00 pm.,. He would further submit that P.Ws.1, 2 and 3 have not spoken anything about the identity of the accused persons and no Test Identification Parade had been conducted to prove that the appellants/accused were the persons involved in the said occurrence, which creates doubt on the prosecution case. Though, it has been stated in

the FIR, that traffic was paralysed, none of the witnesses have spoken about the same and nobody had deposed what had happened on the particular day. He would once again reiterate and submit that on a bare reading of the FIR, it is clear that it is a case foisted for the purpose of invoking the provisions of Act 14 of 1984 against the appellants/accused. He would further submit that the learned Judicial Magistrates disbelieving the evidence of P.W.5 have acquitted the appellants in C.C.No.13 of 2008 and C.C.No.90 of 2008.

8.The learned Additional Public Prosecutor appearing for the respondent would submit that P.W.4 has specifically spoken about the presence of the accused persons at the scene of occurrence and that he has also spoken about the identity of the accused 2 and 3 after gathering information regarding their names from other witnesses. P.W.7, the Investigating Officer has clearly deposed the manner in which he had arrested the accused. All the prosecution witnesses have corroborated with each other. Hence, the prosecution has proved the case beyond all reasonable doubt and that the Criminal Appeal may be dismissed.

9.Heard the learned counsel appearing for the appellants/accused and Mr.K.Prabakar, learned Additional Public Prosecutor appearing for the state and carefully perused the materials on record and the judgement of the court below.

10. I have given 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.

11.This Court is able to see that P.W.5 is a stock witness, he is a common witness in this case and also in C.C.Nos.13 of 2008 and 90 of 2008, pending on the files of the learned Judicial Magistrate, Ooty, and learned Judicial Magistrate, Kothagiri, registered against the appellants. With regard to arrest and recovery, his evidence is totally self contradictory in nature and thereby creating suspicion in the present case with regard to arrest, recovery and confession. Further, though it is the case of the prosecution that the traffic was paralysed and the shop keepers downed their shutters, no evidence has been let in to prove the same. Further, the 2nd and 3rd appellants were stated to be strangers to the witnesses, the respondent had not taken any steps to conduct the Test Identification Parade on them to prove that they are the actual accused. No independent witness from the local area have been examined. On overall reading of the FIR would go to show that it is a stereo typed FIR in the cases which are registered for the purpose of showing that there was infraction of public order, leading to invoking the Act 14 of 1984. As stated above, there are also other material contradictions in the prosecution with regard to arrest, recovery and confession, creating a doubt on the

prosecution case. The prosecution has not proved the case beyond all reasonable doubt.

12. In the result, this Criminal Appeal is allowed. The impugned Judgement of conviction and sentence passed by the Additional Sessions Court (Fast Track Court No.5), Coimbatore @ Tiruppur in in S.C.No.252 of 2008 dated 05.08.2009 is set aside. The appellants are acquitted of the charges levelled against them. Bail bond if any executed by the appellants shall stand cancelled and the fine amount if any paid by the appellants shall be refunded to them.

Jer

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Sessions Judge
(Fast Track Court No.5),
Coimbatore @ Tiruppur

2. The Inspector of Police
Palladam Police Station
Coimbatore District.
Crime No.989 of 2007.

3. The Section Officer
Criminal Section (Records),
High Court of Madras.

4. The Public Prosecutor
High Court of Madras.

5. The Superintendent,
Central Prison,
Coimbatore.

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Kak(30/05/2019)