

Bail Slip

The Appellant herein/Accused, namely 1. Prakash @ Gunduprakash (A1) and 2. Siva (A3) were directed to be released on bail as per order of this Court dated 25.02.2011 made in Crl MP.NO.1/11 IN CRL A.NO.793/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.A.No.793 of 2009

1. Prakash @ Gunduprakash
2. Siva ... Appellants /A1 & A3

Vs

State by the Inspector of Police,
Anuppurpalayam Police Station,
Coimbatore ... Respondent/Complainant

Prayer:- This Criminal Appeal is filed, under Section 374 (2) of the Code of Criminal Procedure, against the judgement of conviction and sentence, dated 19.11.2009, made in SC.No.26 of 2009, by the Additional District and Sessions Judge, (FTC-V) Coimbatore at Tirupur.

For Appellants: Mr.S.N.Arun Kumar-Amicus Curiae

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

1. This Criminal Appeal has been filed, against the judgement of conviction and sentence, dated 19.11.2009, made in SC.No.26 of 2009, by the Additional District and Sessions Judge, (FTC-V) Coimbatore at Tirupur, (a) convicting and sentencing the first Appellant/A1, for the offences under Sections 120(B), 392, 394 read with 120(B) of IPC, to undergo Rigorous Imprisonment for seven years and (b) convicting and sentencing the second Appellant/A3, for the offences under Sections 120(B), 392, 394 and 392 read with 397 of IPC, to undergo Rigorous Imprisonment for seven years and ordering the sentences to run concurrently.

2. There are three accused persons in this case. The Appellants herein are A1 and A3 respectively. The Appellants/A1 and A3 were charge sheeted for the offences under Sections 120B, 393, 394, 392 read with 397 of IPC, alleging that the Appellants/A1 to A3 and A2 entered into a criminal conspiracy on 20.04.2006 to commit theft of the salary amount carried by PW.1 and PW.2, by using deadly weapon and that in pursuance of

- such a conspiracy, on 29.04.2006, at about 4.45 p.m., when PW.1 and PW.2 were carrying a cash of Rs.38,000/- in a Two Wheeler, namely, Bajaj M-80, bearing registration No.TN-39-W-2638, opposite to VGV.Garden, A1 and A3 waylaid them in another Yamaha Motor Cycle and that the Appellant/A3 snatched the cash bag, containing Rs.38,000/- from PW.2, after causing a cut injury with an Aruval and that the Appellant/A1 facilitated the crime, by taking the Appellant/A3 as the pillion rider and then fleeing from the spot, along with the robbed cash of Rs.38,000/-. Yet another person was arrayed as A2, as he was said to have conspired with the Appellants/A1 and A3.
- 3.The final report was filed before the Judicial Magistrate I, Tiruppur, who took it on file in PRC.No.7 of 2008 and after compliance of the procedure under Section 207 of Cr.PC and having found that the case was exclusively tried by the Court of Sessions, the said Magistrate committed the case to the Additional District and Sessions Judge, FTC-V, Coimbatore, at Tirupur, who took it on file in SC.No.26 of 2009 and framed necessary charges. 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.11 and marked Exs.A1 to A10 and Mos.1 and 2.
 - 4.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 have been falsely implicated in this case.
 - 5.The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found A2 not guilty and found the Appellants/1 and A3 guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.
 - 6.This court heard the submissions of the learned counsel on either side.
 - 7.The learned counsel for the Appellants/A1 and A3 would contend that the occurrence had taken place on 29.04.2006, at 04.45 p.m. and the First Information Report was registered on the same day at 07.30 p.m. and the Appellant/A1 was arrested on 23.03.2007 and the Appellant/A3 was arrested on 07.09.2007. He would further contend that when the Trial Court has rendered a finding that there is no material to show that the accused had conspired, the Trial Court erred in convicting the accused for the offence under Section 120 (B) read with other offences.
 - 8.The learned counsel for the Appellants/A1 and A3 would further contend that it is highly strange for PW.1 identifying the Appellant/A3 after a period of one year and five months, alleging that on seeing the

Appellant/A3, standing near the bus stand, he was stated to have contacted immediately PW.10 Investigating Officer, who had conducted the investigation initially. He would submit that it is the categorical evidence of PW.1, that he had seen the Appellant/A3 near the Thannir Pandal Bus Stand, by chance and he had immediately informed PW.10, Investigating Officer and that within no time, the Appellant/A3 was arrested at the same place, which is contrary to the evidence of PW.10, who had stated that PW.1 had come to the Police Station and informed about the Appellant/A3, standing in the bus stand and thereafter, he had taken gone in a Jeep to the place, where the Appellant/A3 was stated to have been standing and that the manner of arrest of the Appellant/A1 as spoken to by PW.8 is highly strange and suspicious.

9. The learned counsel for the Appellants would contend that in respect of identity of the two wheeler, in which the Appellants/ accused stated to have come and committed the offence, the evidence is contradictory in nature and that the Appellants were arrested nearly 11 months after the occurrence and no test identification parade was conducted and no independent witnesses were examined and that the Prosecution has miserably failed to prove its case beyond all reasonable doubts and consequently, the Appellants/A1 and A3 are entitled for acquittal.
10. Per contra, the learned Additional Public Prosecutor for the Respondent would contend that though the test identification parade was not conducted, the Prosecution has proved the case beyond all reasonable doubts, by letting in valid evidence, both oral and documentary and hence, he would pray for dismissal of this Criminal Appeal.
11. I have given my careful and anxious consideration to the rival contentions put forward by learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.
12. PW.1, who was working as an Accountant at Vetrivel Tex Baniyan Company at the relevant point of time and who lodged the complaint, Ex.P1, has deposed that the Head Office of his company is situated opposite to Thirumoorthy Nethralaya Eye Hospital, Kumar Nagar, Avinasi Road, Tiruppur. On 29.04.2006, he along with one Jagananth/PW.2, took the two wheeler namely Bajaj M-80, belonging to his Baniyan Company, bearing registration No.TN 39 W 2678 and went to the Head Office, received the salary amount of Rs.38,000/- and were returning to their office. When they were nearing V.G.V Garden, at Thirumurugan Poondi at about 4.45 p.m., PW.1 noticed a red colour Yamaha two wheeler, coming from their behind. Hence, PW.1 stopped his vehicle thinking that some known

persons are following them. The pillion rider of the Yamaha Bike came near PW.2 and threatened him to give the bag, containing the cash. The accused snatched the bag and both of them fled away from the scene of occurrence. PW.1, further stated that the said Yamaha Bike did not contain any registration number except the letters "T.A.A".

13. PW.2/Jagananth, who accompanied PW.1 at the relevant point of time, has also deposed about the said occurrence in the same line as that of PW.1. PW.3/Muniyappasamy, who is the manager of the Priya Tex-Head Office would depose about the giving of cash to P.W's.1 and 2 on 29.04.2006. He had also deposed about PW.1 informing about theft of cash and upon receipt of the said information he and few some employees went to the scene of occurrence where he saw PW.1 standing.
14. PW.4/Duraikannan, is the witness to preparation of the Observation Mahazar (Ex.P2); Rough Sketch, arrest and recovery. PW.5/ Dr.Balachander, had deposed about treatment given to PW.2 on 29.04.2006 at about 5.20 p.m., and issuance of Wound Certificate (Ex.P5), wherein he had given his opinion that the injuries are of simple in nature.
15. PW.6/Angamuthu Kumar, has deposed that he is a Two-wheeler Mechanic by profession. He further deposed that A2 came to his workshop twice or thrice for getting his two wheeler repaired and that since said two wheeler was a old one, A2 had requested him to repair the vehicle for getting fitness certificate, pursuant to which PW.6 had repaired the said vehicle and also painted the vehicle with red colour, he has also written the vehicle No."T.A.A.2728". A2 did not come back to take back the vehicle. He also deposed that he is a member of the Workshop Owners Association and as per resolution of the said Association if any vehicle is not taken within time specified, then the said vehicle is to be handed over to the near by police station. He would also depose that on the request of police he had handed over the said vehicle to the police.
16. PW.7/Sivakumar, is a witness of the seizure of the two wheeler bearing registration No."T.A.A. 2718" (M.O.1) under the cover of mahazar (Ex.P7). PW.8/Subramaniam, was the Sub Inspector of Anupperpalayam Police, who, on receipt of Ex.P1, complaint on 29.04.2006, registered the case in Crime No.529 of 2006 for the offences under Section 394 IPC. He would further depose that on 23.3.2007, when he was on his routine check up at Poovarasampatti-Tirumurugan Poondi-A-Chettipalayam Junction, he saw a two wheeler coming from East to West and on seeing the police party, he attempted to escape and on enquiry the said person came forward to give a confession statement, the admissible portion of which is

marked as Ex.P6, pursuant to which, the vehicle in which he came was seized and later on, it came to light that the said vehicle was involved in Crime No.131 of 2007 for the offence under Section 379 IPC. The accused/A1 took PW.8 and other witness workshop of PW.6 and identified the Yamaha two wheeler "T.A.A. 2728" which was seized under the cover of Mahazar Ex.P7.

- 17.PW.9/Tmt. Lakshmi, was the Inspector of Police (Additional Incharge) of Tiruppur North Police Station, at the relevant point of time, who prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P9). She also examined the witnesses and recorded their statements. She forwarded the case diary to PW.10, for further investigation. PW.10/Udayakumar, Inspector of Police attached to the Anupperpalayam Police Station, on receipt of the case details from PW.9, conducted further investigation and upon receipt of information from PW.1, that A3-Sivam was standing near Thannir Pandal Bus Stand, he went to the said place along with his police party. When PW.1 identified the accused, he effected arrest of A3 at about 7.30 p.m., on 07.09.2007. The accused came forward to given a voluntary confession statement and pursuant to the admissible portion, M.O.2-Aruval was seized under the cover of mahazar Ex.P4, in the presence of witnesses. PW.11/Ganesan is the Inspector of Police, who conducted further investigation and filed the final report against the Appellants/ accused.
- 18.It is seen from the evidence of the witnesses that the occurrence had taken place on 29.04.2006, at 04.45 p.m. and the First Information Report was registered on the same day at 07.30 p.m. and the the Appellant/A1 was arrested on 23.03.2007 and the Appellant/A3 was arrested on 07.09.2007.
- 19.When there is finding by the Trial Court to the effect that there is no material to show that the accused had conspired, the conviction of the Appellants under Sections 120(B) of IPC is not sustainable.
- 20.The evidence in respect of identity of the Appellant/A3 is contradictory in nature. It is highly strange for PW.1, identifying A3 after the period of one year and five months, alleging that he was standing near the bus stand and that he has immediately stated to have contacted PW.10, the Investigation Officer who has conducted the investigation initially. It is the categorical evidence of PW.1 that he had seen A3 near Thannir Pandal Bus Stand by chance, and he had immediately informed PW.10 and that within no time, the third accused was arrested on the same place. Whereas, contrarily to such evidence of PW.1, PW.10, has deposed that PW.1 had come to the police station and informed about A3, standing in the bus stand and thereafter, he had taken a jeep and gone to the place where A3 accused

was stated to have been standing.

21. Further, there is also a grave doubt, regarding the manner of arrest of the accused by PW.8, recovery of material objects and identification of the Appellant/accused. Despite the appellants were said to have been arrested by chance, the respondent/police did not take any steps to conduct an identification parade. Further, since the accused/appellants are not known to the victim, the respondent/police ought to have conducted the test identification parade thereby, the identification of the appellants in the court by the victim for the first time become valueless. There was every chance of showing the Appellants/accused to the witnesses prior to their examination.
22. In fact, the accused are strangers to the witnesses PW.1 and PW.2 and further no evidence has been let in by the prosecution, to prove that MO.1 was used by the appellants in commission of the crime. Further, the evidence as regards recovery of weapon, is also highly doubtful. It is the admitted case of PW.10 that A3 confessed to him about the crime, but there is no evidence to show the commission of crime.
23. Even assuming that the occurrence would have occurred on 02.10.2007 and that PW.2, would have been taken to the nearest hospital, even though PW.5 is a private Doctor, the accident register pertaining to the wound certificate was not marked by the Prosecution, creating a grave suspicion about the case of the Prosecution.
24. It is settled law that to prove a criminal conspiracy, there must be evidence, direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of offence and where the factum of conspiracy is sought to be inferred from circumstances, the Prosecution has to show that those circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.
25. The Honourable Supreme Court has held in R.Venkatakrisnan Vs. CBI (2009-11-SCC-737) that the court, for the purpose of arriving at a finding as to whether the said offence of conspiracy has been committed or not, may take into consideration the circumstantial evidence and while doing so, the court must bear in mind that meeting of the minds is essential and that mere knowledge or discussion would not be sufficient.
26. Merely levelling charge of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy is not sufficient to mulct criminal liability on the Respondents. The purpose or

circumstances warranting an inference of existence of a conspiracy should be stated so as to bring the Respondents to face the trial in criminal court. A complaint should make out a prima facie case against the accused persons and one cannot have the construction of a fine superstructure without a foundation as observed in K.S.Narayanan Vs. Gopinathan (1982-Crl.LJ-1611).

27. In the case on hand, as analysed above, there is nothing in the evidence pointing out the guilt of the accused under Section 120B of IPC and to show that there was a meeting of minds amongst the Appellant/ accused to commit the offence of conspiracy.
28. The mere identification of the accused persons at the trial for the first time is from its very nature inherently of a weak character. A conviction should not be based on a vague identification. Unless the evidence is absolutely clear, it would be unsafe to convict the accused for such an offence.
29. In AIR 1982 SC 839 (Mohanlal Gangaram Gehani Vs. State of Maharashtra), it was held that when the victim did not know the accused prior to the occurrence and when the test identification parade was not held, identification of the accused for the first time in the Court is valueless and cannot be relied upon.
30. In AIR 2007 SC 1729 (Ravi @ Ravichandran Vs. State), it was held that where the manner in which occurrence took place as well as conduct of Prosecution witnesses do not lead to an inference that the accused has been properly identified, the conviction is not sustainable and the accused is at least entitled to the benefit of doubt.
31. In view of the above infirmities and in the light of the decisions cited supra, this Court is of the view that the prosecution has failed to prove its case beyond all reasonable doubts, thereby compelling this Court to give the accused the benefit of doubt, entitling them to be acquitted.
32. In the result, the Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellants are acquitted of the charges levelled against them. The bail bond, if any executed by them, shall stand cancelled and the fine amount, if any paid by them, shall be refunded to them.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

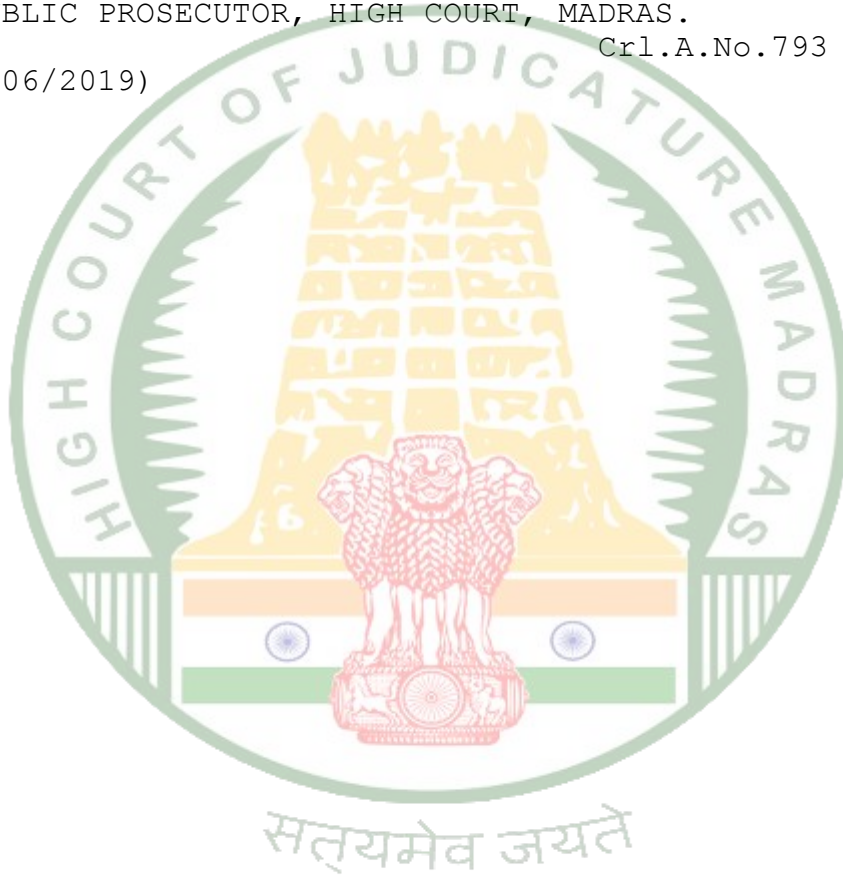
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To:

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FAST TRACK COURT NO.V, COIMBATORE AT TIRUPUR.
- 2.THE JUDICIAL MAGISTRATE NO.I, TIRUPPUR
- 3.DO THRO THE CHIEF JUDICIAL MAGISTRATE ,COIMBATORE
- 4..THE INSPECTOR POLICE, ANUPPURPALAYAM POLICE STATION, COIMBATORE
- 5.THE SUBPERINTENDENT CENTRAL PRISON,COIMBATORE
- 6.THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.

Cr1.A.No.793 of 2009

A.SK(18/06/2019)



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