

Bail Slip

The Appellant/ Sole Accused, namely Chandrasekar @ Sekar S/o.Gunasekar was directed to be released on bail as per order dated 03.01.2011 in CrI MP.NO.1/10 IN CRL A.NO.591/2010 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2010

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.591 of 2010

Chandrasekar @ Sekar

Appellant/Accused

Vs

State by Inspector of Police
Nambiyur Police Station, Erode
Crime No.183/2009
Respondent/Complainant

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 30.08.2010, made in SC.No.179 of 2009, by the Additional District Sessions Court (FTC II), Gopichettipalayam.

For Appellant : Mr.D.Baskar

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

- 1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 30.08.2010, made in SC.No.179 of 2009, by the Additional District Sessions Court (FTC II), Gopichettipalayam, convicting and sentencing the Appellant for the offence under Section 392 of IPC, to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to undergo six months Rigorous Imprisonment and for the offence under Section 328 of IPC to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to undergo Simple Imprisonment for six months and ordering the sentences to run concurrently.

2.The short facts, leading to filing of this Criminal Appeal, are as follows:-

- a) On 17.8.2009 at about 18.00 hours, while PW.1, Saraswathi was walking along Nambiyur-Sevur Road, along with PW.2, Subbulakshmi, near Vilvamarathu Karupparayam Temple at Power House Medu, the Appellant came in a Hero Honda Motorcycle, bearing Reg.No.TN 29 AC 0450 and committed robbery of gold chain, weighing 1 $\frac{3}{4}$ sovereign, to the value of Rs.15,000/- from PW.1, by snatching it from her neck, after spilling chilly powder on her face, with an intention to cause hurt to her and thereby, committed the offences punishable under Sections 392 and 328 of IPC.
 - b) The Respondent, after completing investigation, had filed the final report, before the Judicial Magistrate II, Gopichettipalayam and the case was taken up in PRC.No.183 of 2009. The copies of the case records were furnished to the accused and finding that the offences were exclusively triable by the Court of Sessions concerned, the learned Magistrate had committed the case to the Principal Sessions Judge, Erode, who had taken the case in SC.No.179 of 2009. After hearing the accused, necessary charges were framed against the Appellant/ accused, for the offences under Sections 392 and 328 of IPC. The Appellant/ accused denied the charges and sought to be tried.
 - c) On the side of the Prosecution, nine witnesses were examined and Ex.P1 to Ex.P8 were marked and three material objects, MO.1 to MO.3 were produced and marked. On the side of the defence, no oral and documentary was let in.
 - d) The Trial Court, on completion of recording evidence, had questioned the Appellant/ accused under Section 313 of Cr.PC. The accused had denied the same as false and he had stated that on 17.8.2009, due to rain, while he was sitting on the road side, after taking bath in Kodivery River, 4 to 5 persons came there and they shouted "thief, thief" and caught him and taken away the keys of his motorcycle and sent him to Police Station. The Trial Court, by the impugned judgement of conviction and sentence, had convicted the Appellant/ accused, as stated above, which is challenged in this Criminal Appeal.
- 3.This court heard the learned counsel on either side and also perused the materials placed on record.
- 4.The case of the Prosecution, as revealed from the evidence adduced before the Trial Court and as noted by the Trial Court, is as follows:-

a) PW.1 Saraswathi, who is the resident of Nambiyur

Village, had deposed that on 17.8.2009, at 6.00 p.m., while she was walking along with PW.2, Subbulakshmi, along the Nambiyur-Sevur Road, near Vilvamarathu Karupparayan Temple, the accused came in a Hero Honda Motorcycle, stopped the motorcycle and waylaid her and after spilling chilly powder over her face, snatched her gold chain and ran away and that when she raised an alarm, shouting "thief, thief", some persons came there and tried to catch the accused, but the accused ran into the forest and that she had given a complaint to the Respondent Police and the complaint was marked as Ex.P1. The chain, which had been snatched by the Appellant/ accused, was marked as MO.1 and the Motorcycle used by the Appellant/ accused was marked as MO.2

- b) PW.2, Subbulakshmi, who is the resident of Nambiyur Village, had deposed that she knew PW.1 and that on 17.8.2009, at 6.00 p.m. while she was walking along with PW.1, Saraswathi, near Vilvamarathu Karupparayan Temple, along Nambiyur to Coimbatore Road, a person, aged about 30 years, came from behind and snatched the chain worn by PW.1 and she identified the accused.
- c) PW.3, Loganathan, had deposed that one year prior to his examination, while he was proceeding to his Company at around 5.00 p.m. to 6.00 p.m., near Vilvamarathu Karupparayan Temple, he had seen the Appellant, stopping his motorcycle and coming near PW.1 and PW.2 and having snatched the chain, belonging to PW.1 and on seeing him, the Appellant/ accused ran away from the place of occurrence, leaving the motorcycle there.
- d) PW.4, Kannappan, husband of PW.1 had deposed that he was informed about the incident and he went to the place of occurrence and his son also came there and thereafter, they went to Nambiyur Police Station, along with PW.1 and gave the complaint.
- e) PW.5, Eswaramurthi, is the son of PW.1 and he had deposed that he was working as a Mechanic in the Tamil Nadu State Transport Corporation and that PW.4 is his father and PW.1 is his mother and that on 17.8.2009 at about 5.30 p.m. when he was at Nambiyur Bus Stand, he heard about somebody having stolen his mother's chain and that he rushed to the place of occurrence and brought his mother to Nambiyur Police Station at about 8.00 to 8.30 p.m. and he had written the complaint on behalf of his mother and his mother, had affixed her signature in the complaint and thereafter, he had identified the place of occurrence to the Inspector and that he and one Dhanasekar made signatures in the observation mahazar, Ex.P2, based on which, the Motorcycle M.O.2 was seized under seizure mahazar, Ex.P3.

- f) PW.6, Periasamy, had deposed that on 17.8.2009, he had heard that the gold chain of the witness, Saraswathi had been snatched and that on 18.8.2009, at about 5.30 a.m. when he was walking with one Krishnakumar, along Nambiyur Sevir Road, he had seen a group of persons and some police standing and he had also seen the accused there and that the police had seized the chilly powder and the chain from the accused and prepared the seizure mahazar, Ex.P4 and that one Krishnakumar had signed the same and the packet containing the chilly powder was marked as MO.3.
- g) PW.7, Sakthivel, Head Constable of the Nambiyur Police Station, had deposed that on 11.9.2009, he went to Dharmapuri District Palakodu and enquired about the accused and collected the details of the motorcycle, particularly, the engine number and chassis number of the motorcycle, bearing Reg.No.TN 29 TC 0450, from the Regional Transport Officer, Dharmapuri and thereafter, came to Ohm Ganapathi Finance, Erode, where the accused got finance facility for purchasing the motorcycle and later paid back the loan and got the RC Book and that PW.7 had prepared a special report and that the requisition letter issued by the Inspector to Regional Transport Officer, Dharmapuri District was marked as Ex.P5 and the endorsement made on the letter was marked as Ex.P6.
- h) PW.8, Karuppasamy, Sub Inspector of Police, Nambiyur Police Station, had deposed that on 17.8.2009, he had registered the case in Cr.No.183 of 2009, for the offence under Section 392 of IPC, based on the complaint from PW.1 and that the First Information Report was marked as Ex.P7 and thereafter, he had forwarded the original First Information Report to the Judicial Magistrate, II, Gobichettipalayam and copies to the higher officials.
- i) PW.9, Muthusamy, Inspector of Police had deposed that after registration of the case, he took up the case for investigation on 17.8.2009 at 21.15 hours and visited the place of occurrence and prepared the observation mahazar under Ex.P8 and prepared a rough sketch and seized the motorcycle bearing Reg.No.TN 29 AC 0450 written on the front side and he had prepared the observation mahazar and got the signatures from the witnesses and examined the witnesses and recorded their statements and that on 18.8.2009 at 5.30 a.m. near Nambiyur Pilliyampalayam Junction Road, he had arrested the Appellant/ accused in the presence of the witnesses, Periasamy and Krishnakumar and that he had recorded the confession statement of the Appellant/ accused, based on which, he had seized the gold chain, weighing 14 grams and a packet containing chilly powder, under the seizure mahazar, in the presence of

the witnesses, Periasamy and Krishnakumar, and got their signatures and remanded the Appellant/ accused to judicial custody and thereafter, he had given a requisition letter to the Regional Transport Officer, Dharmapuri, on 11.9.2009 through PW.7 and received the endorsement of the Regional Transport Officer, Palakodu and confirmed that the motorcycle bearing Reg.No.TN 29 AC 0450 is belonging to the accused and examined PW.7 and recorded their statements and after completing investigation, he had filed the final report for the offences under Sections 392 and 328 of IPC.

5.The learned counsel for the Appellant would submit that the Prosecution has not proved the charges against the Appellant, by cogent evidence and that the case was a fabricated and foisted one and that the Appellant was arrested on mistaken identity and that the appellant being a stranger no steps were taken by the respondent to conduct a test identification parade, as contemplated under law and that the Appellant was identified for the first time in the Court. The learned counsel would further submit that the evidence of PW.1 and PW.2 is in categorical terms to the effect that immediately after the occurrence, when they had gone to the Police Station along with PW.4 and PW.5, they had seen the accused at the Police Station and they had identified him and the jewels and only thereafter, the complaint was taken from them and the case was registered. He would further submit that if the evidence of PW.1 and PW.2 are taken into consideration, the entire case of the Prosecution with regard to the arrest, recovery and confession, has to fail and that the Trial Court, without taking into consideration the evidence of PW.1 and PW.2, had erroneously convicted the Appellant. When there is a glaring and grave discrepancy in the evidence with regard to the arrest, recovery and confession, the entire case of the Prosecution is doubtful and thereby, the Appellant is entitled to the benefit of doubt, entitling him to be acquitted and in such circumstances, he would pray that this Criminal Appeal may be allowed and the impugned judgement of conviction and sentence be set aside.

6.Per contra, the learned Additional Public Prosecutor for the Respondent would submit that the witnesses have identified the accused before the Court and that there is nothing wrong in the witnesses identifying him for the first time in the Court and that minor contradictions in the evidence of PW.1 and PW.2 cannot be given much significance when the arrest and recovery, had been proved by the evidence of PW.6, who had categorically spoken about the arrest and recovery, through Ex.P4 and as such, it cannot be stated that the impugned judgement

suffers from any infirmity and pray for dismissal of this Criminal Appeal.

7. 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.
8. On perusal of the entire evidence, it is seen that the evidence of PW.1 is crystal clear that immediately after the occurrence, her husband, PW.4 and son, PW.5, came to the place of occurrence and the Police had also come to the scene of occurrence and enquired her and that thereafter, immediately, the Police had taken the bike from the place and that she along with her husband, son and friend Subbulakshmi, who are PW.2, PW.4 and PW.5, respectively, had gone to the Police Station and that when she had gone to the Police Station, the Police had shown her chain and enquired her as to whether it belonged to her and thereafter, they had obtained the complaint from her and that they had enquired the Appellant in the presence of her and her husband.
9. Further, PW.2 had corroborated the evidence of PW.1, stating that on the same day of occurrence, the Police had enquired the Appellant/ accused and that she was informed that they had arrested the Appellant and the case had been registered and they had been asked to go away from that place.
10. On considering the evidence of PW.1 and PW.2, this Court finds that it is in categorical terms that the Appellant/ accused was stated to be arrested immediately after the occurrence, whereas the Prosecution has projected a different version, as if the Appellant/ accused was arrested on the next day early morning, that too without any information or particulars, by PW.1 and PW.2, regarding the identity of the person and thereby belying the case of the Prosecution with regard to the so called arrest, confession and recovery. In such circumstances, the explanation given by the Appellant/ accused at the time of questioning under Section 313 of Cr.PC that he was caught by some persons and taken to the Police Station, by mistaken identity, while he was taking bath against his objections, holds water. In such view of the matter, this Court is of the considered view that on this score alone, this Criminal Appeal deserves to be allowed, granting benefit of doubt in favour of the Appellant/ accused and there is no necessity or need to deal with the other grounds raised by the learned counsel for the Appellant/ accused.

11. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellant is acquitted of all the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount, if any paid by the Appellant, shall be refunded to him.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. The Additional District Sessions Judge (FTC II), Gopichettipalayam.
2. The Judicial Magistrate NO. II, Gobi chettipalayam.
3. The Chief Judicial Magistrate, Erode
4. The Superintendent, Central Prison, Coimbatore
5. The Inspector of Police, Nambiyur Police Station, Erode
6. The Public Prosecutor, High Court, Madras

+1cc to Mr. , Advocate SR.No. 49637

Crl.A.No.591 of 2010

A.SK(19/07/2019)

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