

BAIL SLIP

The Appellant/Accused viz., 1.Manoharan, S/o.Neghan, 2.Rajkumar, S/o.Chandrasekaran, the Orders of this court dated 21.12.2010, 22.12.2010 in Crl.MP.Nos.1/10 in Crl.A.Nos.647 of 2010 & 1/10 in Crl.A.Nos.769 of 2010 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A.NOS.647 AND 769 OF 2010

Manoharan

... Appellant/Accused -1
in Crl.A.No.647 of 2010

Rajkumar

... Appellant/Accused -2
in Crl.A.No.769 of 2010

Vs.

The State by Tamil Nadu
The Inspector of Police,
Law & Order, K 1 Sembium Police Station,
Sembium, Chennai - 600 011.
(Cr. No.342 of 2009)

... Respondent in both Crl.As

Common Prayer:

The Criminal Appeals filed under Section 374 (2) Cr.P.C. against the Judgment passed by the learned Additional District and Sessions Judge, Fast Track Court IV, Chennai in S.C.No.218 of 2010, dated 08.09.2010.

For Appellant in : Mr.T.Mohan for
Crl.A.No.647 of 2010
M/s.Shaikh Mehunisa

Crl.A.No.769 of 2010 Mr.V.Perarasu,
Legal Aid Counsel

For Respondent : Mr.K.Prabakar
in both Crl.As Additional Public Prosecutor

COMMON JUDGMENT

The appeals are directed against the Judgment of Conviction and Sentence dated 08.09.2010 in S.C.No.218 of 2010 by the learned Additional District and Sessions Judge, (4th Fast Track Court) Chennai wherein the 1st appellant / A1 was found guilty for offence under Section 397 of I.P.C., and the 2nd appellant / A2 was found guilty for offence under Section 394 r/w. 397 of I.P.C., and were sentenced to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- and in default to pay fine to undergo 3 years Simple Imprisonment.

2. The case of the prosecution is that the appellants/accused with an intention to snatch/rob the chain of a woman who was going alone, on 14.05.2009 at 3.00 p.m, had been waiting in Perambur Besat Road, Scout Camp Office and in pursuance of the same, taking advantage that PW1 one Nithyakalyani was walking alone, the first appellant/A1 waylaid and threatened her with a knife and snatched the gold chain, weighing 5 sovereigns and ran away from the scene of occurrence and got on to the bike with which the 2nd appellant/A2 was waiting and both of them escaped from there. On the complaint given by PW1, a case was registered by the respondent Police in Cr.No.342 of 2009 on 15.05.2009. After completion of investigation, the respondent had filed a final report before the learned Magistrate for offences under Section 394 read with 397 of I.P.C. On appearance of the appellants/Accused, they were furnished with the copies of the documents under Section 207 of Cr.P.C. and the Magistrate finding that the case was exclusively triable by the Court of sessions committed the case to the Principal Sessions Judge, Chennai. The Principal Sessions Judge after taking the case on file made over the case to the trial Judge. On appearance of the accused, the Trial Judge framed charges against the first accused/A1 for offence under Section 397 of I.P.C. and against the second accused/A2 for the offence under Section 394 r/w. 397 of I.P.C.. When the appellants / Accused were questioned, they denied the charges and sought to be tried. On the side of the prosecution, PWs1 to 6 were examined and Exs. P1 to P12 and MOs.1 to 2 were marked. No evidence was let in on the side of the defence. After completion of evidence, the accused were questioned under Section 313 of Cr.P.C. and after hearing the arguments of the counsel, the Trial Court found the accused guilty and convicted and sentenced them as stated above.

3. Taking into consideration the evidence of the prosecution witnesses PW1, Nithyakalyani/the defacto complainant, she had deposed that she knows the accused and that on 14.05.2009 after attending a funeral while she was coming back home via Carriage Station Beset Road around 3.00 p.m, the first appellant/A1

waylaid, threatened her with a knife and snatched her Gold Chain weighing 5 sovereigns and after he had snatched the chain, she had seen another person waiting with a two wheeler little away from them. She had raised alarm and when the public nearby attempted to apprehend him, he had got on to the pillion of the two wheeler and both of them fled away from the scene of occurrence. She had further deposed that the second person who drove the motor cycle was the person standing second in the Court. The knife was marked as MO1. The chain which she was wearing which was snatched by the accused was marked as MO2. Thereafter, she had gone back home and on the next day at 9.00 a.m, she had gone to the respondent Police Station and given the complaint. The complaint was marked as Ex.P1. After she had given the complaint against two persons who could be identified and she was asked to come back to the Police Station at 4 p.m. and when she returned to the Police Station, she had seen both the accused in the Police Station and on being enquired she had identified them. The Police have also shown the chain which was snatched and it was shown to her in two pieces and she identified the chain and that the chain was handed over to her at the station and that she had produced the chain in the Court.

4. PW.2 - Babu had deposed that he was working in a shop in Carriage Station Beset Road, Perambur and that P.W1 was known to her and that the accused were also known to him. On 14.05.2009, around 3.00 p.m. the accused had come in a black colour Hero Honda Motor Cycle and that P.W.1 was running behind them shouting 'catch them, catch them' and when he attempted to catch them, he was unable to catch the accused. When he enquired P.W.1., she had stated that they have snatched her chain.

5. P.W.3 Dilip kumar had deposed that on 14.05.2009 around 3.00 p.m, he had gone to the mechanic shop to take his bike which was left for repair and at that time, he had seen the appellants/accused together riding a black colour Hero Honda motorcycle and he had seen one lady running behind the motorcycle shouting that they had snatched her chain and 'catch them, catch them' and when he had attempted to stop the appellants/accused, they had escaped from the scene of occurrence.

6. P.W.4 who is stated to have attested the Observation Mahazar did not support the case of the prosecution and he had been treated as hostile.

7. P.W.5 had deposed that on 15.05.2009 around 12 p.m, while he was on the way to see his friend, he had seen a group of persons near Venus Bus stop. When he had gone near, he had seen the respondent Police enquiring the first accused/A1 Manohar and

the second accused/A2 Rajkumar and they had confessed that they had robbed the chain from a lady and while the Police was examining the second accused, he had also stated the same. The first appellant/A1 had confessed to the crime and the Police had recorded the confession statement and that he had attested the same, this signature in the confession were marked as Exs.P2 and P3. Thereafter, the respondent had taken him to Kalmandabam, Grace Garden 4th Street and the second appellant/A2 Rajkumar had identified the motorcycle and the motorcycle was recovered under the Recovery Mahazar which was marked as Ex.P4 and that he had signed in the Recovery Mahazar. Thereafter, the first accused/A1 was taken to his house at Vannarapettai from where the respondent Police recovered the gold chain which was in two pieces. Thereafter, the first accused/A1 Manohar handed over a steel knife which was recovered in a Recovery Mahazar. The knife was marked as M.O.1 and the Recovery Mahazar was marked as Ex.P5. Thereafter, he along with the accused were taken to the Police station and admitted portion of the confession statement of the accused was marked as Exs.P6 and P7. He had further deposed that the respondent examined him.

8. P.W.6 the Sub-Inspector of Police at K1, Sembiam Police Station, had deposed that on 15.05.2009 while he was in duty, P.W.1 Nithyakalyani appeared before him at 9.00a.m and given a written complaint. Based on which, he had registered the case in crime No.342/2009 for the offence under Section 397 of I.P.C and registered the FIR, which was marked as Ex.P8. Thereafter, at 9.50 a.m, he had gone to the scene of occurrence along with PW1 and prepared an Observation Mahazar in the presence of witnesses Zahir and Manikandan and the Observation Mahazar was marked as Ex.P9. Thereafter, he prepared rough sketch which was marked as Ex.P10. Around 12.00 noon, he had arrested the first appellant/A1 near Venus Bus Stop and when he enquired the first accused/A1, he had given a confession statement in the presence of witnesses Murali and Sathish and he had recorded the confession statement (Ex.P6) and thereafter at 1.00 p.m, the first accused had identified the house of the second appellant/A2 and that he had arrested the accused. When he had enquired second appellant /A2, he had given a confession statement which was recorded in the presence of witnesses Murali and Sathish. Based on the confession statement, he had identified the motorcycle used by the appellants/accused and he had recovered the motorcycle under Ex.P4 Mahazar. Thereafter, he had gone to the house of the first appellant/A1 at 1.15 p.m and in the presence of the same witnesses, he had recovered the steel knife M.O.1 and two pieces of gold chain M.O.2 under Ex.P5. Then he recovered the articles involved in Exs.P1 and P12 in Form 95 and that on the next day gone to the scene of occurrence and enquired PW1, PW2, PW3 and PW 4 and one Manikandan and they had come along with the appellants/ accused

to the Police Station. Subsequently, he had summoned PW 1 and she was asked to identify the gold chain and that she had identified the gold chain and the appellants/accused and the motorcycle used by them during the occurrence and thereafter he prepared a Remand Report and produced the appellants/accused before the Court and after completion of investigation and after getting opinion from the Assistant Public Prosecutor, has filed the final report for offence under Section 397 of I.P.C. Based on the evidence laid, the trial court has found the accused guilty and convicted them and sentenced as stated above.

9. The learned counsel for the appellants/accused assails the Judgment on the following grounds:

There are several contradictions and embellishments in the prosecution case. The appellants and the witnesses are strangers and that nothing had been stated about their identity. Though the appellants are stated to have been arrested on the next day, no steps have been taken by the respondent to conduct the test identification parade to confirm that the appellants/accused are the actual persons involved in the occurrence. The occurrence is stated to have been committed in a locality where there was several persons during noon time. There has been a great delay in the complaint being given to the Police Station and the FIR reaching the Court, more particularly, the printed FIR having reached the Court only after the arrest of the appellants/accused creating a grave doubt in the prosecution case. The manner in which the arrest is stated to be effected greater suspicion and doubt volumes in the prosecution case. The evidence with regard to the arrest of the accused is unbelievable.

10. The identification of the accused for the first time in Court leads to suspicion. It is highly strange that P.W.2 states that he knows the appellants/accused and has not stated anything about them during the course of investigation. The evidence of PW1 with regard to the person who had threatened her is doubtful. Though the witnesses have been stated to be examined on the same day, these statements have reached the Court after several days. The Trial Court did not take into consideration the contradiction evidences of PWs 1 and 6 (Investigation Officer) regarding the arrest of the appellants/accused.

11. Further, PW 2 & PW 3 could not have been the witnesses to the occurrence, since their statement with regard to PW2 running a mechanic shed and PW 3 having come to see his two wheeler cannot be believed and as per the observation Mahazar, no such mechanic shed was available and that as per the evidence of PW1, there were other public in the locality and nobody has been examined by the Police.

12. In support of his contention, he relied upon the Judgement of this Court reported in 2018 SCC Online Mad 2059:2019 Cri LJ 234 in the case of Sheik Dawood Al Mothi Vs. State Rep. by the Inspector of Police, B-4, Baluchetty Chatram Police Station, Kancheepuram District.

13. The learned Additional Public Prosecutor would submit that the prosecution has proved the case beyond all reasonable doubt through the evidence of PW1, PW2 and PW3. Further the case of the appellants/accused is fortified by the recovery of the knife, gold chain (MOs.1 and 2) from the house of first appellant/A1. He would further submit that the reason for the delay in giving the complaint has been explained by PW1 and the reasons for the delay is also reasonable.

14. The learned Additional Public Prosecutor further submitted that the non holding of the identification parade is not a fatal to the prosecution, since the appellants / accused were arrested on the next day and that the PW1 had identified them in the Police Station and had also identified them in the Court.

15. The learned counsel for the appellants/accused would submit that PW1 is not clear as to who is the person who snatched her chain and who is the person who drove the two wheeler and would submit that the trial Court erred in convicting the appellants/accused based on the unconvincing evidence.

16. What is to be seen that whether the prosecution has proved the case beyond all reasonable doubts and whether the trial Court is right in convicting the appellants / accused.

17. Admittedly in this case, the occurrence had happened on 14.05.2009 around 3.00 P.M, while PW1 was walking along the road, the appellants/accused are strangers to PW1. As per the evidence of PW2 and PW3, it was near a mechanic shop and PW2 and PW3 who were in the mechanic shop were stated to have witnessed the occurrence. Strangely, in this case none of the witnesses have informed the Police about the occurrence immediately, despite the occurrence happening in a busy locality during day time. The complaint has been preferred to the Police on the next day. While analysing the evidences of PW1, PW2, and PW3, nothing had been stated about the identity or any identification marks regarding the appellants / accused. Whereas, it is very strange that the respondent / Police namely P.W.6 immediately on the receipt of the complaint had seen the accused moving in the suspicious circumstances and having arrested the first appellant/A1 and thereafter based on the confession given by

him, arrested the second appellant/A2. As per the evidence of PW1, after giving a complaint to the respondent at 9.00 a.m, she had gone back home and that she was asked to come back only at 4.00 p.m and when she had gone there, she had seen both the accused in the Police station and that she had identified them and that the respondent Police had shown her chain and that she identified the chain and the chain was returned to her on the same day. Whereas, as per the evidence of PW6 Investigating Officer after the appellants/accused were shown to PW1, the chain and the motorcycle were produced before the Court by way of Form 95.

18. A perusal of the records shows that the chain and the motorcycle were produced before the Court only on 09.06.2009. Further, it is seen that though PW2 and PW3 are stated to have witnessed the occurrence and seen the appellants /accused, no steps were taken by the respondent Police to conduct the test identification parade to confirm the involvement of the appellants/accused in the offence.

19. Taking into consideration, the entire facts the attended circumstances, the delay in the complaint and the manner in which the accused are stated to have been arrested creates a great doubt in the case of the prosecution. Further, the non conducting of the test identification parade is also fatal to the case of the prosecution.

20. The evidence of PW1 is not clear as to which of the appellant threatened her with the knife. As per the evidence in the Court, she has stated that second appellant/A2 was the person who has threatened her with the knife. If it is so, it is contrary to the complaint and the evidence of PW2 and PW3.

21. It is relevant to note that in the decision reported in 2018 SCC Online Mad 2059:2019 Cri LJ 234 in the case of Sheik Dawood Al Mothi Vs. State Rep. by the Inspector of Police, B-4, Baluchetty Chatram Police Station, Kancheepuram District, this Court has held as follows:

"In all cases where the accused is an stranger to the victim/witnesses and the latter have seen him for the first time at the commission of the offence, immediately on arrest of such an accused, the Police in order to assure themselves that the accused person who has been arrested is the person who has actually committed the offence, must seek for a direction from the Court having jurisdiction to conduct a test identification Parade. Section 54-A of CrI.P.C. Specifically empower the Court to direct holding of an identification of the accused person at the request of

the prosecution. By following this procedure in cases of this nature, there is at least an assurance for the investigating agency that the investigation is going on in the right direction. That apart, such an identification will become relevant under Section 9 of the Evidence Act and it can be used in criminal proceedings as evidence. Of course CCTV footage has now become a very important tool for the Police which helps them in a long way in crime detection but this is a facility which is not available in all nook and corner of the State. The Police personnel needs to be educated on the availability of a provision under Cr.P.C. For identifying the accused person. By following this procedure, the element of doubt that arises about identity of the accused for the first time in the Court after a very long gap, can also be avoided."

22. In view of the above reasoning, this Court finds that there is a grave doubt in the prosecution case and that the benefit of doubt has to be rendered to the appellants/accused and they are entitled to be acquitted.

23. In view of the above Judgment of conviction and the sentence passed by the learned Additional District and Sessions Judge, Fast Track Court IV, Chennai in S.C.No.218 of 2010, dated 08.09.2010 is set aside and the appellants are acquitted of all the charges levelled against them. Accordingly, both the Appeals are allowed. The fine amount paid if any, shall be returned to the appellants/accused. Bail Bonds, if any shall stand terminated.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Additional District and Sessions Judge,
Fast Track Court IV ,
Chennai.

2. The Inspector Of Police,
K 1 Sembium Police Station,
Sembium, Chennai - 600 011.
3. The Principal Sessions Judge,
Chennai (For Information)
4. The Superintendent,
Central Prison, Puzhal,
Chennai.
5. The Public Prosecutor,
High Court, Madras-104.

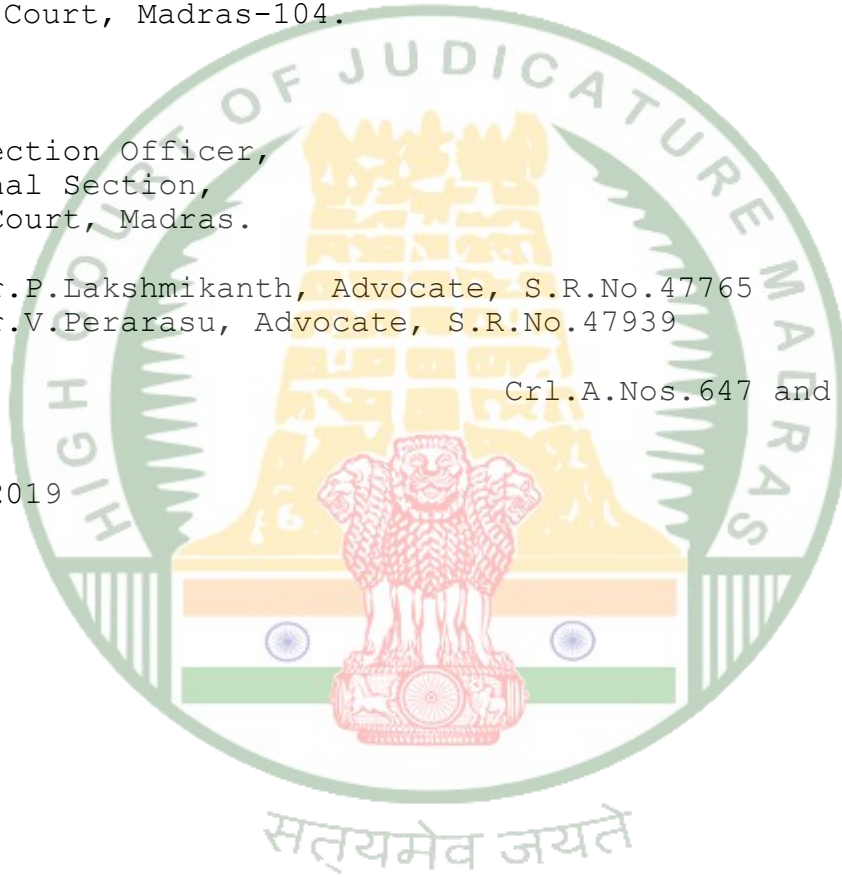
Copy To

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

+1cc to Mr.P.Lakshmikanth, Advocate, S.R.No.47765
+1cc to Mr.V.Perarasu, Advocate, S.R.No.47939

CrI.A.Nos.647 and 769 of 2010

SVI (CO)
CS/10/09/2019



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