

Bail Slip

The Appellant/Accused namely Karuppasamy S/o.Muniasamy was directed to be received on bail as per order of this Court dated 28/01/2011 in MP.No.1/2010 in Crl.A.No.803/2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM:

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

Crl.A.No. 803 of 2010

Karuppasamy

... Appellant

/Vs/

State rep. By
Inspector of Police
V5, Thirumangalam Police Station
Chennai - 101.
Crime No.2711 of 2005.

... Respondent

PRAYER: Criminal Appeal filed under sections 374 (2) of the Criminal Procedure Code, against the Judgment dated 31.08.2010 made in S.C.No.261 of 2010 on the file of the Additional District and Sessions Judge (Fast Track No.I), Chennai.

For Appellant : Mr.S.N.Arun Kumar

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 learned Additional District and Sessions Judge (Fast Track No.I), Chennai in S.C.No.261 of 2010 dated 31.08.2010 wherein the trial Judge found the appellant/accused guilty for offence under section 452 and 392 IPC and convicted him to undergo 4 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months Simple Imprisonment under Section 452 IPC and 6 years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo 3 months Rigorous Imprisonment under Section 392 IPC and the sentences are ordered to run concurrently.

2.The case of the prosecution in brief is that, the P.W.1-Muthulakshmi, is a resident of Door No.354, Bharathidasan Street, Thillaiyadi Valli Nagar, Thirumangalam, Chennai - 40 and her husband P.W.2 was running a sweet stall in which the appellant/accused was working as a servant. On 14.07.2005 her husband and mother-in-law had gone to the sweet stall and about 12.00 pm., while P.W.1 was cooking in her house, the accused had come to her house and enquired about her mother-in-law. P.W.1 had replied that her mother-in-law had gone to the shop. The accused had gone out and returned again and had asked P.W.1 to give some green chillies. When, P.W.1 had gone in to take the green chillies, the accused closed the door and demanded money. Thereafter accused gagged the mouth of P.W.1 with a piece of cloth and tied her hands and demanded her jewels. When P.W.1 became freighted the accused took the key, opened the steel cupboard and took the jewels and also escaped from the place by brandishing a knife. Thereafter P.W.1 pressed the calling bell through her chin, called the master who was residing in the upstairs portion. The said master came along with other tenants who were residing adjacent to his house and released the hands of P.W.1. Immediately she had contacted her husband over phone and informed about the incident. Thereafter, P.W.1 along with her husband went to the police station and lodged the complaint.

3.P.W.5-Viswanathan, Sub-Inspector of Police, who was on duty at about 15.30 hours had received the complaint-Ex.P.1 from the complainant-P.W.1. On the basis of the said complaint, he registered the case in Crime No.2711 of 2005 under Sections 381 and 384 IPC and prepared FIR-Ex.P.5. He further visited the place of occurrence and prepared observation mahazar-Ex.P.6, rough sketch-Ex.P.7 in the presence of the independent witnesses Rajendran and Subramani. Further he examined P.W.2-Muthukumar and other witnesses and also recorded their statements. Thereafter, he placed the case records before the Inspector of Police for further investigation.

4.P.W.6-Mohamed Muthakur Hussain, Assistant Commissioner of Polcie, took up the case for further investigation and altered the case under Section 397 IPC and sent the altered report-Ex.P.8 on 15.07.2005. Thereafter on 17.07.2005 at about 6.00 pm., on information, P.W.6 arrested the accused and recorded the confession statement-Ex.P.3, given by him. After completion of investigation, P.W.6 filed the charge sheet against the appellant/accused under Sections 381, 384 and 397 IPC on 21.07.2005.

5.The said case was taken as PRC.No.66 of 2006 on the file of the X Metropolitan Magistrate, Egmore, Chennai and the Magistrate had furnished free copies of the documents which are relied on by the prosecution under Section 207 Cr.P.C.,.

6.As the offence under Section 397 IPC is exclusively triable by the Court of Sessions, the learned Magistrate committed the same to the Principal District and Sessions Judge, Chennai, accordingly it has been made over to the Additional District and Sessions Judge (Fast Track No.I), Chennai, as per law.

7.The learned trial Judge, after appearance of the appellant/accused and on hearing both sides and after considering the materials on record framed the charges against the appellant/accused under Sections 452 and 392 r/w 397 IPC. The said charges were read over and explained to the appellant/accused in Tamil. Though the appellant/accused accepted the offence and pleaded "guilty", the trial Court proceeded with trial in accordance with law.

8.In order to prove the case of the prosecution on the side of the prosecution P.Ws.1 to 6 were examined; Exs.P.1 to 8 were marked and material objects M.Os.1 to 6 were also marked. No evidence was let in on the side of the defence. Even during the time of questioning under Section 313 Cr.P.C., the appellant/accused had admitted to his guilt and pleaded guilty.

9.Considering the facts and circumstances of the case and from the evidence of prosecution witnesses on record, the trial Court found the appellant/accused guilty for the offences punishable under Sections 452 and 392 IPC and sentenced him as stated above. Challenging the said conviction and sentence, the appellant/accused had preferred the present criminal appeal.

10.Heard the learned counsel appearing for the appellant/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.

11.The learned counsel for the appellant/accused would submit that though the appellant had pleaded guilty, and answered in affirmative to the questions raised during 313

Cr.P.C., the trial Judge had not exercised the discretion judicially and that the discretion has been exercised in an arbitrary manner. The trial Judge did not take into consideration the circumstances under which the case has been registered. He would submit that the appellant had been fixed in this case. Admittedly, nothing had been stated in the complaint about the appellant having used any knife to threaten the complainant-P.W.1. None of the witnesses have in the initial statement recorded under Section 161 Cr.P.C., spoken about the appellant using a knife to threaten PW.1. Strangely after the arrest of the appellant on 17.07.2005, a statement had been obtained from the complainant/P.W.1 as if the appellant threatened her with knife at the time of incident. The further statement had been recorded belatedly on 17.07.2005 and it has reached the Court only on 18.07.2005, after the arrest of the appellant/accused. He would further submit that the alleged weapon had not been recovered and that thereby the confession statement of the appellant cannot be believed since it has not lead to any recovery or discovery of fact. Further he would submit that it is a categoric evidence of P.W.2 that within 24 hours of the occurrence, the appellant/accused was arrested and the entire jewels were also recovered from him. Whereas the case of the prosecution is that the appellant/accused was arrested only on 17.07.2005, after a period of 3 days, thereby creating a doubt with regard to the arrest, recovery and confession made. Further the so called conduct of the appellant/accused having returned all the jewels intact creates a doubt in the prosecution case. Further, the alleged occurrence stated to have happened on 14.07.2005 at about 12.00 pm., and around 03.30 p.m., the FIR has been registered and the same has reached the Court only on 15.07.2005 at 1.10 pm.,. Further, there is nothing on record to show that the trial Court had explained the charges against him, after the appellant/accused had admitted the guilt. Further there is no evidence to show that the trial Court had satisfied the appellant/accused understood the allegations made against him and the consequences of the admission made by him and there is also nothing on record to show that the trial Court administered caution to him with regard to consequences of him admitting to the guilt. He would further submit that the offence under Section 452 IPC, cannot be made against the appellant/accused, since he is a known person to the complainant and was working in the sweet stall of the husband of PW.1 for the past 1 ½ years and that it is the usual course the appellant/accused used to go to the house of P.W.1 and he was also residing in the upstairs terrace of the house of P.Ws.1 and 2. Further, the non-examination of the mahazar witnesses also causes doubt on the prosecution case. Further, in any event, sentence of imprisonment is excessive and the trial Judge having found that offence under Section 452 was proved beyond all reasonable doubt, ought to have acquitted the

appellant/accused and the imprisonment of 6 years under Section 392 IPC is also excessive.

12.The learned Additional Public Prosecutor appearing for the respondent would submit that in the further statement recorded on 15.07.2005, P.W.1 stated that she was threatened with knife by the appellant/accused, however, the statement had reached the Court on 18.07.2005, after the arrest of the appellant/accused along with the alteration report on 18.07.2005. He would further submit that though the knife had not been recovered, P.W.4 had spoken about the handing over of the jewels-M.Os.1 to 6 by the appellant. Apart from the above, the appellant/accused had right from the beginning pleaded to his guilt.

13.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.

14.Admittedly, a case of Section 452 IPC has not been made out against the appellant/accused since he is a known person working under P.W.2, husband of the P.W.1 and that he is residing in the upstairs terrace of the house of P.W.2 and that he was regularly having food in the house and also having a regular access over the house of P.W.2. Thereby, the ingredients for offence under Section 452 of IPC have not been made out against the appellant/accused and this conviction for offence under Section 452 of IPC it is set aside. So far as the evidence of P.W.1, in the Ex.P.1-complaint is concerned, nothing had been stated about the appellant/accused having threatened P.W.1 with knife. Only in the further statement recorded much later and sent along with the alteration report, P.W.1 had stated about the appellant/accused having used the knife which creates a doubt in the prosecution case. Though, P.W.4 has stated that recovery of jewels had been made within 24 hours of the date of occurrence, as per the prosecution the appellant/accused were arrested only on 17.07.2005, which is fatal to the prosecution case. Further, the appellant/accused had right from the beginning pleaded guilty for the offences made by him.

15.At this juncture, the learned counsel for the appellant/accused would submit that the appellant is very poor and he was not able to engage a counsel and on the advice of the legal aid counsel who appeared on behalf of him before the trial Court that he would be given a lesser sentence if he pleads guilty, the appellant had not contested the case and he had pleaded guilty.

16.Taking into consideration, the facts and circumstances of the case, while setting aside the conviction under Section 452 IPC, the conviction for offence under Section 392 IPC is confirmed. However, considering the materials on record and the manner in which the trial has been conducted this Court is of the opinion that the sentence of imprisonment of 6 years Rigorous Imprisonment for the offence under Section 392 IPC in the case on hand is excessive.

17.In the result, the Criminal Appeal is partly allowed and the conviction and sentence for offence under Section 452 IPC are set aside and the conviction in respect of offence under Section 392 IPC is confirmed, however, the sentence of imprisonment for offence under Section 392 IPC is modified to 2 years Rigorous Imprisonment with fine of Rs.1,000/- in default of payment of fine, to undergo 3 months Simple Imprisonment. The trial Court is directed to secure the appellant/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge (Fast Track No.I),
Chennai.

2.The Public Prosecutor, High Court of Madras.

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

4.The Inspector of Police, V5, Thirumangalam Police Station
Chennai - 101. Crime No.2711 of 2005.

5.The XIIIth Metropolitan Magistrate,
Egmore, Chennai.

6.The Xth Metropolitan Magistrate,
Egmore, Chennai.

7.The Superintendent,
Central Prison,
Puzhal, Chennai.

Crl.A.No. 803 of 2010

nr 29/04/2019



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