

BAIL SLIP

The Appellant in Crl.A.No.450/2006/Accused namely Ravi S/o.Varadharaj Naickar (A2) was directed to be released on bail in Crl.M.P.No.3275/2006 in Crl.A.No.450/2006 dated 06.06.2006.

The Appellant in Crl.A.No.940/2006/Accused namely T.Mahendran, (A3) S/o.Thangappan was directed to be released on bail in Crl.MP.No.1/06 in Crl.A.No.940/2006 dated 24.01.2007.

The Appellant in Crl.A.No.1007/2006/Accused namely Pandi (A1), S/o.Ponnusamy was directed to be released on bail in Crl.MP.No.1/06 in Crl.A.No.1007/2006 dated 24.01.2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.Nos.450, 940 and 1007 of 2006

Ravi	...Appellant in Crl.A.No.450/2006 (A2)
T.Mahendran	...Appellant in Crl.A.No.940/2006 (A3)
Pandi	...Appellant in Crl.A.No.1007/2006 (A1)

Vs

State by Inspector of Police,
Tiruppur North Police Station,
Coimbatore District.
(Crime No.573/02)

...Respondent in all the Crl.A.s

Prayer in Crl.A.No.450/2006: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the judgment of the learned Additional District and Sessions Judge, (Fast Track Court No.5), Coimbatore at Tiruppur in S.C.No.338 of 2005 by judgment dated 06.04.2006, convicting the appellant herein under Section 120B IPC read with 397 IPC and sentencing him to undergo 10 years RI and to pay fine of Rs.10,000/- in default to undergo 2 years RI (out of the fine amount, imposed

on the accused persons, a sum of Rs.15,000/- shall be payable to PW1 Thiru.Palanisamy as compensation under section 357(1)(b) Cr.P.C.

Prayer in Crl.A.No.940/2006: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the judgment of the learned Additional District and Sessions Judge, (Fast Track Court No.5), Coimbatore at Tiruppur in S.C.No.338 of 2005 by judgment dated 06.04.2006, convicting the appellant herein under Section 120B IPC read with 397 IPC and sentencing him to undergo 10 years RI and to pay fine of Rs.10,000/- in default to undergo 2 years RI (out of the fine amount, imposed on the accused persons, a sum of Rs.15,000/- shall be payable to PW1 Thiru.Palanisamy as compensation under section 357(1)(b) Cr.P.C.

Prayer in Crl.A.No.1007/2006: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the order conviction and sentences, for ten years under Section 397 read with 120(b) of I.P.C. in S.C.No.338 of 2005 dated 06.04.2006 by the learned Additional District and Sessions Judge, Fast Track Judge No.5, Coimbatore.

For Appellant : Mr.A.Mohamed Ismail
for M/s.S.T.P.Kuil Mozhi in
CA.450/06 and CA.940/06

For Appellant : M/s.B.Singaravelu in CA.1007/06

For Respondent : M/s.S.Thankira
Government Advocate (Crl.Side)

COMMON JUDGMENT

These criminal appeals were preferred by the appellants/accused A1 to A3 against the judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Judge No.5, Coimbatore, wherein the learned trial Court convicted the appellants/accused and sentenced them to undergo 10 years rigorous imprisonment and fine of Rs.10,000/- in default to undergo 2 years rigorous imprisonment for the offences under section 397 r/w 120(b) of IPC passed in S.C.No.338 of 2005 dated 6.4.2006.

2.Brief case of the appellants/accused in all the appeals:

The prosecution case is that on 26.10.2002 at 13.00 hrs PW 1 Palanisamy withdrew Rs.1 Lakh from the SBI main branch at Tiruppur and while he was proceeding in his motor cycle TN.39 D

5091, at that time appellants/accused 2 and 4 was following PW1 in one scooter and appellant/accused A1 and absconding accused A3 in another scooter, assaulted and pull down PW1, who was moving in his (TN 39 6081) bike and snatched Rs.1 Lakh and caused injuries with knife and committed the offences under section 120(b) r/w 397 of IPC. Immediately PW1 was admitted in the hospital and Exhibit P1 complaint preferred to the Inspector of Police and the same was registered in crime number 1573 of 2002. On investigation, PW 11 Inspector of Police inspected the scene of occurrence at about 19.30 hrs and preferred rough sketch and observation mahazar Exhibit P16 and examined the witnesses Ramesh and Moorthy and recorded their statements. On secret information at 20.15 hrs, PW11 arrested A1 Pandey and absconding accused Peter @ Peter Raja and recorded their confessions and the same was attested before witnesses Shanmugam and Govind and seized the Suzuki motor cycle bearing registration number TN 39 E 6081 and recovered Rs.2500/-. Further he examined the witnesses namely Palanichamy, Kumar, Aravind, Ramesh, Moorthy, Shanmugam and Govind and recorded their statements. On 27.10.2012 remanded the accused to judicial custody. PW 13 Inspector of Police on further investigation arrested A2 Ravi and recorded his confession and recovered Rs.8500/- in front of the witnesses Karthik and Murali. On 26.11.2012 at about 6.15 AM with help of police party arrested the accused A3 and recovered Rs.12,000/- and seized scooter bearing registration number TN 38 A 1171. The accused namely Mary @ Dori Mary was already in custody in crime number 435 of 2002 under section 392 of IPC and 25(1)(a) of Arms Act. The investigation officer applied the PT warrant to the Madurai Central Prison and he was remanded in this case. After completing the investigation, PW 13 filed the final report on 13.3.2003. The learned trial Court on committal framed the charges under section 120(b) r/w 397 of IPC for which the appellant /accused denied the charges.

3. During the trial, the prosecution examined PWs-1 to 13, Exhibits-P1 to P16 and M.Os-1 to 5 was marked. No witnesses examined on the side of accused.

4. On completion of trial, the learned judge convicted the appellants/accused for the offences under sections 120(b) r/w 397 of IPC. Aggrieved over the same, the appellants/accused filed a criminal appeal.

5. Rival submission raised in Crl.A.Nos.450, 940 and 1007 of 2006:

The learned counsel for the appellant/accused submits that the trial Court failed to consider the fact that the appellant had been arrayed as 1st accused and he was charged that the appellant along with one Peter Raja the absconding Accused attacked and robbed the victim (PW 1) but the victim (PW1) and

eye witness the PW 2 did not rise a finger against the appellant in their evidence and they categorically deposed that the 3rd accused robbed the money from him and who attacked by knife was not before the Court.

6.The learned counsel for the appellant/accused submits that the trial Court failed to consider the fact that PW5 and PW 6, who are interested witnesses since they are working along with PW1 the victim, under PW3. Hence, the arrest of appellant alleged extra judicial confession and recovery of money made in their presence are not reliable one.

7.The learned counsel for the appellant/accused submits that the trial Court failed to consider the fact that the denomination and numbers of alleged money recovered from the appellant and co-accused did not find a place in Exhibits P4,P5,P7,P8,P9 and P10 and Form-95 did not contain the same.

8.The learned counsel for the appellant/accused submits that the trial Court failed to consider the fact that the prosecution did not conduct identification parade and without any basis the appellant was arrayed as 1st accused as if he along with one Peter Raja the absconding accused attacked the victim PW1 and robbed Rs.1,00,000/- from him. Subsequently the prosecution changed the story after completion of trial, without considering the same the trial Court passed the order.

9.The learned counsel for the appellant/accused submits that the lower Court ought to have seen that the alleged victim Palanisamy has clearly and categorically deposed in his evidence that the person who said to have stabbed him with a knife was not in Court and that the money taken from him is the person by name Mahendran who is the accused in this case and there was no whisper or mention anything about the accused/appellant herein and on this ground alone, the appellant ought to have been acquitted from the charges, giving benefit of doubt to the accused/appellant herein.

10.The learned counsel for the appellant/accused submits that the lower Court further failed to see that PW 2 who is the alleged eye witness in this case has deposed in his evidence that while he was standing in front of a shop at Palaniammal complex, while Palanisamy was coming from east to west in a motor vehicle, two persons said to have overtaken the vehicle of Palanisamy and stabbed on the stomach of the said Palanisamy and

though five persons said to have involved in the crime only two persons were mentioned and nothing mentioned about the other accused persons which clearly shows that a false case has been foisted against the appellant herein and PW 2 could not have witnessed the occurrence.

11.The learned counsel for the appellant/accused submits that the lower Court failed to see that from the evidence of PW 1 Palanisamy it is clearly seen that the amount snatched from him is the accused by name Mahendran, A3 in this case and the person who stabbed him is the accused Peter Raja, absconding accused in this case who was not in Court at the time of giving evidence by PW1, as stated by him and hence it is clear that the appellant herein has no role to play in the alleged crime except the allegation that he has furnished the particulars to the other co accused about the person who was carrying money along with him and as such the lower Court ought to have acquitted the accused/appellant herein from the charges.

12.The learned counsel for the appellant/accused submits that the lower Court ought to have seen that though five accused persons said to have been involved in the alleged crime there was mention only about the accused Mahendran and the absconding accused Peter Raja and as far as this accused/appellant herein is concerned, he has no role to play in the alleged crime and on this ground alone, the appellant ought to have been acquitted from the charges.

13.The learned counsel for the appellant/accused submits that the lower Court failed to see that no identification parade has been conducted as far as this appellant and the 3rd accused in this case and the identification of the accused 2 and 3 in Court by PWs 1 and 2 cannot be accepted as contended by the counsel appearing for the defence side.

14.The learned counsel for the appellant/accused submits that the lower Court erred in not relying on the decisions cited by the defence side in support of the above contentions and on this ground also the appellant is to be acquitted from the charges in the absence of any clear and clinching evidence and in the absence of any materials connecting him with the alleged crime.

15.The learned counsel for the appellant/accused submits that the lower Court ought to have seen that the contradiction

between the charges against the accused and PW1 and PW2 evidence. As per the charges is that on 26.10.2002 at 13.00 hrs PW 1 Palanisamy withdrew Rs.1 Lac from the SBI main branch at Tiruppur and while he was proceeding in his motor cycle TN-39-D-5091, at the time accused 2 and 4 in scooter and accused 1,3 absconding accused totally 3 persons in TN 39 6081 were following the PW 1 and snatched Rs.1 Lac and caused injury with knife, here accused 1,3 and absconder, totally 3 persons in one bike and two persons in another bike followed and committed the alleged offence, contra PW 1 and 2 deposed in their evidence that only two persons were coming in red colour Suzuki motor cycle and kicked the PW 1 and one person who is fat asked the PW 1 where is money and stabbed him with knife and the other person snatched Rs.1 Lac from him. The person who stabbed with knife was not in the Court and who is taken money from him is A3. So that the learned lower Court ought to have seen the prosecution have failed to prove the 3rd person i.e., accused 1,2 and 4 how they were gone out of the occurrence place.

16.The learned counsel for the appellant/accused submits that the lower Court failed to see that no test identification parade had been conducted by the respondent police to conclusive prove that this appellant has been involved in this crime and other accused also even the learned defense counsel contented this aspect. The learned lower Court ought not to have appreciated the prosecution for none conducting the test identification parade.

17.The learned counsel for the appellant/accused submits that the lower Court failed to see that this appellant, accused 1 and absconding accused were riding the bike bearing No. TN 39 6081 but the respondent police have seized a scooter bearing No. TN 38 A 1171 from this appellant.

18.The learned counsel for the appellant/accused submits that the lower Court failed to see that the denomination and number of the currency notes which were said to have recovered from the accused persons have not mentioned in mahazar and hence it cannot be said that they were seized only from the accused persons and the judgment cited in support of the above contention was also not considered by the lower Court. The lower Court ought not to have appreciated the reason of PW 11 for none mentioning the denomination of currency note in mahazar.

19.The learned counsel for the appellant/accused submits that the lower Court failed to note that immediately after the seizure of the currency notes, the investigating officer has not

sent them to the Court after sealing them and hence the alleged seizure of the currency notes cannot be acceptable one.

20.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

21.I have given my careful consideration to the respective submission made by the learned counsel for the parties.

22.At the outset, I shall mention that the evidences of PWs 1 to 5 would clearly go to show that on 26.10.2012 at about 1.00 PM when PW1 moving in the bike along the road after taking the amount of Rs.1 Lakh from the state bank, the appellants/accused including one absconding accused Peter Raja came in the two motor cycles and pulled the PW1 and snatched the bag and assaulted with knife causing grievous injuries. This was witnessed by PW2.

23.According to the prosecution PW1 is the injured eye witness and PW 2 is also the eye witness. In Exhibit P1 complaint, PW1 specifically state that two persons attacked him and among the two, one person in a fair complexion and stout and another person are in black complexion having lean body.

24.PW9 Doctor, gave treatment to PW 11 deposed that at about 2.00PM, PW1 admitted as in-patient in his hospital and he issued the accident register Exhibit P14. The injuries are as follows:

- i) Penetrating injury about 5 cm @ of the umbilical small bowel protruding through the wound
- ii) Incised wound in the right palm 8 x 1/4 cm skin deep.

The doctor opined that the injuries are grievous in nature.

25.Apart from the injured witness PW1, in this case PW2 identified only A3 and not other accused.

26.In the instant case, the other witnesses are the recovery witnesses under section 27 of Indian Evidence Act. All the appellants/accused arrested in this case made disclosure about the money looted from PW1 and the same was says through the seizure mahazar Exhibits P4 to P12. The admissible portion of the confession statement was marked as Exhibits P6, P9 and P11. In contra, PW 1 identified A3 is the person who took his bag containing Rs.1 Lakh and told that the person who attacked me was not present in the Court. Both the witnesses speaks about the involvement of two persons. Further both the witnesses identifying the accused A3 in the Court only for the first time

and they have not seen any of the witnesses before the occurrence nor identified them in the test identification parade.

27. Further in this case, PW3 is the partner in the bannian company namely Sri Valli fashion . He deposed that PW1 Palanisamy is the Manager of this company and he gave his cheque of Rs.1 Lakh from the state bank and accordingly the amount was dropped from the bank and on the way, PW 1 was attacked and on information from PW1, he visited the scene of occurrence and enquired by the police. PW 4 is the mahazar witness who attested Exhibit P2 rough sketch and observation mahazar.

28. It is pertinent to note that, the investigating officer invited PW5 who was working in the company of PW3 and co-employee of PW1 for arresting the accused. PW5 and one Govind who is also a co-employee moved with the Inspector for searching the accused in various places. Finally the Inspector enquired two persons who were standing nearby the brandy shop in M.S.Nagar with their two wheeler TVS Suzuki TN 39 E 6081. On further enquiry, both persons admitted their crime along with other accused. Then the Inspector recorded their confessions and seized the amount of Rs.2500/- and two wheeler through Exhibit P3. Then Inspector seized Rs.23000/- which was hidden in the house of Pandian and seizure mahazar was effected in Exhibit P5. PW6 is also a mahazar witness for the seizure of Rs.8500/- through Exhibits P9 and 10. The said witnesses identified A2 in the Court. PWs 7 and 8 were also the mahazar witness in the arrest and seizure. PW7 turned hostile and PW 8 speaks about the seizure mahazar Exhibit P2. PWs 10 to 13 are the investigation officers.

29. The question that remains to be considered is that whether the abovesaid arrest and seizures were in accordance with the law. On cumulative reading of all the evidences relating to arrest, search and seizures, I come to the conclusion that the arrest and seizures were stage manage one and not supported by independent witness. One circumstance is that the co-employee of PW1 was invited by the investigating officer to the various seizure areas in which no single independent witness was examined by the prosecution. The second circumstance is that even before visiting the seizure spot, the police were seen in the place which negatives the theory of disclosure as stipulated in Section 27 of the Indian Evidence Act. The third circumstance is that the seizures of Rupees from the appellants/accused dislodge the evidence of the eye witnesses PWs 1 and 2.

30. As indicated above, all the circumstances would clearly indicate that there is no reasonable explanation for the presence of policeman before effecting seizure and non

examination of independent witness which destroys the case of the prosecution.

31.The next vital circumstance is the identification parade. The witnesses deposed that they have not seen the appellants/accused before the occurrence. I am surprised, why no identification parade was not conducted in this case. Further there is no explanation from the investigating officer for not conducting the test identification parade. Therefore, this circumstance, in my view, affects the root of the case. Since all the appellants/accused were identified only in the open Court which has been occurred after 4.1/2 years, the evidence of the eye witnesses cannot be believed without corroboration. Further PW 1 injured witness without any dock identification, he identified only one accused. PW 2 who witnessed the occurrence also identified one accused in the Court without previous test identification parade. The learned trial Court, even though extracted in its judgment in Para No.39 about the non conduction of test identification parade but heavily relied on the seizures from the appellants/accused which is apparently illegal on the face of the record. Therefore the prosecution has failed to prove their case beyond reasonable doubt and the learned judge without going into the above said issues, passed the order of conviction which is not sustainable.

32.In the result:

a) All the criminal appeals are allowed and thereby the conviction and sentence imposed on the appellants in S.C.No.338 of 2005 dated 06.04.2006, on the file of the learned Additional District and Sessions Judge, Fast Track Judge No.5, Coimbatore, is set aside.

b) The appellants/accused A1 to A3 are acquitted from all the charges and the fine amount if any paid by the appellants/accused A1 to A3 shall be refunded by the trial Court;

c) The bail bond if any executed by the appellants/accused is stand cancelled. Consequently, connected Miscellaneous Petitions are closed, if any.

vs

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Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate, No.I,
Tiruppur, Coimbatore District.
2. - Do - Thro' The Chief Judicial Magistrate,
Coimbatore.
3. The Additional District and Sessions Judge,
Fast Track Judge No.5, Coimbatore.
4. - Do- The Principal Sessions Judge,
Coimbatore.
5. The Inspector of Police,
Tiruppur North Police Station,
Coimbatore.
6. The Superintendent, Central Prison
Coimbatore.
7. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.B.Singaravelu, Advocate, S.R.No.3886

+1cc to Mr.C.Sivakumar, Advocate, S.R.No.3870

Cr1.A.Nos.450, 940 and 1007 of 2006

Kak (06/03/2019)

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