

BAIL SLIPS

Crl.No.978 of 2006:-

Appellant/Accused herein viz. S.Karthik was directed to be released on bail by the order of this Court dated 17.11.2006 in MP.1/2006 in Crl.A.No.978 of 2006.

Crl.A.No.993 of 2006:-

Appellants/Accused herein viz. 1.Pangaraj @ Raja Reddy, 2.M.Meeran and 3.D.Samuvel were directed to be released on bail by the order of this Court dated 22.11.2006 in MP.1/2006 in Crl.A.No.993 of 2006.

Crl.A.No.994 of 2006:-

Appellant/Accused herein viz. Bangaraj @ Raja was directed to be released on bail by the order of this Court dated 22.11.2006 in MP.1/2006 in Crl.A.No.994 of 2006.

Crl.A.No.995 of 2006:-

Appellant/Accused herein viz. M.S.Manoharan was directed to be released on bail by the order of this Court dated 22.11.2006 in MP.1/2006 in Crl.A.No.995 of 2006.

Crl.A.No.1001 of 2006:-

Appellants/Accused herein 1.Arunachalam, 2.G.N.Kannayiram and 3.Utham Chand was directed to be released on bail by the order of this court dated 23.11.2006 in MP.1/2006 in Crl.A.No.1001 of 2006.

Crl.A.No.1010 of 2006:-

Appellant/Accused herein viz. J.Kumar was directed to be released on bail by the order of this court dated 24.11.2006 in MP.1/2006 in Crl.A.No.1010 of 2006.

Crl.A.No.1018 of 2006:-

Appellant/Accused herein viz. R.Sanjeevi Naicker was directed to be released on bail by the order of this court dated 28.11.2006 in MP.1/2006 in MP.1/2006 in Crl.A.No.1018 of 2006.

Crl.A.No.1054 of 2006:-

Appellant/Accused herein viz. Moorthy @ Shankar was directed to be released on bail by the order of this court dated 12.12.2006 in MP.1/2006 in Crl.A.No.1054 of 2006.

Crl.A.No.1005 of 2006:-

Appellant/Accused herein viz. O.K.Nithyanantham was directed to be released on bail by the order of this court dated 24.11.2006 in MP.1/2006 in Crl.A.No.1005 of 2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

DELIVERED ON : 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.Nos.978, 993, 994, 995, 1001,
1010, 1018, 1054 & 1005 of 2006

S.KARTHIK ... APPELLANT IN CRL.A.NO.978 OF 2006

1.PANGARAJ @ RAJA REDDY
2.M.MEERAN
3.D.SAMUVEL ...APPELLANTS IN CRL.A.NO.993 OF 2006

BANGARAJ @ RAJA ... APPELLANT IN CRL A NO.994 OF 2006

M.S.MANOCHARAN ... APPELLANT IN CRL A NO.995 OF 2006

1.ARUNACHALAM
2.G.N.KANNAYIRAM
3.UTHAM CHAND ...APPELLANTS IN CRL A NO.1001 OF 2006

J.KUMAR ... APPELLANT IN CRL A NO.1010 OF 2006

R.SANJEEVI NAICKER ... APPELLANT IN CRL A NO.1018 OF 2006

MOORTHY @ SHANKAR ... APPELLANT IN CRL A NO.1054 OF 2006

O.K.NITHYANANTHAM ... APPELLANT IN CRL A NO.1005 OF 2006

Vs

WEB COPY

State of Tamil Nadu, rep. by
The Deputy Superintendent of Police,
Crime Branch C.I.D.,
Chennai-4.

... Respondents in All Appeals

Prayer in CrI.A.No.978, 993, 1001 &
1010 of 2006 & 1018 of 2006:-

Criminal Appeal filed under Section 374 of the Criminal Procedure Code, against the conviction and sentence made in the Judgment dated 26.10.2006 in S.C.No.34 of 1993 on the file of the Court of 6th Additional Sessions Judge, Chennai.

Prayer in CrI.A.No.994, 995,
1018, 1054 & 1005 of 2006:-

Prayer in CrI.A.NO.994 of 2006:-

Criminal Appeal filed under section 374 of the Criminal procedure code, against the conviction and sentence made in the Judgment dated 26.10.2006 in SC.No.35 of 1993 on the file of the Court of the 6th Additional Sessions Judge, Chennai.

Prayer in CrI.A.Nos.995 and 1054 of 2006:-

Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the conviction and sentence made in the Judgment dated 26.10.2006 in SC.No.186 of 1993 on the file of the Court of the 6th Additional Sessions Judge, Chennai.

Prayer in CrI.A.No.1005 of 2006:-

Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the conviction and sentence made in Judgment dated 26.10.2006 in SC.No.410 of 2006 on the file of the Court of the 6th Additional Sessions Judge, Chennai.

For Appellant : Mr.N.S.Sivakumar (in C.A.No.978/2006)

Mr.R.Singaravelan, Senior Counsel
for Ms.M.Srividhya (for A5 & A6 in
C.A.No.993/2006)

Mr.N.S.Sivakumar (for A10 in
C.A.No.993/2006)

Mr.R.Singaravelan, Senior Counsel
for Ms.M.Srividhya (in C.A.No.994/2006)

Mr.S.Hameed Ismail (in C.A.No.995/06)

Mr.R.N.Karthikeyan (for A7, A11 in
C.A.No.1001/2006)

Mr.R.Karunakaran (for A8 in
C.A.No.1001/2006)

Mr.R.John Sathyan (in C.A.No.1010/06)

Mr.R.N.Karthikeyan (in C.A.No.1018/06)

Mr.P.Pazhamalai (in C.A.No.1054/2006)

Mr.R.Karunakaran (in C.A.No.1005/06)

For Respondent : Mr.Mohamed Riyaz
Additional Public Prosecutor
(in all the Crl.A.s)

COMMON JUDGMENT

These criminal appeals were preferred by the appellants/accused against the judgment of conviction and sentence passed by the learned VI Additional Sessions Judge, Chennai in S.C.Nos.34, 35, of 1993, 186 of 1993 and 410 of 2006 dated 26.10.2006.

2.The appellant/accused A3 filed separate criminal appeal in Crl.A.No.1010 of 2006 against the conviction and sentence passed in S.C.No.34 of 1993.

3.The appellants/accused A5, A6 and A10 filed criminal appeal in Crl.A.No.993 of 2006 against the conviction and sentence passed in S.C.No.34 of 1993. During the pendency of the criminal appeal A10 died on 14.6.2013.

4.The appellant/accused Bangaraj @ Raja filed separate criminal appeal in Crl.A.No.994 of 2006 against the conviction and sentence passed in S.C.No.35 of 1993.

5.The appellant/accused A4 filed separate criminal appeal in Crl.A.No.978 of 2006 against the conviction and sentence passed in S.C.No.34 of 1993.

6.The appellants/accused A7, A8 and A11 filed separate criminal appeal in Crl.A.No.1001 of 2006 against the conviction and sentence passed in S.C.No.34 of 1993.

7.The appellant/accused A9 filed separate criminal appeal in Crl.A.No.1018 of 2006 against the conviction and sentence passed in S.C.No.34 of 1993.

8.The appellant/accused A1 Moorthy @ Shankar filed separate criminal appeal in Crl.A.No.1054 of 2006 against the conviction and sentence passed in S.C.No.186 of 1993.

9.The appellant/accused A2 Manokaran filed separate criminal appeal in Crl.A.No.995 of 2006 against the conviction and sentence passed in S.C.No.186 of 1993.

10.The appellant/accused Bangaraj @ Raja filed separate criminal appeal in Crl.A.No.995 of 2006 against the conviction and sentence passed in S.C.No.186 of 1993.

11.The appellant/accused Nithyanandam filed separate criminal appeal in Crl.A.No.1005 of 2006 against the conviction and sentence passed in S.C.No.410 of 2006.

12.Brief case of the appellants is that:

The prosecution case is that Accused No.1 Babu @ Mohahd Raffi as head of gang by making conspiracy with his friends and with some others made plan to grab money from rich people in the name of offering gold foreign coin in cheap price. The main allegation is that during the course of business transaction by setting some accused as custom authorities and by their visit, by showing enquiry over the purchasing innocent people and made threatening not to face the case and grabbing money was happened. Receiving booty was committed by A.1 and out of that booty small amounts were disbursed to other accused. Some accused has been used as brokers. By the said act, PWs 4 to 14 were cheated to the tune of Rs.4, 61,200/- .The offers took place between April 1980 to January 1983 at various places in Chennai.

13.The crime activity came to light by one P.K.Babu approached CBCID Chennai on 7.1.1983 at about 2.00 PM and narrated the facts that he was approached by one Krishnaya and he told that he knew foreign gold coin seller and by purchasing that he would be get profit. He got doubt over the activity of Krishnaya and lodged oral complaint and it was recorded by police as mere statement and not as complaint. That was marked as Ex.P22.The Police made him as a trap witness and he was

called next day on 8.1.1983 to CBCID police office, one Mahazar was prepared and it was marked as Ex.P23. The police party visited presidency hotel Chennai around 1.00 PM and Room No. 203 was noted. That after getting signal, police party visited room No. 203 and 13 accused was present. During the process of arresting 13, some clash was happened and three police personnel have got injury. Some properties were recovered and mahazar was marked as Ex.P24. The CBCID police registered the case on the complaint of Babu in Cr.No.2 of 1983 under sections 120(b), 420, 419, 332 of IPC on 8.1.1983 at about 8.00 PM. The tracing of main accused Babu alias Mohd. Raffi was not happened and he made absconding. After flashing the news in newspapers about the incident as happened in Presidency Hotel on 8.1.1983, first one Jeyakumar and Madurai Veluchamy lodged complaint and the case was registered in Cr.No.3 of 1983 under sections 120(b), 420 of IPC. Another one Thiruvengadam lodged complaint and the case was registered in Cr.No.4 of 93 under sections 120(b), 420 and 392 IPC. One aranai hussain preferred complaint in Cr.No.5 of 1983 and the case was registered under sections 120(b), 420, 392 of IPC and one Sripathi Rao preferred complaint and the case was registered in Cr.No.6 of 1983. One Mahavir Chand Jain complaint in Cr.No. 8 of 1983 and Gopi complaint in Cr.No.10 of 1983, one Kamal batcha complaint in Cr.No. 14 of 1983 and one Asmug Kumar complaint in Cr.No.15 of 1983 cases were also registered. Combining all the crime numbers, common investigation was done and final report has been filed.

BALANCE SHEET OF 11 F.I.R.'S

All are taken on file in one C.C.No.12524 of 1986 by II M.M., Egmore, Chennai, forwarded to Prl. Sessions Court, made over to VI Addl. Sessions Court, Chennai taken as one S.C.No.34 of 1993 and tried jointly.			
S.No.	FIR & Crime Nos. Complainant Name & Sections of offence	Date of occurrence	Names of accused Arrayed in FIR
1.	Cr.No.3/83, dt. April 1982 21.1.83 S.Jayakumar, S/o Late Madurai, R.Srinivasan, (Ex.P60) 420 IPC		1.M.Dharmalinga Mudaliar, 5/83, 3/83, 2/83 Died S/o Muthukumarasamy 2.D.V.Naidu, 3/83, 2/83 S/o Venkatachala Naidu 3.Selvaraj- Died Sivakasi

All are taken on file in one C.C.No.12524 of 1986 by II M.M., Egmore, Chennai, forwarded to Prl. Sessions Court, made over to VI Addl. Sessions Court, Chennai taken as one S.C.No.34 of 1993 and tried jointly.

2.	Cr.No.4/83, dt 28.1.83 V.N.Thiruvengadam S/o Narasimman chettiyar (Ex.P39) 120-B, 420 & 392 IPC	10.6.1982	1.Pandian, Madras-4/83, 48/83 approver 2.K.Thirumalai-4/83, 2/83, Died S/o Kadiravan 3.M.Nagarajan, S/o Malleshwar, approver 4.Pushkaran-4/83, 2/83 Died, S/o Sankaran
3.	Cr.No.5/83, dt 12.2.83 A.Hussain, S/o Abdulla Hameed (Ex.P39) 120B, 420 & 392 IPC	17.10.1981	1.Mohamed Rafi, Died- Madras 5/83, 6/83, 10/83, 14/83, 37/83, 48/83, 8/83 2.Dharmalinga Mudaliar, Madras. Died 3/83, 5/83, 2/83 3.Jayaraman, Chetpet- Died 5/83, 6/83 4.Meeran and others, Chetpet 5/83, 10/83, 14/83
4.	Cr.No.6/83, dt 12.2.1983 T.K.Sripathi Rao, Vani Vihar Hotel Owner, Adyar Ex.P32, 120B, 420 & 392 IPC	29.4.1980	1.Mohamed Rafi @ Babu - Madras 5/83, 6/83, 10/83, 14/83, 37/83, 48/83, 8/83 2.Shankar, Madras 6/83, 14/83, 8/83, 15/83 3.Jayaraman Died and others, Madras 5/83, 6/83
5.	Cr.No.8/83 dt 25.2.83 K.Mahaveerchand Jain S/o Kishjan Lal, Madras Ex.P34, 420 & 392 IPC	29.4.1980	1.Uttamchand 2.Mohamed Rafi @ Babu and others 5/83, 6/83, 8/83, 14/83, 48/83

All are taken on file in one C.C.No.12524 of 1986 by II M.M., Egmore, Chennai, forwarded to Prl. Sessions Court, made over to VI Addl. Sessions Court, Chennai taken as one S.C.No.34 of 1993 and tried jointly.

6.	Cr.No.10/83, dt. 26.2.1983 T.P.Gopi, Kunjuraman, Ex.P36 - 120B, 420 IPC	26.1.1982	1.Mohamed Rafi, - Madras 3/83, 15/83, 10/83, 6/83, 37/83, 48/83, 14/83 2.Meeran-Madras-5/83, 10/83, 14/83, 8/83 3.Nithyanandam-Madras- 10/83, 14/83 4.Balu-Died-Madras-10/83, 14/83
7.	Cr.No.14/83, dt. 3.3.83 S.Kamal Basha, Madras, Ex.P39, 120-B, 419, 420 & 392 IPC	15.12.1980	1.Mohamed Rafi, Died -Madras 5/83, 6/83, 8/83, 10/83, 14/83, 37/83, 48/83, 2.Meeran 14/83, 5/83, 10/83 3.Ishaq Died 4.Nithyanandam, 14/83, 10/83, 37/83, 15/83 5.Shankar 14/83, 8/83, 15/83 6.Balu & Others 14/83, 10/83, 15/83
8.	Cr.No.15/83, dt. 4.3.83 M.Hasamukkumar, Royapuram, Madras, Ex.P40, 120B, 419, 420 IPC	25.12.1980	1.Murthy @ Shankar, 15/83, Vysarpadi, Madras and others
9.	Cr.No.37/83, dt. 11.6.83 R.Doraisamy Pillai, Madras, Ex.P50, 120B, 419, 420 & 392 IPC	Feb 1982	1.Babu @ Mohamed Rafi, - 5/83, 6/83, 8/83, 10/83, 14/83, 37/83, 48/83 2.Prasad & several others

All are taken on file in one C.C.No.12524 of 1986 by II M.M., Egmore, Chennai, forwarded to Prl. Sessions Court, made over to VI Addl. Sessions Court, Chennai taken as one S.C.No.34 of 1993 and tried jointly.

10.	Cr.No.48/83, dt. 27.6.83 Rajaram, Madras S/o Kannaya chetty Ex.P52, 120B, 420, 392 IPC	December 1982	1.Babu @ Mohamed Rafi, 5/83, 6/83, 8/83, 10/83, 14/83, 37/83, 48/83 2.Pandiyan - approver 3.Habib @ Panjubai
11.	Cr.No.2/83, dt. 8.1.83 P.K.Babu, 120B, 419, 420 & 392 IPC	6.1.1983	1.R.A.Abdul Rahim, Trichy 2.V.Krishnaiah, Madras 3.K.Sundaraj, Madras 4.D.V.Naidu, Madras 3/83, 2/83 5.N.Dharmalinga Mudaliar Died Madras 5/83, 3/83, 2/83 6.K.Thiumalai, 4/83, 2/83, Superintendent in Central Excise 7.S.N.M.Vasagam Died 8.S.Chockalingam Died 9.V.Thiagarajan, 2/83, 4/83 10.M.Natrajan, Constable PC 6735 11.S.Pushkaran 4/83, 2/83 Died 12.D.S.Thangaappan - Died 13.S.Paramasivam - Died

14.Subsequently some of the absconding accused appeared and separately committed to the Sessions Court. The case was taken on file as S.C.Nos.34, 35, of 1993, 186 of 1993 and 410 of 2006 by the learned VI Additional Sessions Judge. The learned trial Court framed the charges against the appellants/accused under section 294(b), 307 of IPC. The appellants /accused denied their charges.

15. During trial, the prosecution examined PWs. Exhibits P 1 to 60 were marked and MOs 1 to 18 were marked. On the side of the accused Exhibits D1 to D6 were marked.

16. After the trial, on appreciating the material available on record, the trial Court convicted the appellants/accused for the offences under section 420 r/w 114, 120(b) r/w 420, 307 of IPC. Aggrieved over the same, the appellants/accused preferred separate criminal appeals.

17. Brief Submissions raised in all the Criminal Appeals:

The learned counsel for the appellants submits that the Court below not considered the facts that there is 2 years delay in registering the complaint.

18. The learned counsel for the appellants submits that in Crime No.60 of 1983, 6 persons were arrayed as accused and the appellant was shown as accused No.2 and during the pendency of proceedings before the learned 16th Assistant Sessions Judge, A1, A3 and A4, A5 were died and the trial was proceeded against the appellant and the 6th accused after the committal proceedings. A6 was absconded and the case was split up and this appellant alone was proceeded against in S.C.No.35 of 1993. The charges under section 34 was also added along with sections 420 and 307 of IPC in the absence of other accused there cannot be any conviction under section 34 of IPC and moreover, the materials produced by the prosecution is only in the form of the evidence of approval are solely unsustainable.

19. The learned counsel for the appellants submits that PW1 has deposed that A1 and A2 others took Rs.80,000/- and ran away and he alone brandished a knife to threatened him. PW1 except stating that this appellant A2 had also threatened him has not spoken about the words used by him and to whether he brandished any weapon to threaten PW1 and in the absence of such crucial factor, there cannot be a conviction under section 307 r/w 34 of IPC.

20. The learned counsel for the appellants submits that PW1 has not spoken about the identity of this appellant during interrogation and it is pertinent to point out at this juncture that PW1 deposed nearly after 21 years from the date of occurrence and further that his testimony bristles with exaggeration and contradictions and therefore, the trial Court ought not to have placed reliance upon his evidence.

21.The learned counsel for the appellants submits that PW39 Investigating Officer further stated that in the FIR given by PW1 as well as in his 161 of Cr.P.C. statement nothing has been stated and hence any improvements in the testimony of PW1 is only an exaggeration and as such this testimony cannot be a sole basis to convict this appellant.

22.The learned counsel for the appellants submits that the trial Court since this appellant A2 was present while accused No.1 threatened PW1 with a knife he can be convicted under section 307 r/w section 34 of IPC. Since prime accused Mohd. Rafique @ Babu is no more and the testimony of PW 1 is wholly untrustworthy.

23.The learned counsel for the appellants submits that the finding of the trial Court that accused Nos.1 and 2 along with 13 other accused hatched a criminal conspiracy and the testimonies of PW30, PW34, approvers, PW39 Investigating Officer, PWs 28 and 31 Police Constables had sustained the case of the prosecution is unsustainable both on law and facts as their oral testimonies and reveal that the appellant A4 has not played any role in the commission of offence which he was charged.

24.The learned counsel for the appellants submits that PWs-30 and 34 approvers who were originally arrayed as accused in their confession have not fully disclosed as to how the crime was committed and the over act on the part of the accused and as such the orders granting them tender of pardon and their testimonies as witnesses ought not to have been taken to consideration to convict this appellant A2.

25.The confession statements of PW1 and PW34 were recorded only in Cr.No.4 of 1983 (corresponding S.C.No. 34 of 1993) and tender of pardon was granted to them only in respect of the above said crime Number. PW30 is concerned, his confession statement was referred only in respect of Cr.No.2 of 1993 and the tender of pardon was granted in the said crime number. However, the testimony of PW30 was also taken into account and reliance was placed upon his evidence in S.C.No.34 of 1993 to convict 2nd appellant/A6 also.

26.PW2 has spoken out the presence of A5 and even as per his admission except his presence, he has not played any role regarding the dishonest inducement and it is only PW30 approver

has played a major role. PW30 Approver, the A6 introduced him to one Rafique who was the mastermind and was originally arrayed as accused No.1. According to PW30 on dishonest inducement on the part of said Rafique, some witnesses parted with the money and he also admitted that the A6 in turn received some money from Rafique is only as hearsay and he further admitted that the manner in which the A6 helped Rafique has not been stated during investigation. The evidence of PW30 who has also played a major role with Rafique is full of contradictions and being an approver, his testimony was not at all corroborated on material particulars by some other independent witnesses.

27.The evidence of PW34 approver, he knows the A6 as he was introduced by one Panchubai and on 12.06.1982 at Marina Buhari Hotel, A6 and other accused were present and except the said version no incriminating circumstances were made out against A6 and A10 and even the said version was not corroborated on material particulars by some other independent witnesses.

28.PW39 Investigating Officer tender of pardon in respect of PW30 and PW34 recorded only in respect of Cr.Nos.2 and 4 of 1983 respectively and not in respect of any other crime number and further that in the 164 of Cr.P.C. statements the approver said something which is not connected with Cr.Nos.2 and 4 of 1983 as so far as one of the complainant name as Hasmath Kumar PW3 is concerned, he gave the complaint after 3 years from the date of complaint in which he implicates A10 and the reasons for delay in lodging the complaint was not also explained. PW3 deposed that he has not identified the accused in I.D. parade. A cursory perusal the oral evidence of PW39 would reveal that PWs 1, 30 and 34 had made exaggerations over and above the statements given before the police and their statements before the learned Judicial Magistrate.

29.In Crime No.4 of 1983 no offence has been made out against appellants/accused A5 and A6 and further admitted that there was no conspiracy charge to implicate the appellant and the testimonies of approvers would reveal that all of them had implicated only Mohd. Rafique who was originally arrayed as A1 who died later and as such there is no material to convict these appellants.

30.The learned counsel for the appellants submitted the following citations in support of their submissions:

- 1) (2010) 4 MLJ (Cr1)

- 2) (1984) 1 SCC 686 Lal chand and others Vs State of Haryana
- 3) (1980) SCC 417 Juwarsingh and others Vs State of Madhya Pradesh
- 4) (1979) 4 SCC Baldev Sing Vs State of Punjab
- 5) (1988) 1 SCC Chandan and another Vs State of Rajasthan
- 6) 1949 AIR (PC) 257: 1949(76) I.R. I.A. 147 Bhuboni Sahu V The King (PC)
- 7) AIR 1957 SCC 637 (I) B. Jagannadhdas, B.P.Sinha and P.Gajendragadkar JJ
- 8) AIR 1964 SCC 1184 P.B.Gajendragadkar C.J.I. K.N. Wanchoo, K.C.Das Gupta, J.C.Sha and N.Rajagopala Ayyangar JJ
- 9) AIR 1966 SCC 1273 P.B.Gajendragadkar C.J.I. K.N. Wanchoo, M.Hidyayathullah, V Ramaswami and P.Satyanarayana Raju JJ
- 10) AIR 1977 SCC 1579 Y.V.Chandrachud, P.K.Goswami and P.N.Shingall, JJ
- 11) (1979) 4 SCC Chonampara Chellappan Vs State of Kerala
- 12) (1993) 1 MLJ (Cr1) 98 T.S.Antony Vs Sate of Tamil Nadu
- 13) (1996) 6 SCC Abdul Fazal Siddiqui Vs Fathechand Hirawat and another
- 14) (2014) 2 MLJ (Cr1) 296 Laskhmanan and another Vs State rep. by Inspector of Police
- 15) (2010) 4 MLJ (Cr1) 67 (SC) S.Arul Raja Vs State of Tamil Nadu
- 16) (1997) (I) CTC 637 Muralidharan Vs State Rep by Inspector of Police

31.I have heard the arguments on either side and perused the entire materials available on record.

32.In this case, three accused turned approvers. They are PW1, PW30 and PW34 and deposed before the learned Additional Sessions Court, Chennai, In this case, approvers evidences are much relied by prosecution.

33.The evidence of PW1 evidence reveals about seeing the appellants/accused and he described nothing more.

34.The evidence of PW30 speaks about Meeran as he introduced him Babu alias Mohd. Raffi alone. He speaks Mahavir Jain Chand, made transactions and he was cheated. Further he speaks Kamal

Batcha transactions. He has spoken number of transactions. Regarding the appellant Samuel this witness spoke about one Aswig Kumar was brought by Samuel. He has spoken mainly against Babu @ Mohd. Raffi and the cheating amounts 2/3 would be taken by him. One third was given to others. Further he spoke that Babu @ Mohd. Raffi never pays any higher amount for his helpers. Pandian was arrested on 30.01.1983. Within one week he came out from Jail on bail. The proceedings for treat him as an approver is a clear violation of sections 306 and 307 of Cr.P.C. He himself lodged petition before the learned Magistrate Court as he should be examined as approver. At that time he was on bail. He further stated that he lodged petition through his advocate. Further he states that the police did not know that he had taken action to become approver. Usually prosecution alone will move to take any accused as approver. First they will file petition, under Section 164 of Cr.P.C. to record the statement of accused. After recording that statement by Judicial Magistrate, then they will move petition under Section 309 of Cr.P.C. to make that accused as approver. This basic procedure was not followed in this case. At the time of PW30 deposition before the learned Additional Session Judge, Chennai, on 18.08.2005 he was brought to the Court by arresting of him by CBCID Police. He was examined on that date as PW30. His petition to accept him as approver was marked as D1. He faced 10 cases. His confession as approver has been recorded on 1983 July month. Contrary to his chief examination, in cross examination he fairly admits that appellant Meeran did not brought Mahvir chand to Babu alias Mohd.Raffi. Further he admits that on police examination under section 161 of Cr.P.C. he never said that money was handed over to Meeran to bring commodity. Further he admits directly that he never seen that money was handing over of Mahavir Chand to Mohd. Raffi.

35.Third approver PW34 belonged to police force and he deposed that Babu @ Mohd. Raffi had a close link with PW30. With their participation, he committed crime. He deposed that including him 13 persons present in Room No.203 of the Presidency Hotel. He had 4 cases and he also gave petition to the learned Judicial Magistrate to accept him as approver. This petition was marked as D2.

36.It is pertinent to note that the accused Babu @ Mohd. Raffi was put under detention on 25.08.1983 as deposed by PW34. The final report was filed against 40 persons, since most of them died including main accused Mohd. Raffi. Only 18 accused were tried before the learned VI Additional Session Court, Chennai. 11 FIRs were taken into account. The germinating case of prosecution namely Cr.No.2 of 1983 defcato complainant

B.K.Babu was not examined in Court. Out of 11 defacto complainants, 8 defacto complainants were not examined in Court. Out of examined 3 defacto complainants, the defacto complainant Gopi turned hostile. Taking 164 Cr.P.C. statement PW30 never speaks that Thiruvengadam was carried to Babu on the words of Manoharan and Pangaraj. Further his 164 statement never speaks about booty of Rs.65,000/- belonged to Thiruvengadam was shared by accused Manoharan and appellant Pangaraj. The same thing is reflected in 164 statement of PW1. Further PW2 never said in his 161 of Cr.P.C. statement that he was cheated by Manharan and Pangaraj with other accused. The same thing reflected in the 161 of Cr.P.C. statement of PW 5 who is brother of PW2.

37. On reading the evidence of PW3, it is found that he gave complaint about incident of 1980 in the year of 1983. His evidence clearly reveals that leaving Samuel, himself and his uncle, the accused party comprised two persons saying they were going to Commissioner's Office. Doubting their actions they were followed by them but would not succeed to nab them. All along, as close friend of him, the appellant helped him. Both of them made efforts to place the accused Sankar and his complaint was marked as ExP1. Further he deposed before 1980 incident, he knew appellant Samuel for 3 years and appellant Samuel's father was his customer. The appellant Samuel was also in dark that they both did not know before the occurrence, that they are going to be cheated. His complaint speaks both PW3 and A7 jointly searched the cheating party. He never makes any allegation against A7 Samuel in his complaint. This is confirmed in his evidence before trial Court. On the complaint of PW3, a case was registered against Moorthy @ Sankar without any prima facie against him. This Court comes to the conclusion that he should have been cited as prosecution witness.

38. By some conversion of properties, everybody using materials like Cycle, watch etc, which has been seized from appellant Pankaraj @ Raja Reddy which are no way connected with the case. Further no witness came forward to say for the arrest of appellants and no witness came forward to say that they have attested any confession statements recorded by the police.

39. Evidence of PW 2 un-creditworthy

The inordinate delay in lodging FIR is not satisfactorily explained by prosecution:

- i) V.N.Thiruvengadam PW2 lodged the complaint on 28.01.1983 marked as Exhibit P26 registered the FIR in Cr.No.4 of 1983 marked as Exhibit P27 under sections 120-B, 419,

420 and 392 of IPC.

- ii) There is an unusual and abnormal delay of 7-½ months in lodging the complaint FIR.
- iii) As per Ex.P26 and P27 there were earlier written complaints lodged before the Deputy Commissioner of Police (Crimes) on 21.06.1982 and an oral complaint lodged before the Teynampet Police Station which has been suppressed. He failed to pursue the complaint diligently in not approaching the CBCID immediately.
- iv) According to PW2 the complaint was lodged on 28.01.1983 after seeing the newspaper report of arresting the cheating gangsters.
- v) The conduct of the complainant PW2 in not setting the criminal law in motion of soon after the alleged robbery cheating takes place is fatal to the prosecution case.

40.The evidences of brothers PW2 and PW5 is also full of conflicting and contradictory. PW5 deposes that on 10.6.1982, PW 2 and PW5 proceeded with cash of Rs.60,000/- to Marina Buhari Hotel. Thereafter the self-proclaimed police officials came to the scene of occurrence and took them into custody. PW5 was pushed out of the jeep and one accused namely Karthik escaped. PW2 deposed that on 10.6.1982 prior to the occurrence, sample test of gold coin took place at Sathya Sai Silverwares and paid advance of Rs.5,000/- to Pandian PW30. On 12.6.1982 he and his brother went to Sathya Sai Silverware with the cash of Rs.60,000/- from there they went to Marina Buhari Hotel.

41.Therefore, the date, event and place of occurrence are materially contradictory in nature. There are two different versions from the independent PW2 and PW5. When there are conflicting versions of PW2 and PW5, the benefit also goes to the appellants/accused. The prosecution cannot wriggle out the statement of PW5 as he was not declared hostile.

42.The trial Court failed to consider the evidence of PW39, the Investigation Officer who categorically admitted in his cross-examination that the appellants participation in the above alleged crime was not established. Further the approvers namely PWs-1, 30 and 34 never stated that the appellants had shared their design with the prime accused or acted as broker to bring the innocent public to purchase gold at cheaper rate. The clear admission of PW39 in the cross examination eliminate the alleged offence of section 114 of IPC and section 420 of IPC against the

appellants that they never shared the plan and had no mens rea to cheat the so called prosecution witness who deposed in the trial. According to PW1, in his chief examination he affirms that he was not aware of the accused persons. His friend Vijayakumar only introduced the appellant/accused M.S.Manoharan. He further says that he used to visit Prakash Roadways to meet Manokaran. Manoharan and his brother Haribabu introduced his friend Karthik and they told PW1 to introduce any gold merchant.

43.PW1 in his chief examination says that he himself told the above said persons that one Thiruvengadam proposed to purchase gold. So there is no necessity for this appellant/accused to insist or induce PW2 Thiruvengadam to purchase gold. Hence the theory of inducement by the appellants/accused to part with his money cannot be accepted. In such circumstances mere presence or representation by the appellant/accused M.S.Manoharan, which is not claimed or alleged to be dishonest or fraudulent, would not attract the charge of cheating only because the complainant part with his money on the basis thereof.

44.EVIDENTIARY VALUE OF APPROVER'S EVIDENCE

It is settled law that tainted evidence cannot corroborate the tainted evidence such as the evidence of accomplice witness. In this case, the tainted evidences are PW1, PW30 and PW34. The findings of the trial Court that the tainted evidences corroborate with PWs-2, 3 and PW5 cannot be sustained. PW.3's evidence is no way concerned with Crime No.4 of 1983. PW3 lost his credit worthiness due to inordinate delay in lodging FIR and suppression of earlier FIRs.

45.The approver's evidence is not corroborated with material particulars by independent evidence. The evidence of one accomplice cannot be used to corroborate the evidence of another accomplice. An accomplice cannot corroborate himself tainted evidence does not loose its taint by repetition.

46.Even according to the testimony of approvers, namely PWs-1, 30 and 34 they did not support the prosecution case against the appellant/accused regarding the knowledge of pre-plan hatched by them and their evidence lacks credibility. There is no evidence implicating the appellant/accused about their involvement for the purpose of any monetary benefit received to the appellant/accused and he only states that the appellant/accused remain only spectator and no over tack attributed against the appellant/accused. The confession of a

co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials there is no scope for applying the principle of moral conviction or grave suspicion.

47. In criminal cases, where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt.

48. NO RECOVERY:

No recovery is made from the appellant/accused. No material object concerning Crime No.4 of 1983 was recovered. The list of material objects listed as M.Os.1 to 18 is not relevant to the case in Crime No.4 of 1983.

49. The principal offenders / masterminds / perpetrators / conspirators who are namely PWS-30 and 34 with prior concert have executed many more offences under different FIRs or similar modus operandi were granted pardon and the rest of the accused persons are alleged to be abettors are awarded conviction and severe sentence.

50. Misjoinder charges

i) According to section 219 of Cr.P.C. the same kind of offences omitted by a person within a span of 12 months not more than three can be tried together.

ii) In this case the offences are not of the same kind but they are different kinds and extended to a period of 3 years at different places and by different groups of parties and appellant Karthik is no way connected where other offences by others on different dates, time and place.

iii) The joint trial of all the 11 cases is an utter disregard to the provision contained under section 219 of Cr.P.C. it causes incurable prejudice as he has been tried along with cases in which he has no way connected thereby vitiating the trial.

iv) This joinder of trial in which the

appellant/accused - Karthik said to have involved in only one case. So there are occasion to failure of justice as it is violative of the prohibitory provision under section 219 of Cr.P.C.

v) As there is error in charge and mis-joinder of charge of offences of various kinds results failure of justice where the prejudice goes into root of the case and the failure of justice will be presumed.

vi) If the appellant/accused - Karthik was tried separately he would have been charged and tried before the Court of I Class Metropolitan Magistrate."

51. In the present case, there are serious discrepancies in the place of occurrence and act of commission of offence narrated by approvers namely PWs-1, 30 and 34. The approvers had been improving their story from time to time in order to give support to the prosecution case and not because it was the truth. Therefore the story cannot be accepted as trust worthy.

52. It is established as a rule of prudence that conviction can be based on the testimony of accomplice only if it is thought reliable as a whole being intrinsically natural and reliable and if it is corroborated by independent evidence, either direct or circumstantial, connecting the accused with the crime.

53. The famous case reported in 1949 AIR PC 257 Bhuboni sahu Vs the King:

"The evidence of one accomplice cannot be used to corroborate the evidence of another accomplice...An accomplice cannot corroborate himself tainted evidence does not lose its taint by repetition".

54. In AIR 1957 SCC 637 Swaransingh Rattan Singh, Appellant Vs State of Punjab, the Hon'ble Apex Court held that

"If it is found that the approver against one of the accused persons is wholly discrepant, this finding itself should inevitably lead the Court to scrutinize his evidence in respect of the other accused persons with greater caution."

55. The Hon'ble Apex Court in its Judgment reported in AIR 1964 SCC 1184 Haricharan kurmi Vs State of Bihar held as follows:

"The confession of a co-accused person cannot be

treated as substantive evidence and can be pressed into service only when the Court is inclined to accept to other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. In criminal trials there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co accused person the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the Court to render the verdict that the charge is not proved against him, and so, he is entitled to the benefit of doubt."

56. Further in AIR 1966 SCC 1273 Saravanabhavan and Govindaswamy Vs State of Madras, held as follows:

"The Court has to consider whether the approver evidence is credible in itself and in doing so it may refer to such corroborative pieces of evidence as may be available. But there may be cases where the evidence of the approver is so thoroughly discrepant and so inherently incredible that the Court might consider him wholly unreliable."

57. The Hon'ble Apex Court in its Judgment reported in AIR 1977 SCC 1579 Dagdu and others etc, Vs State of Maharashtra held that:

"Though an accomplice is a competent witness and though a conviction may lawfully rest upon his uncorroborated testimony, yet the Court is entitled to presume and may indeed be justified in presuming in the generality of cases that no reliance can be placed on the evidence of an accomplice unless that evidence is corroborated in material particulars, by which is meant that there has to be some independent evidence tending to incriminate the particular accused in the commission of the crime."

It is hazardous, as a matter of prudence, to proceed upon the evidence of a self confessed criminal who, in so far as an approver is concerned, has to testify in terms of the pardon tendered to him. The risk involved in convicting an accused on the testimony of an accomplice, unless it is corroborated in material particulars."

58.As per Exs.P26 and P27 there were earlier written complaints lodged before the Deputy Commissioner of Police Crimes on 21.6.1982 and an oral complaint lodged before the Teynampet Police Station which has been suppressed. According to PW2 the complaint was lodged on 28.1.1983 after seeing the news paper report of arresting the cheating gangsters.

59.According to PW39 Investigating Officer, PW34 Nagarajan Ex-Policeman was arrested on 7.1.1983 in Cr.No.2 of 1983 and his statement under section 162 of Cr.P.C. was recorded on 8.1.1983. Then he was produced before the learned Magistrate on 9.1.1983 and again produced on 10.1.1983 for police custody. He was arrested in Cr.No.4 of 1983 on 28.1.1983 at 3.30 p.m. and he was taken into police custody on 1.2.1983. The complaint in Cr.No.4 of 1983 was received on 28.1.1983 when the statement of accomplice is very much available with investigating officer and the complaint was received much later than the statement of approver PW34, the omission of the name of appellant/accused Karthik cannot be treated lightly. The arrest and the statement of PW34 create serious suspicion. The implication of names of accused persons in the statement is much after deliberation and discussions between 7.1.1983 and 28.1.1983. The benefit of doubt about the complicity of the appellants should always necessarily go to the appellants.

60.The independent witnesses namely Chellapilali PW5 and Gopi PW5 turned hostile being participates in the deliberations from the inception of the transaction till accomplishment of the alleged offence as not supported the case of PW2, PW5 in the evidence says he did not knew the appellants. The findings of the trial Court in para No.94 held that PW1 was not cross examined and his evidence can be accepted, is unsustainable in law.

61.It has been held by the Hon'ble Apex Court reported in 1980 Supp SCC 417 Juwar Singh and others Vs state of Madhya Pradesh, that, cross examination is not the only method of discrediting a witness. If the oral testimony of certain witnesses is contrary to prove facts their evidence might well be discarded on that ground. If their testimony is on the face of it unacceptable, Courts are not bound to accept their testimony merely because there was no cross examination.

62.In the result, the trial became vitiated on account of improper framing of unconnected questionnaires and examining the

accused who is not at all connected to other cases and the evidences appearing in those questionnaires are not implicated against appellants /accused.

63.The complicity of the appellants/accused was not mentioned in the earlier version in the FIR neither as to their presence at the 1st instance nor at the scene of occurrence till its completion nor instigated the members of the party to cheat PW2 nor lured PW2 to get the gold kasu maalai at cheaper rate in order to part with the money. The evidence of PW2 is doubtful, unbelievable and untrustworthy and do not inspire confidence to bring home guilt of appellants for the charge under section 420 read with section 114 pf IPC.

64.Section 114 of IPC. This section applies to cases where a person abets the commission of the offence sometime before and at a different place and also remains present at the time of the offence is committed. There are no direct and independent sources to show the presence of appellants either at the time of commencement of offence or till the completion of offence. The evidence of principal offenders turned approvers i.e. PWS-1, 30, 34 are tainted and not corroborated with material particulars. Their evidence is not reliable and unworthy of credit.

65.The essential factor of the offence of abetment under section 114 of IPC is absent. The knowledge of commission of offence with the aid of appellant/accused karthi was not proved beyond all reasonable doubt. Mere presence as an abettor will not render liable for the offence committed. The prime accused who were involved in all these series of offence of similar modus operandi were dead. The other prime accused A1 Krishnnaiah and A2 from whom the cash was seized were all acquitted.

66.In the result:

(a) All these Criminal Appeals are allowed and thereby the conviction and sentence imposed on the appellants/accused by the learned VI Additional Sessions Judge, Chennai in S.C.Nos.34, 35 of 1993, 186 of 1993 and 410 of 2006 dated 26.10.2006 are set aside;

(b) The appellants/accused are acquitted from all the charges;

(c) The bail bond, if any, executed by the appellants/accused shall stand cancelled and the fine amount, if any paid by the appellants/accused shall be refunded by the trial Court.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1. The VI Additional Sessions Judge, Chennai.
2. The Metropolitan Magistrate No.II, Egmore, Chennai.
3. The Chief Metropolitan Magistrate, Egmore, Chennai.
4. The Principal Sessions Judge, Chennai.
5. The Public Prosecutor, High Court, Madras-104
6. The Deputy Superintendent of Police, Crime Branch, CID Chennai-4.
7. The Metropolitan Magistrate NO.XVIII, Saidapet.
8. The Superintendent, Central Prison, Puzhal, Chennai.
9. The Judicial Magistrate NO.2, Chennai.
10. The Director General of Police, Mylapore, Chennai.
11. The Commissioner of Police, Chennai.

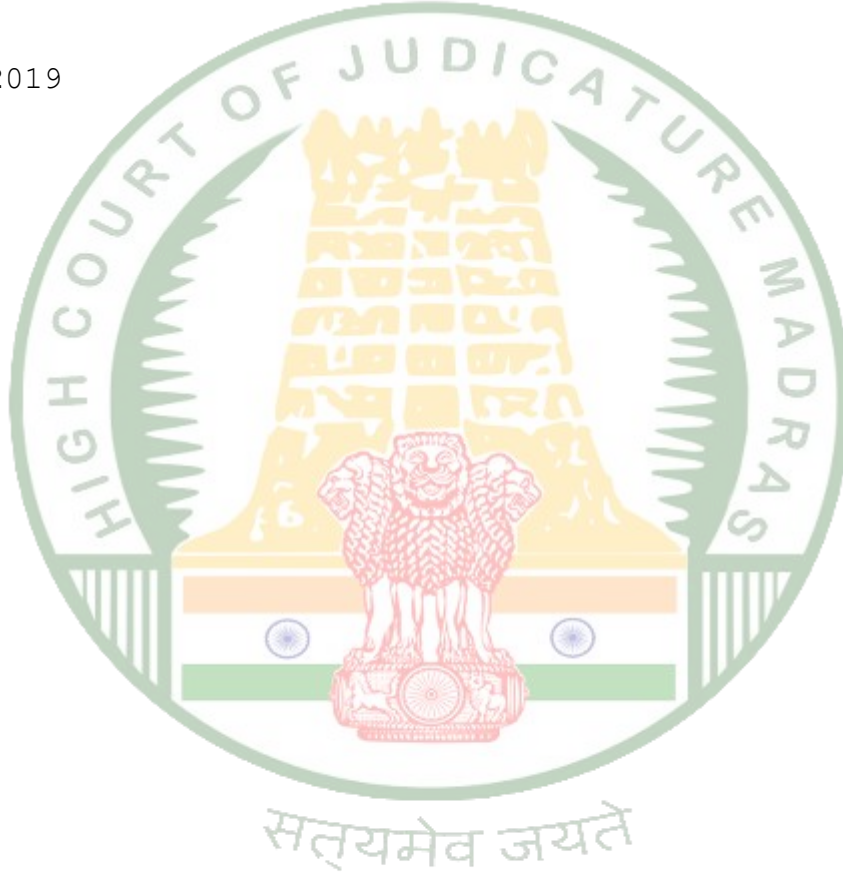
Copy To

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

+1cc to Mr.R.Karunakaran, Advocate, S.R.No.12008
+1cc to Mr.R.John Sathyan, Advocate, S.R.No.12062
+2cc to Mr.N.S.Sivakumar, Advocate, S.R.No.12610, 12257

Crl.A.Nos.978, 993, 994, 995, 1001,
1010, 1018, 1054 & 1005 of 2006

SSV(Co)
CS/26/03/2019



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