

Bail Slip

The Appellant/ Petitioner /Accused,namely Mannaiyan @ Venkatesan S/o. Ponnusamy was directed to be released on bail as per order of this court dated 01.04.2011 in MP.NO.1/11 IN CRL A.NO.234/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
Crl.A.No.234 of 2011

Mannaiyan @ Venkatesan

...Appellant/Sole Accused

-Vs-

The State rep. by
The Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai - 600 021.
(Cr.No.330 of 2009)

...Respondent/Complainant

This Criminal Appeal is filed under Section 374 of Cr.P.C. praying to set aside the conviction and sentence against the appellant/accused on 20.04.2010 in S.C.No.56 of 2010 by the learned Additional District & Sessions Judge, Fast Track Court No.1, Chennai - 600 001 and acquit him from all the charges.

For Appellant : Mr.PA.Kadirvel, Legal Aid Counsel
For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed seeking to set aside the judgment of conviction dated 20.04.2010 made in S.C.No.56 of 2010 by the learned Additional District & Sessions Judge, Fast Track Court No.1, Chennai, and to acquit him from all the charges.

2 Case of the prosecution is that the appellant/accused on 30.04.2009 at about 09.00 a.m. when the witness Mani P.W.1 proceeded to go to Nethaji Nagar Murugan Temple, at a place near Tondiarpet, IOC Bus Terminus, waylaid and threatened him by showing knife and attempted to cut the head of P.W.1. When P.W.1 thwarted the same and made alarm, public gathered there and tried to catch the accused, but the appellant/accused took soda bottles from the nearby Bunk Shop and thrown on the road, disturbing public tranquility. Thereafter, when P.W.1 along with the public tried to catch the appellant/accused, he threatened and snatched Nokia Cell Phone and cash of Rs.27 from P.W.1, at that time P.W.2, the Sub Inspector of Police came and caught hold the appellant/accused with the help of public.

3 Therefore respondent police registered a case against the appellant in Crime No.330 of 2009 for the offence punishable under Sections 341, 392, 336, 427, 307 & 506(II) of IPC and after investigation laid a charge sheet before the learned XV Metropolitan Magistrate, George Town, Chennai-1, which was taken on file in P.R.C.No.124 of 2009. The learned Metropolitan Magistrate, since the offence charged against the appellant is triable only by the Court of Sessions, had committed the case to the learned Principal Sessions Judge, Chennai. The learned Principal Sessions Judge, Chennai, had taken the case on file in S.C.No.56 of 2010 and made over the same to the learned Additional District and Sessions Judge, Fast Track Court - I, Chennai, for disposal. The learned Additional District and Sessions Judge, after trial, found the appellant/accused guilty for the offence punishable under Sections 341 and 392 and not guilty for the offence punishable under Sections, 427, 307 & 506(II) of IPC and hence by judgment dated 20.04.2010, convicted and sentenced him to undergo simple imprisonment for a period of one month for the offence under Section 341 of IPC and to undergo rigorous imprisonment for a period of four years for the offence under Section 392 of IPC and no fine was imposed. Aggrieved against the judgment of conviction, the appellant is before this Court with the present criminal appeal.

4 According to learned legal aid counsel appearing for the appellant, the alleged occurrence has taken place on 30.04.2009 at about 9.00 a.m., whereas, FIR registered only at 04.00 p.m., and the delay was not explained by the prosecution properly and even though as stated in the

complaint Ex.P1, the place of occurrence is very busy and there were many persons available, prosecution has failed to examine any of the independent witness to substantiate the case of the prosecution. Prosecution has examined P.W.6, as mahazar witness and he also turned hostile and P.W.7 also turned hostile. Except the complainant/P.W.1, no other witness was examined by the prosecution to prove its case. Further there was no cross examination on the side of the defence and the case was fully cooked up by the prosecution and false case has been foisted against the appellant. There is contradiction in the evidence of P.W.1 and P.W.2, the Sub Inspector of Police. P.W.1 has stated that while the appellant/accused snatching the phone and cash, he along with the public had caught the appellant/accused and handed over to the police, whereas, the evidence of P.W.2 would go to show that when he went to place of occurrence, he saw some crowd and he with the help of public caught the appellant/accused, which itself shows that the case was falsely foisted against the appellant and arrest and recovery was also not proved by the prosecution. The learned trial Judge has failed to consider the above facts and erroneously recorded conviction, which warrants serious interference.

5 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 and P.W.2 had clearly spoken about the occurrence. Defence side did not cross examine the prosecution witnesses, even after giving opportunities. Therefore, the learned trial Judge, after considering all the materials and the arguments advanced on either side, had rightly convicted the appellant/accused, which does not call for any interference.

6 Heard the learned counsel appearing on either side and perused the materials available on record.

7 P.W.1 is eye witness and he has spoken about the offence said to have been committed by the appellant/accused. From the evidence of P.W.1 and also P.W.2, it reveal that place in where the alleged occurrence said to have taken place is a very busy place and there were many persons available at the time of occurrence. But, prosecution has neither cited the persons as witness nor examined before the Court of law and hence prosecution has failed to examine any of the independent witness to substantiate its case. Prosecution has examined P.W.6, as mahazar witness and he also turned hostile and P.W.7 also

turned hostile not supported the case of the prosecution. There is contradiction in the evidence of P.W.1 and P.W.2, the Sub Inspector of Police. P.W.1 has stated that while the appellant/accused snatching the phone and cash, he along with the public had caught the appellant/accused and handed over to the police, whereas, the evidence of P.W.2 would go to show that when he went to the place of occurrence, he saw some crowd and he along with P.W.3 and Head Constable Baski caught the appellant/accused, which itself creates doubts in the case of the prosecution. Further prosecution has stated that the appellant had taken the Soda Bottle from the shop near by the place and thrown the same in the street, but even the shop keeper has not been examined by the prosecution. When there are several opportunities to prove the case, prosecution has failed to utilize those opportunities by examining independent witness. Therefore, on the whole, prosecution has failed to establish its case beyond reasonable doubt. The learned trial Judge has failed to appreciate the above facts and convicted the appellant/accused. Therefore this Court is inclined to interfere with the judgment of conviction passed by the trial Court.

8 In the result, the criminal appeal stands allowed, judgment of conviction dated date 20.04.2010 made in S.C.No.56 of 2010 by the learned Additional District & Sessions Judge, Fast Track Court No.1, Chennai, is hereby set aside and the appellant is acquitted from all the charges leveled against him in Crime No.330 of 2009. The Superintendent of Jail, Central Prison, Puzhal, is directed to release the appellant/accused immediately, if he is not required for any other case.

9 While parting with the case, I appreciate the services rendered by Mr.PA.Kadirvel, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The learned counsel on record for the appellant is entitled for remuneration as per rules.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District & Sessions Judge,
Fast Track Court No.1, Chennai.
2. The Public Prosecutor, High Court of Madras.
3. The Inspector of Police, H-6, R.K.Nagar Police
Station, Chennai - 600 021.
4. The Superintendent of Jail, Central Prison, Puzhal.
+1cc to Mr.PA.Kadirvel , Advocate SR.No. 68011
Crl.A.No.234 of 2011

A.SK(09/08/2019)