

Bail Slip

The Appellant/Accused NO.2 namely R.Selvaraj S/o.Ramu (S.C.No.5/2009 on the file of Additional Sessions Judge, (Fast Track Court) at Dharmapuri) was ordered to be released on bail by order of this Court dated 30.06.2011 and made in CrI.MP.No.1 of 2011 in CrI.A.No.386/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.386 of 2011

R.Selvaraj

...Appellant/A2

-Vs-

State Rep. by the
Inspector of Police,
Hogenakkal Police Station,
Dharmapuri District,
Cr.No.155/2008

...Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the conviction and sentence passed against the appellant/accused-2 by the Additional Sessions Court (Fast Track Court) at Dharmapuri, in S.C.No.5 of 2009 dated 29.06.2010 and acquit him from all charges.

For Appellant : Mr.Koviramalingam

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (CrI.Side)

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JUDGMENT

This criminal appeal has been filed against the judgment of conviction passed in S.C.No.5 of 2009 dated 29.06.2010 made by the learned Additional Sessions Judge, (Fast Track Court), Dharmapuri.

2 The respondent police had registered a case against the appellant and one another stating that on 12.09.2008 on the Hogenakkal to Anjetti Road, 3 Kilometers on the western direction of the Alampati Parisil Thurai, within the limits of Hogenakkal Police Station, while the informant Balaji and the witness Kumar were proceeding in a Bajaj C.T.100 two wheeler motor cycle bearing Reg.No.TN 24 Y 6615, accused 1 & 2 with a common intention of committing robbery, intercepted the two wheeler and A1 assaulted P.W.3 with Koduval aiming on his neck and when P.W.3 prevented the same by raising his right hand, he sustained cut injury. A1 and the appellant/A2 tied both the hands of P.W.3 along with the tree by using lungi cloth piece and tied the both the hands of P.W.1 with the tree by using lungi cloth piece and hip thread and robbed cellphone from the witnesses and the two wheeler motor cycle and also taken money for a sum of Rs.29,000/-. Therefore a case was registered against A1 for the offence punishable under Sections 342, 394 and 392 r/w 397 of IPC and against the appellant/A2 for the offence punishable under Sections 342 and 394 of IPC. After investigation, the respondent laid charge sheet before the jurisdictional Magistrate and the same was taken on file in S.C.No.5 of 2009 by the learned Additional Sessions Judge, Fast Track Court, Dharmapuri.

3 Before the trial Court, in order prove the case of the prosecution, P.W.1 to P.W.6 were examined and Ex.P1 to Ex.P10 were marked and also material objects 1 to 4 were exhibited.

4 The learned Additional Sessions Judge, after trial, by judgment dated 29.06.2010, found A1 guilty of offence and convicted him and sentenced to undergo rigorous imprisonment for a period of three months for the offence under Section 342, and sentenced to undergo rigorous imprisonment for a period of seven years and also to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of six months for the offence under Section 394 and to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/- in default, to undergo simple imprisonment for a further period of six months for the offence under section 392 r/w 397 of IPC. The appellant/A2 was found guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three months for the offence under Section 342 and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for a further period of six months for the offence under Section 394 of IPC. Aggrieved against the judgment of conviction, A2 has filed the present criminal appeal before this Court.

5 According to learned counsel appearing for the appellant/A2, date of occurrence was on 12.09.2008, whereas,

case was registered only on 14.09.2008, prosecution has failed to explain the delay properly, which creates doubt in the case of the prosecution. There is previous enmity between the appellant and P.W.3 and in the FIR, no name was mentioned, it was mentioned as unknown person. Therefore the respondent police foisted false case against the appellant/A2. P.W.1 and P.W.3 are relatives and there is no eye witness to the occurrence. There are contradictions in the evidence of the prosecution witnesses regarding place of arrest. Further, before registering the present case, the appellant was remanded under Goondas Act and subsequently revoked. The respondent police ought to have conducted identification parade, since the FIR was not registered against named person and non-conduct of identification parade to identify the accused is fatal to the case of the prosecution. Prosecution has failed to produce the lungi cloth piece and hip thread said to have been used in the alleged occurrence and recovery was not made in the manner known to law. The weapon alleged to have been used in the occurrence i.e. Koduval was not produced before the Court and prosecution has produced only knife. Further the medical certificate was not issued from the hospital, where P.W.1 and P.W.3 had taken treatment for their injuries, and it was only issued privately. The trial Court has failed to consider the contradictions between the evidence of prosecution witnesses and the defence taken by the appellant/A2 and therefore benefit of doubt should be extended to the appellant/A2.

6 Learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 and P.W.3 are injured witnesses and they have clearly spoken about the involvement of the appellant/A2 in the offence. P.W.3/Doctor, who has given treatment to the injured witnesses P.W.1 and P.W.3, has stated that both P.W.1 and P.W.3 came to the Hospital with injuries and therefore he issued wound certificates Ex.P2 and Ex.P3. P.W.4 is the witness for Mahazar and P.W.5 is the witness for recovery. Therefore prosecution has proved its case beyond reasonable doubt through the evidence of P.W.1 to P.W.5 and the trial Court has also rightly appreciated the evidence and convicted the appellant/A2 and the same does not call for any interference.

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

8 It is seen that case was registered against two persons and the appellant was arrayed as A2 and convicted by the trial Court for the offence under Section 342 and 392 of IPC. Even though the learned counsel appearing for the appellant/A2

vehemently contended that in FIR no name was mentioned and identification parade has not been conducted and the lungi cloth and hip thread alleged to have been used in the occurrence was not produced before the Court, P.W.1 and P.W.3, the injured witnesses had clearly identified the accused persons before the Court and the injuries sustained by them itself had spoken about the offence committed by the accused. Further, FIR is not an encyclopedia, the respondent police on receiving the complaint, has registered a case against unknown persons and after investigation, has identified the accused. It is contended that the weapon alleged to have been used in the occurrence is Koduval and some of the witnesses of prosecution had stated that Aruval and the prosecution has produced one knife before the Court. Both the Aruvual and Koduval is almost one and same and some may call it as Aruval and some may call it as Koduval and hence the contradictions pointed out by the learned counsel for the appellant would not affect the case of the prosecution in any way. The injured witnesses P.W.1 and P.W.3 immediately after the occurrence, had admitted in the Hospital and P.W.3, the Doctor, one who treated the injured witnesses had clearly spoken about the injuries sustained by P.W.1 and P.W.3, which corroborate the evidence of P.W.1 and P.W.3. On reading of entire evidence of P.W.1 to P.W.5 coupled with Ex.P2 and Ex.P3, it is clear that the accused caused injuries to P.W.1 and P.W.3. There is no reason to discord or disbelieve the evidence of P.W.1 and P.W.3. This Court as an appellate Court, has re-appreciated entire evidence on record and find that prosecution has proved its case beyond reasonable doubt and there is no reason to interfere with the judgment of conviction. However, in order to meet ends of justice, period of imprisonment alone modified from seven years to four years for the offence under Section 394 of IPC.

9 Accordingly, the criminal appeal is partly allowed with the above terms. Trial Court is directed to secure the presence of the accused to undergo remaining period of imprisonment immediately.

Sd/-

Assistant Registrar (CS)

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Sub Assistant Registrar

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To

1.The Additional Sessions Judge (Fast Track Court),
Dharmapuri.

2. The Judicial Magistrate, Pennagaram

3. -do-Through; The Chief Judicial Magistrate, Dharmapuri

4. The Superintendent, Central Prison, Vellore.

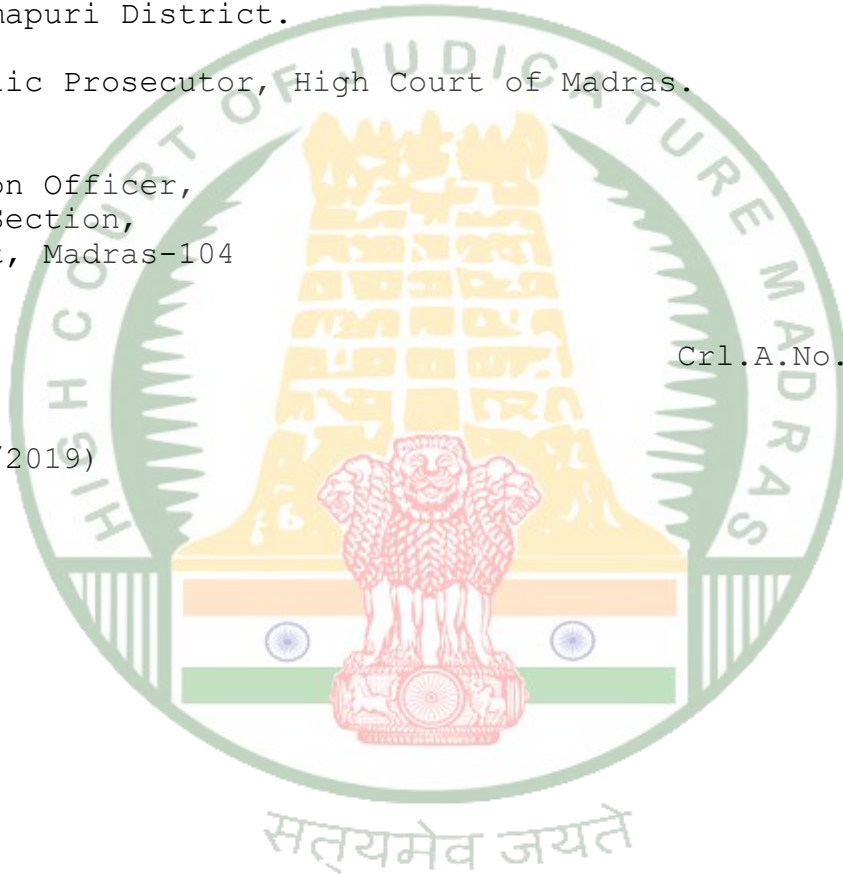
5.The Inspector of Police, Hogenakkal Police Station,
Dharmapuri District.

6.The Public Prosecutor, High Court of Madras.

Copy To
The Section Officer,
Criminal Section,
High Court, Madras-104

Crl.A.No.386 of 2011

SV(CO)
GMY(13/08/2019)



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