

Bail Slip

The Petitioner/Accused viz., Vinoth Kumar @ Vinoth S/o.Kamaraj was released on bail as per order of this Court dated 16/08/2011 in M.P.No.1/11 in Crl.A.461/1 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.461 of 2011
and
Crl.M.P.No.9594 of 2019

Vinoth Kumar @ Vinoth

... Appellant

-Vs-

The State represented by
The Inspector of Police,
V-5, Tirumangalam Police Station,
Chennai-600 101.
(Crime No.843 of 2009)

... Respondent

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment dated 22.11.2010 passed in S.C.No.130 of 2010 by the learned Additional District and Sessions Judge (Fast Track Court-II), Chennai.

For Appellant : Mr.A.V.Somasundaram

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

J U D G M E N T

This appeal has been filed to set aside the judgment dated 22.11.2010 passed in S.C.No.130 of 2010 by the learned Additional District and Sessions Judge (Fast Track Court-II), Chennai.

2. The respondent police registered a case in Crime No.843 of 2009 against the appellant herein for the offence under Section 397 of IPC and after completing the investigation, laid a charge sheet before the learned X Metropolitan Magistrate, Chennai. The learned Magistrate taken the charge sheet on file in PRC.No.247 of 2009 and since the offence is exclusively triable by the Court of Sessions, he committed the case to the learned District and Sessions

Judge, City Civil Court, Chennai. In turn, the learned Sessions Judge taken the case on file in S.C.No.130 of 2010 and made over the case to the learned Additional District and Sessions Judge (FTC-II), Chennai for disposal. After completing the formalities, the learned Sessions Judge framed charges for the offences under Sections 452 and 394 r/w 397 of IPC against the appellant/accused.

3. In order to prove the case, the prosecution examined as many as 18 witnesses, marked 20 exhibits and 6 material objects. After completing the prosecution witnesses, when the incriminating circumstances culled out from the prosecution witnesses were put before the accused, he denied as false. On the side of the defence, no oral and documentary evidence was produced. After hearing the arguments on both sides and considering the materials placed before it, the trial Court found guilty of the appellant for the offences under Sections 452 and 397 of IPC and sentenced him to undergo 3 years Rigorous Imprisonment and fine of Rs.2,500/-, in default, 3 months Simple Imprisonment for the offence under Section 452 of IPC and 7 years Rigorous Imprisonment and fine of Rs.2500/-, in default, 3 months Simple Imprisonment for the offence under Section 397 of IPC by judgment dated 22.11.2010. Challenging the said judgment, the accused has preferred the present appeal before this Court.

4. The learned counsel appearing for the appellant would submit that there are material contradictions between the prosecution witnesses. The respondent police foisted a false case against the appellant/accused and without conducting the investigation in fair manner, falsely laid the charge sheet against the appellant and also the prosecution has not proved its case beyond reasonable doubts. PW-4 has stated that the appellant was arrested by the police on the same day and PW-8 has also stated that while he was enquired by the police on 28.10.2009, he saw the appellant/accused in the police station, whereas, PW-18/Investigation Officer has stated that the accused was arrested only on 30.10.2009. PW-18 also recovered the gold chain from the appellant/accused and recorded his confession statement on 30.10.2009. The arrest and recovery have not been proved by the prosecution and hence, there are material contradictions regarding the date of arrest of the accused and also the recovery of the stolen gold chain. The learned counsel would further submit that PW-1 has stated that the gold chain was cut into 3 pieces at the time of occurrence, whereas, the recovered chain was a single piece, which also creates suspicious. Further, PW-1 stated that she sustained 15 injuries over her body at the time of occurrence, whereas, Ex.P9/Wound Certificate shows that there are 7 injuries, out of which, 6 injuries are simple in nature and the 7th injury alone was grievous in nature. Further, the learned counsel would submit that PW-1 has stated that she lost her teeth, whereas, there was no evidence to prove the same, which also creates suspicious. Therefore, the

prosecution has not established its case. Since the Mahazar witness has turned hostile, he has not supported the case of the prosecution. There are discrepancies in the evidence of PWs-1, 3, 4 and 5. When two views are possible, the benefit of doubt should be extended to the appellant/accused. Though the trial Judge has made observation that the prosecution has not properly investigated the case, there is a flaw in the investigation. The benefit of doubt has not been extended to the accused, which affects the fundamental juris prudence of Criminal Law. The learned counsel would further submit that the serology report does not speak as to whether it is human blood or animal blood. The absence of any specific evidence about the blood group is also creates suspicious and the report has not helped the prosecution to establish its case. Therefore, the prosecution has not proved its case beyond reasonable doubts and the benefit of doubt should have been extended to the appellant/accused. The learned counsel further submitted that the appellant was aged only 19 years at the time of occurrence and the benefit of Section 360 of Cr.P.C has to be extended to him since the appellant is the first offender. Though the trial Court made an observation that there is a defect in the investigation, whereas, it has failed to give effect by ignoring the same and convicted the appellant/accused, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that PW-1 is the victim and PW-2 is the husband of the victim. PW-2 has clearly stated that they have bought flat in F2, First Floor, Jeyantha Park, No.36, Park Road, Anna Nagar (West), Chennai. They engaged PW-8 for painting work. PW-8 also stated that he engaged the accused for painting work and even PW-1, 2, 3, 4 have also stated that they have seen the accused prior to the occurrence, when he came for painting work. The evidence of PW-4/watchman has clearly stated that since he has seen the accused in earlier days, when he came for painting work, he allowed him into the apartment on the date of occurrence. The appellant/accused told PW-4 that he wanted to enquire about the work done by him in Flat No.F2. After the occurrence, PW-4 heard the noise from the said flat and at that time, he saw the accused ran away from the apartment. PWs-3 and 5 have also stated that they have seen the accused even prior to the occurrence, when the accused came for painting work. The accident register/Ex.P8 also shows that known person attacked the victim. The evidence of PW-15/Doctor and the wound certificate/Ex.P9 have clearly show the injuries sustained by the victim. The discrepancy pointed out by the learned counsel for the appellant, is minor, which will not affect the case of the prosecution. All the points raised by the defence counsel before the trial Court are correctly answered by the trial Court and the trial Judge rightly rejected the defence taken by the appellant and found that the prosecution has proved its case beyond reasonable doubts and convicted the appellant/accused. Hence, the authorities cited by the

learned counsel for the appellant is not applicable to the present case on hand. Since the judgment of trial Court well found, this Court need not interfere with the same.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the materials available on record.

7. The case of the prosecution is that PW-1 was residing at Flat No.F2, First Floor in Jayantha Park, W-36, Park Road, Anna Nagar. One month prior to the occurrence, the appellant/accused came for painting work along with the team of members and after completing the painting work on 26.10.2009, the appellant came to the victim's house. At that time, no one was there in the house except the victim/PW-1 and he asked PW-1 as to whether any complaints regarding the painting work done by them, for which, she said no and sent him back. On the next day i.e., on 27.10.2009, the appellant/accused again came to the victim's house with knife at 3.30 p.m and requested her to allow him to go inside to see about the painting work done by them and if she is not allowed him, he would not be paid. Therefore, she allowed to look into the house and after entering the house, the appellant/accused asked PW-1 to bring water. After providing water, PW-1 asked him to go out and open the door and at that time, the appellant/accused attacked with knife on her head, lips, thigh, left hand, shoulder, right hand, fingers and caused multiple injuries and when she shouted at him, at that time he left the knife there itself and escaped from there. After hearing the noise, PWs-3 and 5 came there and at that time, the accused ran away through steps and ran away from the flat. PW-4/watchman, after hearing the notice, came there and seen the appellant/accused pushed the gate and ran away. PWs-3 and 5, after seeing the victim with multiple injuries, took her to the private hospital and admitted her. The doctor intimated to the police and the police came to the hospital and recorded the statement from PW-1 and registered a case and after completing the investigation, laid a charge sheet and after trial, the appellant was convicted.

8. On a reading of evidence of PW-1, it is seen that she is the injured witness and she has narrated the incident that after completion of painting work, on the date of occurrence, i.e., on 27.10.2009 at about 3.30 p.m, the appellant/accused came to her house and asked her as to whether any complaint regarding the painting work done by them, for which, she replied no complaints and the appellant also requested her to allow him inside the house to verify as to whether any defect in the painting work. When she allowed him inside the house, he asked her to bring water and after providing water to him, PW-1 asked the accused to go out, and at that time, the appellant/accused attacked her with knife. PW-3 and 5 have also stated that on the date of occurrence, they heard the

sound from the house of the victim and after hearing the noise, they went there and at that time, the appellant/accused ran away from the house through steps on the apartment. PW-8 also stated that he engaged the appellant for painting work for the last two days. PW-6 has stated that he has also residing in the apartment. On 27.10.2009, the police came to the apartment and prepare the observation mahazar in the house of the victim and also recovered the knife, key chain and found blood stain in the floor and they removed by cotton and also stood as a witness. PW-7 has spoken about the painting work done in the victim's house and the appellant was also doing painting work. PW-8 has also stated that prior to the occurrence, they are engaged for doing painting work in the house of the victim and the appellant was also engaged in the said work. PW-9 has also stated about the painting work done in the victim's house for the last two days. The evidence of PWs-6 to 9 proved that the appellant/accused has gone to the victim's house for painting work prior to the date of occurrence. On a reading of the evidence of PW-4/watchman, it is seen that the appellant came to the apartment by saying that they have received some complaint regarding the painting work, which was done by them in the victim's house. Since PW-4 has already seen the accused during painting work, he allowed him to go inside the apartment. Therefore, the presence of the appellant/accused on the date of occurrence especially before and immediately soon after the occurrence was clearly established by the prosecution. PW-15/Doctor, who was working in the Sridevi Hospital has spoken that on the date of occurrence, the victim was taken to the hospital by PW-3 and 5 and they admitted her in the hospital and also an entry was made in the accident register. According to PW-15, the victim sustained 7 injuries, out of which, 7th injury is grievous in nature and the same shows the loss of tooth. Though the learned counsel for the appellant submitted that there was no entry in Ex.P8/Accident register, Ex.P9/wound certificate shows that the nature of injury described as grievous. Even though there is no specific entry regarding the 7th injury in Ex.P8/Accident Register, all the seven injuries have been separately described in Ex.P9/Wound Certificate. At the time of admission in the hospital, an entry regarding loss of tooth was made in the Accident Register, whereas, the same has not been specifically mentioned in Ex.P9/wound certificate. Therefore, mere non-mentioning the injury No.7 as mentioned in the wound certificate is not fatal to the case of the prosecution. It cannot be treated in the further improvement. PW-15/Doctor has clearly stated that the victim lost her tooth and the injury is concerned grievous in nature and he has also stated that all the other injuries are simple in nature and the same would be caused through knife. Exs.P10 to P13/photographs filed by the prosecution show that the knife (Arival) and the handle of the the said Arival lying on the floor. The prosecution found the blood stain and bike key from the place of occurrence. The Motorbike and Ex.P13 show that the bike

was standing nearby the apartment. Since the appellant/accused lost the key inside the house of the victim, he left the motorbike in the apartment itself. PW-16 has stated that he has taken the fingerprint in the house of the victim and also collected the fingerprint from the appellant and sent the same to the Forensic Lab. Ex.P15/forensic report shows that the fingerprint taken from the occurrence place is tallied with the appellant's fingerprint. The evidence of PWs-1, 3 to 5 is proved the presence of the accused in the apartment and the evidence of PW-16 further strengthened the case of the prosecution. On a reading of the complaint, it is seen that the complaint is given by PW-1 and she signed in the place of complainant and PW-3 signed as witness. From the evidence of PW-15/Doctor, it is seen that when the victim was admitted in the hospital, she was conscious. After getting statement from the victim, the police written the complaint and obtained the signature from the victim as well as PW-3. The contention raised by the learned counsel for the appellant is not acceptable in this regard. The main contention raised by the learned counsel for the appellant is that according to the evidence of PW-4 and 8, the police arrested the appellant on the date of occurrence and kept him in the police station till 28.10.2009 in the illegal custody of the police station, subsequently created the document as if they arrested the accused on 30.10.2009. PW-14 is the friend of the husband of victim and created the document of arrest and recovery of the chain as if he has voluntarily given the confession statement. The Trial Court accepted that there is a flaw in the investigation, but, unfortunately, it has not given any effect to that. There are contradictions and discrepancies in the arrest and recovery of the chain as contended by the learned counsel for the appellant. From the evidence of PWs-3 and 5, it is seen that immediately soon after the occurrence, they heard the noise from the house of the victim, they rushed to the place of occurrence and at that time they saw the appellant nearby the house of the victim, who was running through steps and also saw the victim, who sustained multiple injuries and took her to the hospital. The bike key of the appellant was also recovered from the seen of occurrence, which shows that the prosecution has proved its case beyond reasonable doubts. From the evidence of PW-15/Doctor, it is seen that the injuries sustained by PW-1 are grievous in nature and also from the evidence of PWs-1, 6 to 9, it is proved that the appellant/accused was engaged for painting work along with other members. The other witnesses also corroborated the evidence of PW-1. Even though the arrest and recovery are doubtful, it cannot be the sole reason to discard the evidence of PWs-1, 3 to 5. In this case, PW-1/injured witness has clearly stated that the appellant caused injuries to her. The evidence of PW-15/Doctor and the medical records corroborated the same. Therefore, the prosecution has proved its case beyond reasonable doubts. As rightly pointed out by the trial Court, the defect in investigation may not be the sole ground for acquitting the accused and disbelieve the case

of the prosecution in toto. When the eye witness in this case established PW-1, the other circumstances witnesses PWs-3 to 5 categorically stated the presence of the accused on the date of the occurrence and also other supporting witnesses PWs-6 to 9 proved that the appellant is a known person to the victim and there is no difficulty in identifying the accused and the evidence of Doctor further confirmed the same. The authorities referred by the learned counsel for the appellant will not be helpful to the present case on hand. There is no quarrel with the proposition laid down by the judgment referred to by the learned counsel for the appellant and also Section 360 of Cr.P.C. It is not mandatory that the Court should extend the said benefit in all the cases, but it depends upon the nature of the offence. In this case admittedly, the appellant went to the victim's house with the intention to snatch the chain and cause grievous hurt with pre-planned motive by possessing deadly weapon and also caused multiple injuries to the victim. Considering the serious nature of the offence, this Court is not inclined to extend the benefit of Section 390 of Cr.P.C to the appellant/accused.

9. In the circumstances, this Court finds that the prosecution has proved its case beyond reasonable doubts with cogent and reliable evidence. There is no sound ground and reason to interfere with the judgment of the Appellate Court and the appeal is liable to be dismissed.

10. Accordingly, this Criminal Appeal stands dismissed. The judgment dated 22.11.2010 passed in S.C.No.130 of 2010 by the learned Additional District and Sessions Judge (Fast Track Court-II), Chennai, is hereby confirmed. The trial Court is directed to secure the custody of the appellant/accused to undergo the remaining period of sentence, if any. Consequently, connected miscellaneous petition is also closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

KMI

To

1.The Additional District and Sessions Judge
(Fast Track Court-II), Chennai.

2.The Inspector of Police,
V-5, Tirumangalam Police Station,
Chennai-600 101.

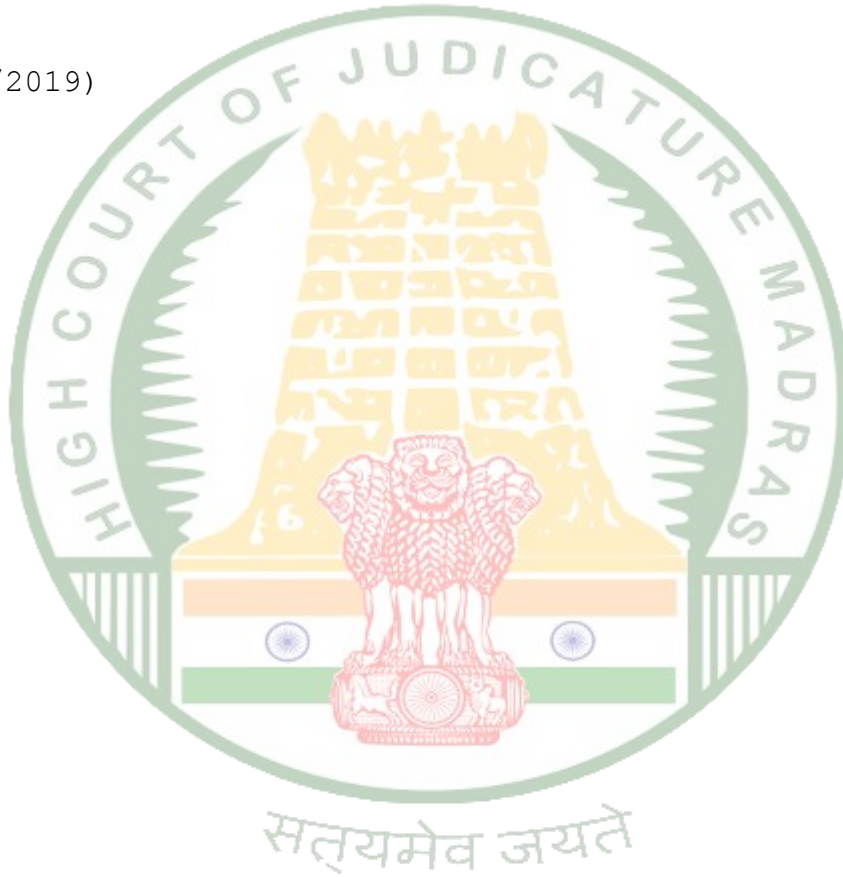
3.The Public Prosecutor,
High Court, Madras -104.

4. The Superintendent,
Central Prison,
Puzhal, Chennai

+1cc to Mr.A.V.Somasundaram, Advocate SR.No.61013

Criminal Appeal No.461 of 2011

NRL (CO)
GMY (27/11/2019)



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