

BAIL SLIP

The Appellants / Accused namely Suresh, aged 24 years S/o.Gunasekaran and Dhakshanamoorthy aged 25 years S/o.Natarajan were directed to be released on bail as per the order of this Court dated 04.05.2012 and 16/03/2012 in MP.No.1/2012 and MP.NO.1/2012 in CRL.A.No.217/2012 & 763/2011 respectively on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :11.02.2019

Pronounced on :22.02.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal Nos.763 of 2011 and 217 of 2012

Dhakshanamoorthy

.. Appellant in
Crl.A.No.763 of 2011

Suresh

.. Appellant in
Crl.A.No.217 of 2012

/versus/

State represented by
The Inspector of Police,
Kadampuliur Police Station,
Crime No.208 of 2009
Cuddalore District.

.. Respondent in
both appeals

Common Prayer: Criminal Appeals have been filed under Section 374 of the Criminal Procedure Code praying to set aside the conviction and sentence passed on the appellants by the learned Assistant Sessions Judge, Panruti in S.C.No.181 of 2011 by judgment dated 14.10.2011.

For appellants :Mr.K.Ilayaraja(both appeals)

For Respondent :Ms.P.Kritika Kamal, GA
(both appeals)

COMMON JUDGMENT

The accused in S.C.No.181 of 2011 are the appellants in these cases. The appellants were found guilty for the offence under Section 394 of IPC and sentenced to undergo 10 years

Rigorous Imprisonment each and imposed fine of Rs.1,000/-each in default to undergo one year Rigorous Imprisonment.

2. The prosecution case is that on 03.07.2009 at about 06.00 p.m., while the defacto complainant Arumugam was proceeding towards Kollukarankottai from Kullanchavadi on the Thar Road of Kattu Vegakollai, he stopped to attend natural call near Manila Graining Factory. The appellants came in a two wheeler threatened him with knife, robbed cash of Rs.30/- and after causing hurt with the knife, they also robbed 1 ½ sovereign gold chain worth Rs.12,00,000/-. Thereafter, both the appellants fled from the scene of crime. He informed about the incident to his friends over phone. The defacto complainant Arumugam was feeling giddy, so got admitted in the Government Hospital. After getting first aid in the Government Hospital, he was taken to Krishna Hospital at Cuddalore.

3. On 03.07.2009 at about 21.30 hours, the Sub Inspector of Police attached to Kadaampuliur Police Station recorded the statement of the defacto complainant Arumugam and registered First Information Report in Crime No.208 of 2009. On 08.07.2009 at about 14.00 hours, when the Inspector of Police attached to Kadaampuliur was involved in vehicle check near Kollukarankottai junction, a two persons in Hero Honda Splendor bearing Reg.No.PY-01-R-8803 were intercepted. Dhakashanamoorthy (A2) was driving the vehicle. Suresh (A1) was on the pillion. On enquiry, they voluntarily confessed they robbed Arumugam. Suresh (A1) informed the name of the pawn shop, where the gold chain robbed from the defacto complainant was pledged. Based on his information, the Investigating Officer went to the pawn shop of Mehendra Kumar (PW-8) and recovered M.O.1 (Gold Chain), which belongs to the defacto complainant (Arumugam). The mahazar for the recovery was prepared in the presence of the witnesses and the same was marked as Ex.P3. The Doctor, who treated the defacto complainant (Arumugam), was examined as PW-9(Aravind). The wound certificate containing the details of the injury sustained by Arumugam was marked as Ex.P5. The Doctor has opined that the injuries sustained by Arumugam was grievous in nature.

4. The Trial Court, after considering the evidence of PW-1 Arumugam/injured witness, the wound certificate mentioning the injury sustained by him, recovery of gold chain based on the confession of the accused has held that the appellants herein are guilty of offence under Section 394 of IPC and sentenced them to undergo 10 years Rigorous Imprisonment each and pay a fine of Rs.1000/- each, in default to undergo one year Rigorous imprisonment.

5. Aggrieved by the conviction and sentence imposed on the appellants, the present appeals are preferred.

6. CrI.A.No.217 of 2012 is filed by Suresh (A1) and CrI.A.No.763 of 2011 is filed by Dhakashanamoorthy (A2).

7. The learned counsel appearing for the appellants in both the appeals would submit that the case of the prosecution carries inherent defects and infirmities. The trial Court, has erred in not appreciating the lapses in the prosecution evidence. Even according to the prosecution for the incident which took place on 03.07.2009, at about 06.00 p.m., PW-1 (Arumugam) has not reported the matter immediately. First, he has gone to the Government Hospital at Panruti. Later, admitted in the Government Hospital, Cuddalore. Finally, he has got treated in a private hospital at Cuddalore. The complaint about the occurrence was given by him belatedly. The delay in lodging the First Information Report had given scope for manipulation, which has not been taken noted by the trial Court. The police has not taken any endeavour to ascertain from the victim witness whether the accused were the persons really involved in the robbery. When there is no corroborative evidence to the version of PW-1(Arumugam). Implication of the appellants falsely is highly probable. The trial Court has failed to consider this lapse in the prosecution.

8. Per contra, the learned Government Advocate representing the State would submit that the victim (PW-1) was attacked by knife and robbed of his gold chain weighing 1 ½ sovereign and cash of Rs.30/-. PW-1(Arumugam) in his complaint as well as in his deposition has stated that while he was proceeding towards Marugoor to meet his friends, he stopped his two wheeler near Manila Graining Factory on the Kattuvegakollai Road to attend his natural call, at that time, two persons in red colour Hero Honda CD-100 came near him and showed knife at him and demanded to give money and chain. When he resisted them, they stabbed on his chest, left hand back and snatched away the chain from him. This statement has been given by PW-1, while he was in the hospital taking treatment for the injury. Later, during the vehicle check, the appellants were apprehended. At that time, they were riding the two wheeler Hero Honda Splendor. Based on their confession statement, gold chain which belongs to Arumugam (PW-1) was recovered from PW-8 (Mahendrakumar).

9. PW-8(Mahendrakumar) pawn broker has identified the accused Suresh(A1) as the person, who pledged the gold chain. The receipt issued by PW-8(Mahendrakumar) was marked as Ex.P4. So, pointing out these evidences, the learned Government Advocate would submit that the overt act of the appellants has been spoken by the injured (PW-1).The injury sustained by him is corroborated and testified by Dr.Aravind (PW-9) and the accident Register Ex.P5. M.O.1 gold chain owned by PW-1 (Arumugam) was recovered from PW-8(Mahendrakumar) pawn broker, who has received

the chain from Suresh(A1). The learned Government Advocate would submit that having proved the guilty of the accused persons beyond reasonable doubt, the judgment of the trial Court has to be confirmed.

10. Heard both sides and perused exhibits and depositions.

11. This is a case where the prosecution is able to prove about the crime through the injured witness. During the course of trial, the prosecution has examined 12 witnesses and marked 9 exhibits along with 3 material objects. From the material evidence, the facts established by the prosecution without any iota of doubt is that on 03.07.2009 at about 7.15 p.m., Arumugam (PW-1) was brought to Panruti Government Hospital by his friend with the following injuries:

- (1)stab injury in his left side chest 1 x 1cm;
- (2) stab injury in the left side below sapula 1 x 1 cm;
- (3)stab injury in the right side chest 1 x 1 cm; and
- (4) stab injury in the left shoulder 1 x 1 cm.

He has brought conscious to the hospital and he has reported to the Doctor that he was stabbed by two persons. Having observed the multiple stab injuries around the chest, PW-1(Arumugam) has been referred to Cuddalore Government Hospital. However, he got admitted in a private hospital by name Krishna Hospital, Cuddalore and got treated for the injuries. PW-9 (Dr.Aravind) has opined that the injury sustained by the accused is grievous in nature.

12. Yet another fact, which has been proved without any doubt, is the recovery of gold chain (M.O.1) from the pawn broker (PW-8). Ex.P4 is the pawn receipt. It is in the name of Sundar. PW-1(Arumugam) has identified the chain (M.O.1), which was recovered from the pawn broker. According to the prosecution, they were able to recover the said chain from PW-8(Mahendrakumar) based on the confession of the accused persons. PW-8(Mahendrakumar) in his deposition, would say that on 08.07.2009 at about 05.00 p.m., police came to his shop along with the first accused (Suresh) and enquired about the chain pledged by Suresh(A1). He handed over the chain to them, he identified the receipt Ex.P4, which has been issued by him to one Sundar.

13. The learned counsel appearing for the appellants would raise a doubt about the prosecution linking the recovery of the chain from the pawn shop of PW-8(Mahendrakumar) and the accused person. Contending that no identification parade was conducted by the investigation officer to ascertain whether the appellants are the two persons who snatched the chain from PW-1 and stabbed him.

14. To this contention, the learned Government Advocate would submit that the evidence of PW-1(Arumugam), who is the injured witness, is natural and cogent. He has not only identified the accused but also identified the vehicle, which the accused persons came on the date of incident. The learned Government Advocate would submit that it is not necessary that in all and every case identification parade has to be conducted. The witness was able to identify the accused person, who have attacked him and robbed the chain coupled with the fact that the robbed property has been pledged by them and later, recovered. Therefore, no further proof is required to hold the accused guilty.

15. In this case, it is not a hard and fast rule proof that identification parade has to be conducted in all cases. The purpose of identification parade itself is for the investigation agency to affirm themselves, whether they are proceeding with the investigation in the right direction. In this case, from the facts proved, we find that the complaint has been registered for chain snatching by two persons. PW-1(Arumugam) has mentioned the vehicle of the accused persons as Hero Honda CD-100. This information, he has given in his earlier statement, while he was in hospital under state of shock. The vehicle which was later seized from the accused, is Hero Honda Splendor. Though the model is different, the maker of the vehicle is same. He is able to identify the vehicle through sticker found on the vehicle. The witness has been cross examined incisely. Some suggestions has been put to him about the injury, he has sustained. No further material has put forth on behalf of the accused person to substantiate that the suggestions put to the witness are worthy of evidence. PW-1(Arumugam) who has sustained grievous injury namely, three stab injuries around his chest, had called his friends immediately after the attack and then proceeded to the hospital. His friend Ramalingam and Jayabalan were examined by the prosecution as PW-3 and PW-4. They reached the scene of crime on receiving the phone call from PW-1 (Arumugam). They found PW-1(Arumugam) lying on the road in semi-conscious state and they have taken him to the hospital. The interception of the accused persons on 08.07.2009 by the police during the vehicular check has been spoken by PW-6 (Veerapandian). He is also one of the witness to the recovery mahazar. He is an independent witness. His evidence is substantially corroborated by the evidence of PW-7 (Sathishkumar).

16. In the said circumstances, the incriminating materials against the appellants has been spoken not by sole evidence PW-1 (Arumugam) alone, but by the other witnesses also. Therefore,

the judgment of the trial Court holding the appellants guilty of the offence under Section 394 of IPC is in accordance with law, based on the proven fact.

17. The learned counsel appearing for the appellants would submit that the period of imprisonment is excessive. Leniency may be shown to them considering their young age.

18. Section 394 of The Indian Penal Code reads as below:

394. Voluntarily causing hurt in committing robbery----If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

19. The punishment prescribed for causing voluntarily hurt while committing robbery is imprisonment for life or rigorous imprisonment for a term which may extend to ten years and also liable to fine.

20. In this case, it is not snatching of chain simplicitor or snatching the chain subjecting the victim under threat. It is the case where the accused have actually stabbed the victim on his chest at three places and caused grievous injury. The evidence of PW-9 (Dr.Aravind) would indicate that due to stab injuries, the victim was taken to Krishna Hospital, Cuddalore for intensive treatment. Since X-Ray revealed that there was blood clot near lungs due to the stab, he was taken to Ramachandra Medical college and Hospital at Chennai for further treatment.

21. Considering the gravity of the injury and the manner in which it was caused, this Court finds that it is not the case to be given liberal sentence. Therefore, these Criminal Appeals are dismissed. The convention and sentence imposed by the trial Court are hereby confirmed. The respondent police is directed to secure the accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant Sessions Judge, Panruti.

2.The Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District.

3.The Judicial Magistrate, Panruti

4.The Chief Judicial Magistrate,
Cuddalore (for information)

5.The Superintendent of Police,
Central Prison, Cuddalore.

6.The Deputy Superintendent of Police,
Mylapore, Chennai - 4.

7.The Public Prosecutor, High Court, Madras.

Judgment made in
Crl.A.Nos.763 of 2011 and
Crl.A.No.217 of 2012

BS (CO)
SSM(15/04/2019).



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