

Bail Slip.

The Appellant/Accused 1.S.Rajan S/o. Shanmugam aged 28 years
2. B.Raghu S/o. Balakrishnan aged 28 years in CrI.A. No.
165/2012 was directed to be released on bail as per order of
this court dated 28.03.2012 and made in M.P. No. 1/2012 in
CrI.A.165/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2019

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.165 of 2012

1.S.Rajan
2.B.Raghu

... Appellants/Accused 1 & 2

/versus/

State by Inspector of Police,
J-6, Thiruvanmiyur Police Station,
Chennai. Crime No.234/2009

... Respondent/Complainant

Criminal Appeal has been filed under Section 374(2) of
Criminal Procedure Code praying to call for the records in this
case, set aside the conviction and sentence dated 13.02.2012 in
S.C.No.133 of 2011 passed by the Additional District and
Sessions Judge, Fast Track Court-III, Chennai and acquit the
accused.

For Appellants :Mr.C.Rajan

For Respondent :Mrs.Kritika Kamal,P. GA

J U D G M E N T

The appellants are the accused in S.C.No.133 of 2011
tried by the Additional District and Sessions Court, Fast Track
Court No.III, Chennai. The trial Court has held them guilty of
offence under Section 397 r/w 394 of IPC and sentenced them to
undergo seven years Rigorous Imprisonment each and to pay a fine
of Rs.2,000/- each, in default to undergo six months Simple
Imprisonment. The period of sentence already undergone by the
appellants/accused was ordered to be set off under Section 428
of Cr.P.C.

2. Brief facts of the case is that on 13.03.2009 at about 12.30 hours, two youngsters came to the residence of Vijayalakshmi at Ambedkar Street, Thiruvannamiyur. They knocked the door of her house and enquired with her about the complaint regarding faulty on the telephone line. When she informed them that there is no telephone connection at all in her house, they went back and again after 10 minutes, they came and called her. This time they wielded knife, shut her mouth, snatched her chain and fled away from the scene of occurrence. The victim Vijayalakshmi immediately called her husband. As per his instruction, Mr.Narasiman, sister's husband of Vijayalakshmi came to the spot and took her to the hospital for the injury she sustained, lodged complaint before the police. The Doctor examined Vijayalakshmi and gave treatment for the injuries sustained by her.

3. Pursuant to the complaint given by Narasiman[PW-1], the respondent police visited the scene of occurrence and recovered a black colour two wheeler Hero Honda Splendor bearing Reg.No.TN 07 AP 2740, chase No.04M1-6044300 and engine No.04M1SM44949. Seizure mahazar was also prepared on the spot at about 14.30 hours. When the respondent police was investigating the present crime No.234 of 2009, they arrested two persons in another crime No.240 of 2009 on 15.03.2009. During the interrogation, based on the information given by those accused, the respondent police came to know that they are assailants, who are also involved in the present case and snatched the chain of Vijayalakshmi, after causing hurt to her. PW-1[Narasiman] was brought to the police station and he has identified the accused person.

4. Further, based on the confession statement, the room in which these accused were staying was searched and incriminating materials like gold chain, thali were recovered from that room in the presence of one Subash [PW-5]. Further, based on the confession statement, they went to the pawn shop owned by Chakra Ram (PW-8) and recovered receipts and the gold chain pledged by Rajan (A1) in the name of Suresh.

5. The Finger Print Expert was asked to compare the chance finger print lifted from the scene of occurrence with the admitted finger print of Rajan(A1). On comparison, he has opined that the chance finger print lifted from the scene of occurrence tallies with the admitted finger print of Rajan(A1). So, the trial Court, considering the evidence let in by the prosecution, has held that the prosecution has proved the case through the victim (PW-2) and the other evidences including the opinion of the finger print expert that the first accused Rajan has committed offence under Section 397 r/w 394 of IPC.

6. Aggrieved by the said Judgment of conviction and sentence, the present appeal is preferred on the ground that the prosecution failed to conduct identification parade immediately after the arrest of the suspect. When the victim and the assailants are strangers to each other, unless the identity of the assailants is established on the earliest point of time, mere identification of the accused in the court for the first time is a very weak piece of evidence to rely upon for convicting them. The evidence of PW-2[Vijayalakshmi] is the self-contradictory as well as the contradictory to the other witnesses. While PW-2 in her testimony has deposed that the assailants left the weapon at the scene of occurrence and fled, according to the Investigating Officer, the weapon was recovered from the room in the presence of PW-5. Even to prove the fact that the prosecution has not placed the seizure mahazar before the Court, the evidence of pawn broker (PW-8) is unbelievable and unreliable for the simple fact that he admits that even without identifying the identity of the loanee, he had accepted the jewels marked as M.O.1 and advanced the loan to the accused, who impersonated himself as Suresh.

7. Further, the learned counsel appearing for the appellants would submit that according to PW-2 and the First Information Report, the incident alleged to have been taken place near Tiruvanmiyur on 13.03.2009 around 12.30 to 12.45 hours. Whereas PW-8 pawn broker, who is running the shop at Anagaputtur has deposed that the accused came to his shop on 13.03.2009 at about 1.00 p.m and pledged M.O.1. Taking into consideration the distance between the scene of occurrence and the place, where PW-8 is running his business, the version of PW-8 has to be rejected in toto due to impossibility.

8. The learned counsel would also submit that while the alleged First Information Report was registered on 13.03.2009 at about 12.45 hours, the same was forwarded to the Magistrate only on 15.03.2009 at about 07.30p.m at her residence. The prosecution has failed to explain the delay in forwarding the First Information Report to the Magistrate at the earliest.

9. Regarding the two wheeler, which was recovered near the scene of occurrence on the date of complaint, the learned counsel appearing for the appellants would submit that ownership of the vehicle and the reason for returning the vehicle to PW-9 [Premkumar] have not been properly explained by the prosecution nor the trial Court has considered the break in the chain of events narrated by the prosecution. So, the learned counsel cumulatively submits that the delay in forwarding the First Information Report, failure of the prosecution in conducting identification parade and contradictions in the deposition of [P.W-8] pawn broker coupled with the self-contradiction of PW-1

[Narasiman] and the evidence regarding the incident as well as the material objects, the benefit of doubt should be extended to the appellants, since the trial court has failed to consider the lapse and lacuna in the prosecution case. Miscarriage of justice has occurred, which has to be redressed.

10. The learned Government Advocate representing the State would submit that PW-2 [Vijayalakshmi] is the victim of the crime. Her evidence is very specific and cogent that on 13.03.2009, the accused along with another person came to her house, enquired about the telephone connection and went back. Again they came after 10 minutes and enquired about the telephone connection on a look of the house and then wielded the knife and ran away from the scene of occurrence. It is possible to recognise the person, who has visited her house twice on the same day and assaulted her thereafter. It is not mandatory requirement for any investigating officer to conduct identification parade. In the case of this nature, it is for the investigating agency to choose whether the identification parade should be conducted or not, since it is only a procedure for the investigating officer to ascertain whether he is investigating the crime in a proper direction. Even during recording the statement of the victim, she had informed the investigating officer that she can recognise the assailants and she has rightly recognised the assailants within a two days of occurrence, the question of conducting identification parade does not arise.

11. In support of his submission, he relied on the judgment of our High Court rendered in Manikandan v. State represented by the Inspector of Police, Erode [CDJ 2017 MHC 7780]. In the said judgment, the Hon'ble Judge has observed as under:

"12. In cases of chain snatching a dacoity, the accused do not emulate the methods of the infamous Pink Panther, who leaves behind his calling card after the commission of a crime. Therefore, in the complaint to the police, the victim will give some identifiable features of the accused such as the skin complexion, hair style, height, general constitution and would generally say that he/she can recognise him, if shown. On such a complaint, the police will register an FIR against unnamed accused and proceed with the investigation. Whenever the police round up a suspect or when a suspect is arrested in another case and he spills the beans about his involvement in this case, the minimum thing which the police will be

expected to do is, to call the victim to the police station and show him/her the suspect. There is absolutely no bar in the Code of Criminal Procedure or in any other law for this. All over the world the police work only this way, because this is a fundamental commonsensical approach."

12. As far as the recovery of the two wheeler is concerned, the learned Government Advocate would submit that the evidence of PW-2 [Vijayalakshmi] that the assailants came in a two wheeler and fled away from the scene of occurrence coupled with the fact that the two wheeler was left abandoned near the scene of occurrence and later recovered by the police under mahazar [Ex.P4] itself is suffice to establish that the said vehicle was used by the assailants for committing the crime. The registration number of the vehicle has been tampered after it was stolen. This fact has spoken by PW-9 who lost his two wheeler in the service line near Marina Beach on 08.03.2009. He has deposed about the identification of his vehicle and tampering the registration number.

13. Thus, the prosecution through the witnesses has cogently and without any break in the chain of events, proved that the appellants along with the other person have gone to the house of PW-2 snatched her chain M.O.1 at a knife point and fled away. Later they were arrested in another case. Based on their confession, the room in which they were staying was searched and incriminating materials were recovered and the gold chain pledged with PW-8 was recovered. Both the assailants as well as the stolen article were duly recognised by the victim witness PW-3. Therefore, there is no error in the finding of the trial Court which requires no interference in the appeal.

14. Learned counsel appearing for the appellants and the learned Government Advocate appearing for the State. Perused the records.

15. The complaint [Ex.P1] is given by PW-1[Narasiman]. Based on the complaint, First Information Report Ex.P9 was registered by Thandavan Inspector of Police attached to Thiruvannamiyur police station. The printed First Information Report Ex.P9 indicates the incident took place on 13.03.2009 at about 12.00 hours. Two gold chains worth about five sovereigns alleged to have been snatched from the Vijayalakshmi. In the complaint itself, PW-1 has stated that the assailants have abandoning the two wheeler and ran away from the scene of occurrence. Based on this complaint, the police has gone to the scene of crime, recovered the two wheeler under mahazar Ex.P4. Observation mahazar has also been prepared by Thandavan Inspector of Police which is marked as Ex.P2. In the said

observation mahazar, the Inspector of Police has recorded that except the two wheeler bearing Reg.No.TN 07 AP 2740 no other incriminating evidence could be collected from the scene of crime.

16. In the light of the above statement found in the observation mahazar [Ex.P2], if one compares it with the evidence of PW-6 Chandrasekar Handwriting Expert, we could see that the prosecution has failed to place before the Court as to what time and when PW-6 visited the scene of crime and lifted the suspicious finger print from the scene of crime. He has not placed before the Court the suspicious finger print lifted from scene of crime nor the admitted finger print collected from A2 after his arrest.

17. The prosecution has also miserably failed to place before the Court under what circumstances, in whose presence the finger print of the accused was collected. Whether at all any finger prints were collected from the accused is highly doubtful, since there is no reliable evidence to believe or accept that there were two finger prints, one suspected finger print lifted from the scene of occurrence and another admitted finger print taken from the accused. In the absence of the questionable finger print and the admitted fingerprint, the opinion of the Finger Print Expert which is marked as Ex.P5 also, does not throw any light how the finger prints (chance finger print and the admitted finger print) were compared and tallied. The opinion of the hand writing expert is so crept without any reasoning. Therefore, this part of the prosecution evidence has to be totally ignored for want of material facts for appreciation by the Court.

18. If this opinion part of evidence is omitted, the remaining incriminating evidence against the appellants is the recovery of M.O.1 from PW-8. The corresponding receipt for the jewel pledged is marked as Ex.P8. The said receipt is issued in the name of Suresh and the first accused has signed in the receipt as M.Suresh.

19. It is the case of the prosecution, that through PW-8 that Rajan (A1) along with Raghu (A2) came and pledged the jewel on 13.03.2009 at about 01.00 p.m. As pointed out by the learned counsel appearing for the appellants, Court can take judicial note of the fact regarding the distance between Tiruvanmiyur and Anagaputtur, if the occurrence has taken place between 12.30 and 12.45 hours at Thriuvanmiyur, pledging the jewel at Anagaputtur within 15 minutes is highly doubtful.

20. Further, on reading the evidence of PW-8 as a whole, would clearly show that he is not a person, who carries the pawn broker business in accordance to rules. The receipt

book carries lot of omissions and corrections. It appears to be not properly maintained.

21. According to the prosecution, the witness hails from Tuticorin. PW-5 has stated that he came to Chennai only on 08.03.2009. He being a stranger to Chennai and to Anagaputtur area, PW-8 in his deposition has said that he has received jewel pledged by A-2 believing his statement that he is a resident of Anagaputtur and he has not asked for any other proof of his residence, coupled with this infirmity the prosecution has also miserably failed to place the recovery mahazar to prove that M.O.1 was recovered from the possession of PW-8, in the manner in which PW-8 has deposed. Since the prosecution failed to link the accused either to the crime or to the corpus delicti of the crime with cogent and reliable evidence, the appellants are entitled for benefit of doubt.

22. According, this Criminal Appeal is allowed. The conviction and sentence passed by the trial Court in S.C.No.133 of 2011 dated 13.02.2012 are set aside. Fine amount, if any paid by the appellants shall be refunded to them. Bail bond, if any executed by the appellants, stands cancelled.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The Additional District and Sessions Judge, Fast Track Court
No.III,
Chennai.

2.The Inspector of Police,J-6, Thiruvanmiyur Police
Station,Chennai.

3. The Judicial Magistrate No.I, Nagercoil

4. The Chief Judicial Magistrate, Kanyakumari

5. The Superintendent, Central Prison, Puzhal, Chennai.

6.The Public Prosecutor, High Court, Madras.

+2 Ccs to Mr.C.Rajan, Advocate sr 18053.

CrI.A.No.165 of 2012

VGII(CO)

SP(04/04/2019)