



Bail Slip

The Appellant namely G.D.Baskaran, S/o.Duraiaraj in Crl.Appeal No.585 of 2015 and Murali @ Kanagaraj, S/o.Late Palanisamy Appellant in Crl.Appeal No.603 of 2015 (Accused -3 and Accused -4 in S.C No.27 of 2015 on the file of II Additional Sessions Judge at Erode, dated 31/08/2015) respectively vide order of this Court, dated 18/09/2015 and made in MP NO.1 of 2015 and in Crl.A.Nos.585 of 2015 and Crl.A.No.603 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.Nos.585 and 603 of 2015

and

M.P.No.1 of 2015

G.D.Baskaran

....Appellant in Crl.A.No.585 of 2015

Murali @ Kanagaraj

... Appellant in Crl.A.No.603 of 2015

Vs.

State represented by
Inspector of Police,
Erode Town Police Station,
Erode District.

(Crime No.3 of 2010)

... Respondent (In both appeals)

Prayer in Crl.A.Nos.585 and 603 of 2015: The Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment dated 31.08.2015 in S.C.No.27 of 2015, on the file of the learned II Additional Sessions Judge, Erode.

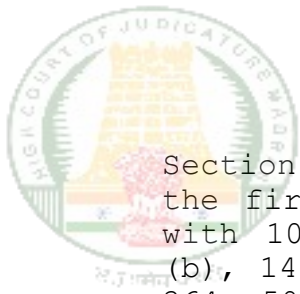
For Appellants : Mr.Syed Mustafa

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

COMMON JUDGMENT

These Criminal Appeals have been filed to set aside the judgment dated 31.08.2015 in S.C.No.27 of 2015, on the file of the learned II Additional Sessions Judge, Erode.

2. The respondent police registered a case in Crime No.3 of 2010 against the appellants and 3 others for offences under



Section 120(b), 147, 364, 506(ii), 323 read with 109 IPC against the first accused and under Section 120(b), 147, 364, 323 read with 109 IPC against the second accused and under Section 120(b), 147, 364 and 323 IPC and for the offence under Section 147, 364, 506(ii) and 325 IPC and for the offence under Section 147, 364 IPC against the 5th accused. After investigation, the police filed charge sheet before the learned Judicial Magistrate-II, Erode against the accused 1 to 5 in P.R.C.No.2 of 2011. Since the offences are triable by the Court of Sessions, the learned Magistrate committed the case to the learned Principal Sessions Judge, Erode. The learned Principal Session Judge, took the case on file in S.C.No.27 of 2015 and made over the case to the learned II Additional Sessions Judge, Erode. During trial, on the side of the prosecution, the respondent police examined as many as 11 witnesses viz., P.W.1 to P.W.11 and marked as many as 13 documents viz., Ex.P.1 to Ex.P.13 and produced two material object viz., M.O.1 to M.O.2.

3. After completion of the evidences on the side of the prosecution side, the accused was questioned under Section 313 (1) (A) Cr.P.C. The appellant denied the incriminating circumstances and all the evidences as false. On the side of the defence, no one was examined, and four documents were marked as Ex.D1 to Ex.D4. After hearing the arguments of both sides, and considering the records, the learned II Additional Sessions Judge, found the accused 1 and 2 not guilty for offences under Sections 120(b), 147, 364, 506(ii), 323 read with 109 of IPC and 5th accused was found not guilty for offences under Sections 147 and 364 of IPC. The third accused was found not guilty for offences under Section 120(b), 147, 364 of IPC and the 4th accused was found not guilty for offences under Section 147, 364, 325 and 506(ii) and was found guilty under Section 323 IPC and convicted for the same. The 3rd accused was sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for six months for the offence under Section 506(ii) IPC and to undergo one year rigorous imprisonment for offence under Section 323 of IPC. The 4th accused was sentenced to undergo one year rigorous imprisonment for offence under Section 323 IPC.

4. Challenging the said judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Erode in S.C.No.27 of 2015, dated 31.08.2015, the appellants/A3 and A4 have preferred the present Appeal before this Court.

5. The learned counsel for the appellants/A3 and A4 would submit that the prosecution has not proved its case beyond reasonable doubt. The accused 1 and 2 were not found guilty and acquitted from all the offences. The same benefit of doubt should have been extended to the appellants also. The learned counsel would further submit that there is no specific overtact



attributed against these appellants in the complaint. The statement under 161 Cr.P.C., has been recorded by the Investigating Officer during investigation regarding the assault made by these appellants and while deposing before the Court, they have improved their version. The learned counsel submitted that the Court should have taken into account the complaint, which is the earlier document in the case. Subsequent improvement in evidence in Court cannot be given credence to them. In the complaint itself, the victim has stated that known persons have attacked him during kidnapping. The injuries sustained by the victim has not tallied with the medical evidence. The prosecution has not proved its case beyond reasonable doubt that five persons have been involved in this case. The learned Sessions Judge disbelieved the case of the prosecution against the other accused persons and wrongly convicted these appellants, which warrants interference of this Court.

6. The learned counsel for the respondent (Crl. side) appearing for the State would submit that even in the complaint, the victim has clearly stated that he was kidnapped by these accused in a Car and they have attacked the victim and forcibly obtained signatures in the documents from him. The Doctor, who gave treatment to the victim, has clearly stated about the injury sustained by the victim. Therefore, the prosecution has proved its case beyond reasonable doubt. The learned Sessions Judge has rightly convicted these accused, which does not warrant any interference.

7. Heard the learned counsel for the appellants (A3 and A4) as well as the learned Government Advocate (Crl. side) and also perused the materials available on record.

8. The case of the prosecution is that on 12.01.2010 at about 6.30 A.M., when the defacto complainant was walking from north towards south in front of Raja Fish shop at Nachiappa Street, on the instigation of G.K.Palanisamy (A1), Ganapathy (A2) and Baskaran (A3) with the intention of Kidnapping and murdering Balasundaran, Baskaran (A3), Murali (A4) Anthony (Absconding accused) Stephen (Absconding accused) and Prakash (Absconding accused) had forcibly kidnapped Balasundaran in the Omni Maruthi Van bearing Registration No.TN 04 E 1145 belonging to Kulandaivelu. Inside the van, the absconded accused shouted at the defacto complainant by saying that 'you son of a prostitute, are you such a big person to conduct case against Vignesh lodge Palanisamy, without paying him money ad thereby insult him. A4 punched Balasundaran on his nose causing grievous injury and A3 (absconding accused) caused injury to Balasundaran on his left leg and his chest. A3, A4 and absconding accused persons threatened Balasundaran that he would be murdered if he revealed the occurrence to anyone. A3 threatened him with a knife and obtained signatures and thumb impressions in five empty promissory notes, six 20 rupees bond papers, 12 green



papers, two white papers. A3 to A5 then dropped the victim Balasundaran at P.S.Park and went away. The first and second accused have committed offences under Sections 120(b), 147, 364, 506(ii), 323 read with 109 of IPC, 3rd accused has committed the offences under Sections 120(b), 147, 364, 506(ii), 323 of IPC, 4th accused has committed offences under Sections 147, 364, 325, 506(ii) of IPC and 5th accused has committed offences under Sections 147 and 364 IPC. After enquiry, charge sheet was also filed against all the accused and also charges were framed as mentioned above. After trial, the trial Court found only these two appellants were guilty of the offences mentioned above and acquitted all other accused.

9. The defacto complainant has clearly deposed that on the fateful day, when he was walking nearby Raja Fish Shop, all the accused, along with the absconded accused, kidnapped him in a car bearing Registration No.TN 04 E 1145 and these two appellants (A3 and A4) assaulted him and caused injuries and also threatened him with knife. Evidence of P.W.1 and the Doctor, who was treated the injured clearly proved that the victim sustained injuries. Though the prosecution has not proved its case beyond reasonable doubt itself for the offence under Section 147, 364 and 325, 120(b) and 364 against all other accused. However, no other witnesses have spoken that they kidnapped the victim by vehicle and also unlawfully assembled. The prosecution has failed to prove the conspiracy and that all the accused assembled unlawfully and kidnapped the victim by vehicle. The prosecution has proved that these appellants have caused injuries to P.W.1. The Doctor who treated the victim in the hospital, has clearly spoken that known persons caused injuries and he has given the wound certificate. From the evidence of P.W.1, injured witness and also evidence of P.W.8 Doctor, the prosecution has proved its case beyond reasonable doubt and the trial Court, while acquitting all the other accused in this case, has given cogent reason for convicting the appellant/3rd accused for the offence under Section 506(ii) and 323 IPC and the appellant/4th accused for the offence under Section 323 IPC. Though the learned counsel for the appellants submitted that in the complaint and the 161 statement itself, the victim has not stated anything about the assault made by the appellants, the learned counsel for the respondent pointed out that even in the complaint itself, the prosecution has narrated the entire facts. On a careful reading of the complaint given by P.W.1, Ex.P1, he has clearly narrated the incident happened on 02.01.2010 at about 6.30 a.m. On the very same day, he was admitted in the hospital and the Doctor has also recorded the Accident Register/Exp.P7. A combined reading on the evidence of P.W.1 and P.W.8, Ex.P1 complaint, Ex.P.7 A.R.Copy and Ex.P8 wound certificate, this Court is of the view that the prosecution has proved its case beyond reasonable doubt. This Court has also re-appreciated the entire evidence of the prosecution and the evidence of P.W.1 injured witness and Doctor's evidence. There is no reason to disbelieve the evidence



of P.W.1 and therefore, this Court holds that the prosecution has proved its case beyond reasonable doubt against the appellants and there is no merit in these appeals.

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10. In the result, these criminal appeals are dismissed. Consequently, connected miscellaneous petition is also closed. The trial Court is directed to secure the custody of the accused persons (A3 and A4) to undergo the remaining part of the sentence.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate II, Erode.
2. The Chief Judicial Magistrate, Erode.
3. The Inspector of Police,
Erode Town Police Station,
Erode District.
4. The II Additional Sessions Judge,
Erode.
5. The Principal and District Sessions Judge,
Erode.
6. The Public Prosecutor,
High Court of Madras.

+2cc to Mr.R.Syed Mustafa, Advocate SR.No.72632, 72633

CrI.A.Nos.585 and 603 of 2015
and
M.P.No.1 of 2015

GJ(CO)
GMY(13/01/2020)