

Bail Slip

That the Appellant/Accused namely Selvam @ Karuvayan S/O Chinnsamy was directed to be released on bail as per order of this Court dated 14.6.2012 in M.P.No.1/12 in CrI RC No.493 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.03.2019	Pronounced on: 26.03.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Case No.493 of 2012

Selvam @ Karuvayan,
S/o.Chinnsamy,
Puliyanthoppu,
Singapuram Post,
Valappadi Taluk,
Salem District.

... Petitioner/Accused No.4

/versus/

State represented by:
The Inspector of Police,
Mangalapuram Police Station,
Salem.

(Crime No.35 of 2000)

... Respondent/Complainant

Prayer: Criminal Revision Case is filed under Section 397 (1) r/w 401 of Cr.P.C, praying to set-aside the conviction and sentence confirmed in the judgment dated 07.02.2011 in C.A.No.22 of 2005 on the file of the Additional District Court, (Fast Track Court), Namakkal District confirming the judgment dated 17.02.2005 made in S.C.No.66 of 2002 on the file of the Chief Judicial Magistrate Court, Namakkal District by allowing the present revision petition.

For Petitioner : Mr.I.C.Vasudevan

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

O R D E R

The Revision Petition is preferred by one Selvam @ Karuvayan. In S.C.No.66 of 2002 on the file of Chief Judicial Magistrate, Namakkal, the revision petitioner along with four others were tried for offences under Sections 148, 395 r/w 397 and 398 of I.P.C. The trial Court held all of them guilty for offence under Section 398 of I.P.C. and sentenced him to undergo 7 years R.I. On appeal, by the revision petitioner in C.A.No.22/2005 on the file of Additional District and Sessions Judge (Fast Track Court), Namakkal. The Learned Additional District and Sessions Court, Namakkal, confirmed the sentence and conviction passed by the Chief Judicial Magistrate, Namakkal.

2. Aggrieved by the concurrent finding of the Courts below, the present revision petition is filed before this Court by the revision petitioner who was arrayed as 4th accused before the trial Court.

3. The brief fact of the prosecution case is that on 17.06.2000, at about 1.30 a.m on the Attur to Rasipuram Main Road near Thammanayakkanpatti Kombakadu Manalmedu, one Saravanan of Salem was driving the goods lorry carrying fertilizers bags bearing registration No.TN.27.L.6888 from Villupuram. He was stopped by Suresh @ Ramesh (A3), dressed in disguise as a women. Saravanan stopped his lorry few meters away and went towards Suresh @ Ramesh (A3). When he moved towards Suresh nearby tropicana field, the other accused Sasi @ Sasikumar (A1), Arumugam (A2), Selvam @ Karuvayan (A4) and Moorthy (A5) suddenly bounced on Saravanan. Sasi @ Sasikumar (A1) has armed with a knife (பாலை கத்தி) caused injury to Saravanan on his right hand and left palm, below the thumb. Arumugam (A2) and Suresh @ Ramesh (A3) tied his hands behind. Selvam @ Karuvayan (A4) and Moorthy (A5) tied his legs with saree. The search of Saravanan pocket, did not yield anything worthy. Meanwhile, hearing his scream, the other driver of his lorry took away the lorry. Fearing that he will bring men for support, the five accused persons fled from the place.

4. Saravanan thereafter came to the road. The other driver who took away the lorry came with men and started searching for the accused. They could not find them. Thereafter, Saravanan along with his lorry driver and cleaner proceeded towards Villupuram. On the way, he changed his bloodstained cloth and also got treatment for the injury sustained. When, Saravanan was waiting in broker Office at Pondicherry, the owner of the lorry informed him about the arrest of two persons connected with the robbery and told him to come and give complaint. On 20.06.2009, he gave a written

complaint to the Mangalapuram, Sub-Inspector. Based on the complaint, the First Information Report was registered in Crime No.35 of 2000.

5. On completion of investigation, final report against the accused persons was filed.

6. After appreciating the evidence let in by the prosecution held all the accused guilty for offence under Section 398 of I.P.C., sentenced all the accused to undergo 7 years R.I.

7. The appeal preferred before the Additional District and Session Court, Namakkal, was dismissed. Confirming the judgment of the Chief Judicial Magistrate, Namakkal.

8. The 4th accused who is the revision petitioner herein has preferred the present revision on the ground that the Courts below has erred in convicting him without considering the material facts. The prosecution has not proved the case beyond reasonable doubt. The delay in lodging the F.I.R, after apprehending the accused and the manner in which PW.1 has deposed reveals the falsehood of the prosecution case. When no material is recovered from this petitioner and his presence along with the other accused persons not been proved through any viable evidence, the ingredient of Section 398 of I.P.C is not attracted.

9. The learned counsel appearing for the revision petitioner would submit that the prosecution has not produced the bloodstained cloth of Saravanan (PW.1) to prove that he was injured in the manner spoken in his complaint and deposition. The conduct of the de facto complainant suppressing the incident even to his employer is highly suspicious. The entire sequence of events as spoken by PW.1 is neither natural nor probable. The Courts below has failed to properly appreciate the facts and evidence. The farce identification parade conducted by the I.O is not trustworthy or reliable. Saravanan (PW.1) admits that the police has identified the accused persons, even before the identification parade. PW.1 alleges that, he sustained cut injury and was treated by Doctor at Thalaivasal. There is no evidence to prove the same. Rajendran (PW.2) who accompanied Saravanan (PW.1) in the lorry along with cleaner Mani (PW.3) does not identify the accused. When Saravanan (PW.1) says that the distance between the owner's house and the SOC was only 10Km. Saravanan (PW.1), Rajendran (PW.2) and Mani (PW.3) have not informed the incident to their owner but had taken the lorry to Villupuram to delivery the goods and thereafter, proceeded to Pondicherry Lorry broker Office. Which is an unusual conduct. These witnesses were unable to re-collect the relatives of PW.1

at Thimmanayakanpatti, where the de facto complainant has changed his bloodstained cloth. Neither the prosecution has attempted to find out the said persons. Rangayan (PW.4) is one of the villager who came to the scene of crime, after the occurrence and there is no incriminating evidence from his deposition. The alleged recovery of material objects were not from the possession of the appellant. In the said circumstances, the learned counsel would submit that it is unsafe to convict the revision petitioner, whose identity and their role in the crime not been established. More so, the learned counsel would contend that the very nature of the case and the witnesses for the prosecution are disjointed and disoriented, through their evidence, the guilt of the appellant does not get proved.

10. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent/state would submit that the delay in giving complaint was fearing ignominy. Saravanan (PW.1) has clearly explained that he fell in the honey trap getting attracted to the person who was cladded as a woman. He parked his lorry and went behind her. Saravanan (PW.1) found the person to whom he was attracted and went behind was not a female. When, he was caught by other four persons and attacked. The shameful act has forced him to bury the incident. After the instruction from his owner, he has returned back to Salem and given the complaint. Srinivasan (PW.14), the Inspector of Police, who registered the complaint has collected the bloodstained soil from the scene of crime under mahazar (Ex.P.3). The soil collected is marked as M.O.5 series. The injury sustained by Saravanan (PW.1) was examined by the Doctor and the wound certificate has been given for the same is marked as Ex.P.9. Therefore, the contention of the learned counsel for the revision petitioner that the bloodstained cloth was not recovered and the Doctor at Thalaivasal, who first treated Saravanan (PW.1) was not examined, pales into insignificance.

11. The evidence of Ramasamy (PW.5) who is the Panchayat President of Thaimanyakanpatti had deposed about the presence of the accused persons in his village on the evening prior to the occurrence. Since they all were outsiders, as a President of that Village he had enquired them and ascertained their identity. When he enquired them, why they are moving around at 7.00 p.m in the night, they have told him that, they have come for the function at their relatives house and they are proceeding to house, after viewing cinema. Ramasamy (PW.5) has identified this petitioner as one of the person, whom he saw in the Village few hours before the occurrence. Later, after midnight, at around 1.00 a.m, Saravanan (PW.1) has called him and informed about the occurrence and shown the injury, he sustained. Thereafter, along with Rajendran (PW.2), Mani (PW.3)

and Rangayan (PW.4), they have gone to the spot and searched for the accused persons.

12. Therefore, the learned Government Advocate (Crl.Side) would submit that it is an highway robbery under the cover of dark in the night.

13. Though, there was a delay in lodging the complaint, the sequence of event from the time of occurrence is spoken by the witnesses, who are likely to be present in the place. The injury found on the body and the confession statement of the accused persons leading to the recovery of incriminating materials. The evidence of Ramasamy (PW.5) has seen the accused persons and made enquiry about them. More particularly, his evidence against the revision petitioner herein has sufficiently proved and established the guilt of the accused.

14. The evidence before the trial Court against the revision petitioner herein is the identification of the accused by Ramasamy (PW.5) who had seen him few hours before the occurrence along with the other accused. Since, their movement was strange and suspicious, he has enquired them. A4 has informed Ramasamy (PW.5) that his name is Selvam Son of Surakarar. Later, after his arrest, he has given the confession statement to Srinivasan (PW.14). Based on the information given by him, the Knife (பாலை கத்தி), which he had concealed in his house roof was recovered under mahazar. The confession of the co-accused have also let to recovery of other incriminating materials. Their evidence are inculpatory in nature.

15. The revision petitioner herein has examined one Paramasivam (DW.1) as defence witness. He has deposed that he know all the five accused. The revision petitioner/4th accused is his brother's son. He has deposed that he along with others came to Singipuram. They came from Thiruvaiyaru to attend the Valaikappu of 4th accused brother's daughter. On the next day i.e., 20.06.2009, when they were about to return back to home, the police came and enquired him. In the cross examination, he admits that the 5th accused/Moorthy is his son. Therefore, his evidence without any other corroboration to substantiate that the accused persons came to the Village to attend Valaikappu of their relatives stands un-proved. Contrarily the presence of the accused on 20.06.2009, in the Singipuram Village was not only spoken by PW.5, but also admitted by the accused themselves through their defence witness Paramasivam (DW.1).

16. In the light of the above facts, the other evidence of the prosecution namely the evidence of Saravanan (PW.1), the injury found in his body as exhibited under Ex.P.9 wound certificate and the recovery of Knife (M.O.5), based on

the confession given by this revision petitioner completes the chain of proof incriminating the petitioner.

17. The facts so proved against this petitioner is robbery between sunset and sunrise on the highways. The evidence of Saravanan (PW.1) reveals that the dacoits searched his shirt pocket and underwear, since, he had no money, they beaten him. Since, the act of robbery is completed, though it did not yield any valuable thing, it is a case of robbery on the highways between sunset and sunrise. From the evidence, we find that the knife (M.O.5) was used by Sasikumar (A1) to assault Saravanan (PW.1) has been recovered from the possession of this revision petitioner, based on the confession statement given by him. Therefore, the conviction and sentence of the Courts below against the revision petitioner needs no interference.

18. In the result, the Criminal Revision Case is dismissed. The trial Court is directed to secure the revision petitioner and commit him to prison to undergo remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To,

1. The Judicial Magistrate,
Rasipuram.
2. The Chief Judicial Magistrate,
Namakkal District.
3. The Additional District Judge,
(Fast Track Court), Namakkal.
4. The Inspector of Police,
Mangalapuram Town Police, Salem District.
5. The Section Officer,
Criminal Section (Records), High Court, Madras.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Vasudevan, Advocate Sr.29040

Criminal Revision Case No.493 of 2012

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srg 02/05/2019



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