

Bail Slip

The Appellants herein/Accused Nos. 1, 2, 4 to 8 namely
1.Baskar S/o.Umapathy aged about 25 years 2.Suresh
S/o.Rajendiran aged about 25 years 3.Ravi @ Ravindran
S/o.Kesavan aged about 28 years 4.Hema @ Hemanandam
S/o.Subramani aged about 26 years 5.Bharath S/o.Suresh Babu aged
about 25 years 6.Gopal S/o.Nagan aged about 33 years 7.Yesu
S/o.Vengaiyan aged about 26 years were directed to be released
on bail as per order of this court dated 14.03.2014 made in
Crl.MP.No.1 of 2014 in Crl.A.127/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2019

PRONOUNCED ON : 11.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.127 of 2014

1.Baskar
2.Suresh
3.Ravi @ Ravindran(Amended as per order of this court
dt.29.04.14 in Crl.Mp.2/14)
4.Hema @ Hemanandam
5.Bharath
6.Gopal
7.Yesu
...

Appellants/Accused 1, 2 & 4-8

Vs
सत्यमेव जयते

State represented by
Inspector of Police (Circle),
Arambakkam Police Station,
Crime No.74 of 2007
(Padirivedu Police Station)
Tiruvallur District.

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Respondent

Prayer:- This Criminal Appeal is filed under Section 374(2)
Cr.P.C., against the judgment of conviction in S.C.No.205 of
2008 dated 22.01.2014 passed by the learned IV Additional
District and Sessions Judge, Ponneri.

For Appellants : Mr.R.John Sathyan

For Respondent : Mrs.Kritika Kamal.P,

Government Advocate (crl.side)

JUDGMENT

The Criminal Appeal is directed against the judgment of the trial court convicting the appellants herein for offences under sections 341 and 395 IPC.

2.The brief facts of the case, leading to this appeal, are as under:

On 17/05/2007 at about 10.30 pm, the Lorry bearing registration number KA 01 C 7969 carrying coal to Badrawathi at Karnataka proceeding near Siruvadi, Sathiyavedu junction, Tiruvallur District 8 persons came in two motorcycles intercepted it. When Gopi the lorry Driver stopped the vehicle, few claimed the Lorry cabin. Some caught hold of the spare Driver Saravanan. One of them, slapped the Driver and put him under the 'fear of death' by showing a knife. Searched his pockets, took away Rs.200/- kept in his shirt pocket and Rs.9,400/- kept in his trouser pocket. After committing the offence of dacoity, they all got down from the Lorry and left in their two motorcycles along with others who were waiting there.

3.The Driver immediately informed about the incident to the lorry owner Nithyanantham, over phone. Due to the urgency to deliver the coal at Badrawathi, the lorry Driver proceeded to Badrawathi. After unloading the coal at Badrawathi, he returned on 22/05/2007 and gave the complaint to the jurisdiction police at Padirivedu.

4.Thiru.Gunasekaran, Sub-Inspector of Police at Padirivedu Police Station registered the first information based on the complaint of Gopi, in Crime No.74/2007 at about 9.30 am on 22.05.2007. Thiru.Duraisamy, Inspector of Police, took up the investigation; went to the scene of crime; prepared observation mahazar; sketch and recorded the statements of witnesses. On the next day (23.05.2007) at about 23.00 hrs, near Sathiyavedu clock tower, Barath (A-6), Gopal (A-7) and Yesu (A-8) were roaming suspiciously. The Inspector of Police, on patrol, interrogated them and through the information given by them,

the TVS Champ used for the offence and the crime money Rs.7,500/- was recovered under mahazar. A-6 to A-8 were remanded to judicial custody.

5. Meanwhile, A-1 to A-5 were arrested by the Puthur Police, Andhra Pradesh, in connection with Crime No.16/2007, Puthur Police Station. During the investigation, the Puthur Police came to know that these accused were involved in several other cases, including the case in Crime No.74/2007 of Padirivedu Police Station. So, the Inspector of Police, Puthur Police Station, Andhra Pradesh, conveyed the details of A-1 to A-5 to Padirivedu Police. On receipt of this information, the further investigation was taken up. With the leave of the Court, A-1 to A-5 were produced under PT Warrant. Identification parade was conducted by the learned Judicial magistrate at Puzal prison. The accused persons were identified by the witnesses. On completion of investigation, final report was filed against A-1 to A-8, for offences under sections 341 and 395 r/w 397 of IPC. Pending trial, A-3 Jotheeswaran died.

6. Before the trial Court, on the side of the prosecution, through 15 witnesses, 11 exhibits and two material objects were marked. Considering the evidence, the trial Court found that the charge of wrongful restraint and dacoity proved. The charge of attempt to cause death or grievous hurt while committing dacoity not proved. One month simple imprisonment for offence under section 341 IPC and 10 years rigorous imprisonment with fine of Rs.10,000/- in default 3 months rigorous imprisonment was imposed to each of the accused for offence under Section 395 I.P.C.

7. Aggrieved by the judgment of conviction and sentence, the appeal is preferred on the ground that the delay in filing the complaint not explained. The identification parade alleged to have conducted in the prison is a farce exercise. The confession and recovery of Material objects not been corroborated by the independent witnesses, which renders the prosecution case, doubtful. The contradictions in the prosecution witnesses not properly considered by the trial Court. No weapon seized or recovered. No medical evidence placed to prove injury to the witnesses. The prosecution failed to investigate about the ownership of the TVS Champ vehicle marked as M.O.1. The trip sheets of the Lorry not recovered. There is no proof to show that on 17/05/2007 Gopi - P.W.1 was carrying coal to Badrawathi and was passing through Sathiyavedu junction.

8.The learned counsel for the appellants would submit that the alleged scene of crime is not within the territorial jurisdiction of the respondent police or any Police Station in Tamilnadu. The scene of the alleged crime, falls outside Tamil Nadu. The witnesses are not certain about the exact place of occurrence. The contradictory evidence of the witnesses, first of all, proves it is not true and next, it did not occur in the place and manner in which the prosecution witnesses have deposed. Hence, according to the learned counsel for the appellants, the appellants are entitled for acquittal.

9.Per contra, the Government Advocate (criminal side) would content that the prosecution has cracked the crime, on arrest of A-6 to A-8. Later, the other accused (A.1 to A.5) were caught by the Police of the neighbouring State (Andhra Pradesh) in a different case. The identification of the accused persons were established by the Police through the witnesses. The reason for lodging the complaint after 5 days is explained by the defacto complainant and the owner of the Lorry. The accused have not established that they were anyway prejudiced by the delay in registering the FIR. The accused persons A-1 to A-5 who were involved in 'highway dacoity' waylaying the lorry Drivers and robbing their valuables were caught by the Puthur Police, Andhra Pradesh. Those accused have disclosed the same information which corroborate the information given by the 6th accused Bharath. The incriminating materials placed before the trial Court clearly proves the guilt of the accused in the crime.

10.Delay in lodging complaint:

The learned counsel for the appellants pointing the delay in lodging the complaint contented that the case is foisted against the appellants with false information. According to the prosecution the date of occurrence is on 17/05/2007 night about 22.30 hrs. The complaint about the incident admittedly given on 22/05/2007. PW-1 - Gopi the Driver of the Lorry, along with PW-2 - Saravanan the spare Driver and PW-3 Nithyanandam the owner of the lorry have gone to the Padirivedu Police Station 5 days after the incident and given the complaint. The reason for delay is spoken by PWs-1 and 3. Normally, it is expected from any victim of a crime to report to the Police, at the earliest. If any cognizable offence not reported within a reasonable time, it does not mean that no offence occurred. At the most, belated complaint gets suspicious. Courts have to scrutinise such belated complaint more meticulously and find out 'whether the delay is due to external advice, embellishment or given with ulterior motive containing falsehood'. In this case, there is no

reason to believe that there was any motive existed between the accused and the defacto complainant or the Police.

11.The Lorry carrying essential commodity had been intercepted during the night of 17/05/2007. The owner of the Lorry has advised the victim Driver who has lost his money to the accused to first proceed to the destination and unload the coal. In obedience to the instruction of his employer, PW-1 has gone to Badrawathi, Karnataka. The delay in giving the complaint has occurred due to the reasons stated. When some plausible explanation is given for the delay and in the absence of any doubtful circumstances to suspect the reasoning, mere delay in lodging FIR ipso facto will not make the complaint unreliable.

12.Scene of crime and jurisdiction:

The learned counsel for the appellants referring the deposition of the eye witnesses and the Police witnesses, who registered the FIR and investigated, contented that there is grave doubt about the exact place of crime. The prosecution witnesses are not consistent about the place of occurrence.

13.The records indicate that the complaint was given on 22/05/2007 about the incident occurred on 17/05/2007. PW-11 has registered the FIR on 22/05/2007 at 9.30 am. After registration of FIR, PW-12 - Doraisamy, Inspector of Police, has taken up the investigation immediately. The Investigating Officer - PW-12 had gone to the scene of occurrence and prepared the observation mahazar - Ex P-2. Mustapa and Muhamed Ali are the witnesses to the observation mahazar.

14.Mr. Mustapa (PW-4) a Car Driver has deposed that on 17/05/2007 he and his friend Muhamed Ali (PW-5) while coming in the motorcycle through the forest area near Siruvadi - Satyavedu junction, they saw a lorry and motor cycle. When they stopped, they were threatened. So, they both left the place. Later, on 22/05/2007, the Police visited the place and prepared the observation mahazar. Both Mustapa and Muhamed Ali have signed the mahazar marked as Ex P-2. Muhamed Ali who was examined as PW-5 has corroborated the evidence of PW-4 saying the place of occurrence is the forest area near Siruvadi - Satyavedu junction and the preparation of observation mahazar. Both PWs-4 and 5 have admitted their signatures in the observation mahazar marked as Ex.P-2. None of the accused have choosen to cross examine these two witnesses. The forest area marked in the

sketch - ExP-9 as scene of crime, fall within the territorial jurisdiction of the respondent Police as per the evidence of PW-11. No contra evidence is let in by the accused to probablise that no such incident occurred in the said spot. The minor contradictions in specifying the location by the defacto complainant who is not the native of that place noway indicate that the offence did not occur, in the place which, falls within the jurisdiction of the respondent police.

15. Identification of the accused:

The case registered on 22/05/2007 got cracked on the arrest of A-6 to A-8 near Sathyavedu clock tower. These three accused were found roaming suspiciously when the patrol Police PW-12 arrested them and enquired. From them, MO-1 motorcycle and MO-2 currencies were recovered. Mahazar for recovery prepared and witnessed by PW-7 - Ravi. He has affixed his signatures and identified it in the Court. However, he was declared hostile by the prosecution. In his deposition, this witness admits that on that day, he was present at Satyavedu clock tower. Police were enquiring 2,3 persons. They told him the enquiry was regarding criminal restraint of a Lorry near Siruvadi junction.

16. Later, when the identification parade conducted in the prison, these accused persons were identified by the prosecution witnesses before the Magistrate. The report of the learned Magistrate is marked as Ex P-11. The Magistrate who conducted the identification parade has deposed about her report and procedure she followed to conduct the identification parade.

17. The learned counsel for the appellants submitted that admittedly, the accused were already shown to the witnesses when they were detained at Putur Police Station, Andhra Pradesh. Therefore, the identification parade conducted was a farce exercise.

18. The learned Government Advocate (criminal side) appearing for the respondent to contradict the said submission made by the learned counsel for the appellants would submit that the identification parade was conducted to ascertain the facts and the investigation was done properly and the suspects are the real accused in this case.

19.A.6 to A.8 who were first detained by the respondent Police disclosed about the identity of the other associates. Later, from Putur Police, Andhra Pradesh, the information was received about the arrest of A-1 to A-5. The witnesses have not only identified the accused persons in the prison but also before the Court. The Magistrate who has followed the demeanour of the accused as well as the witnesses. Being satisfied about the identity of the accused persons, the trial Court has rightly concluded and convicted the accused. The showing of accused in Putur police station is highly improbable since, A-1 to A-5 were arrested at Narayanavanam in Andhra Pradesh in connection with the Putur Police Station Crime No.16/2007 and remanded to judicial custody on 23/05/2007. The contradictions which are pointed by the learned counsel for the appellants is due to the efflux of time. The chief examination of P.Ws-1 to 3 were recorded on 20/01/2009. Whereas, they were cross examined after lapse of 3 years on 05/03/2012. Even the minor contradictions elicited from these witnesses during the cross examination three years after chief examination, pale to insignificance.

20. In the result, the finding of the trial Court holding the accused persons guilty of the offences under section 341 IPC and 395 IPC are confirmed. The Criminal Appeal is dismissed. The trial Court is directed to secure the presence of the appellants/accused to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1. The Judicial Magistrate,
No-I, Ponneri.

2. The Chief Judicial Magistrate,
Thiruvallur District.

3. The IV Additional District and Sessions Judge,
Ponneri.

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4. Inspector of Police (Circle),
Arambakkam Police Station,
Padirivedu Police Station,
Tiruvallur District.

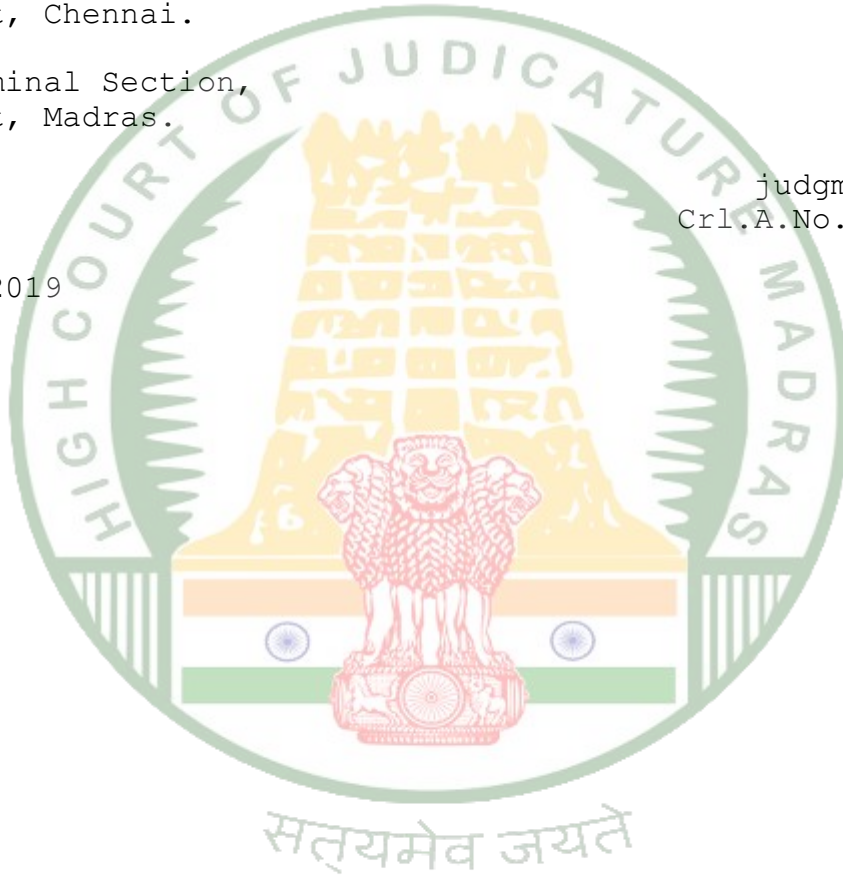
5. The Superintendent,
Central Prison,
Phase I, Puzhal, Chennai.

6. The Public Prosecutor,
High Court, Chennai.

7. The Criminal Section,
High Court, Madras.

judgment made in
Crl.A.No.127 of 2014

nr 20/06/2019



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