

**Bail Slip**

Appellant/Accused 1 to 6 were already released on bail vide this Court dated 30.04.2010 and made in MP(MD)1 of 2010 in CrI. A (MD)No.127 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 22.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI.A.(MD)No.127 of 2010**

1. Nagarajan
2. Thiyagarajan @ Saravanan
3. Ramani
4. Ilayaraja
5. Jaysankar
6. Ramachandra Prabhu

.. Appellants/Accused Nos.1 to 6

Vs.

State rep. by,
The Inspector of Police,
Panaiyappatti Police Station,
Pudukkottai District.
(Crime No.125 of 2002)

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the conviction and sentence passed in S.C.No.66 of 2009 by the learned Additional District and Sessions Judge cum Fast Track Court, Pudukkottai.

For Appellants : Mr.P.Saravana Kumar,
Legal Aid Counsel.

For Respondent : M/s.S.Bharathi,
Government Advocate(CrI. Side).

JUDGMENT

The appellants are six in number. On 17.09.2002 during mid night, as many as 10 persons came to the house of one Rangiyam V.N. Chidambaram and tied the watchman and the cook of the house and stole a silver idol worth about Rs.10,000/-. During the occurrence, the watchman of the house, namely, Azhagappan was injured. In this regard, the said Azhagappan lodged an information before Panaiyappatti police station on 18.09.2002 at about 3.00 a.m. Based on the same, Crime No.125 of 2002 was registered for the offence under Section 397 of I.P.C.

2. Investigation was taken up and final report came to be laid against as many as 10 persons before the learned Judicial Magistrate, Thirumayam. Since the case was exclusively triable by the Sessions Court, it was committed to Sessions Court in P.R.C.No.29 of 2003. It was taken up for trial in S.C.No.66 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Pudukkottai. Out of the 10 accused, only six accused were available for facing the trial and the remaining four accused had absconded. Therefore the case was split up and the appellants herein alone faced the trial in S.C.No.66 of 2009. The appellants pleaded not guilty to the charges and claimed to be tried. The charges framed against the appellants as follows:-

Accused	Penal Provisions u/s.
Accused Nos.1 to 6	120(b) of I.P.C.
Accused Nos.1 to 5	395 of I.P.C.
Accused No.6	395 r/w 120(b) of I.P.C. and 412 of I.P.C.

The accused denied the charges and claimed to be tried. The prosecution examined as many as 17 witnesses and marked Ex.P.1 to Ex.P.16. M.O.1 to M.O.7 were also marked. The learned trial Judge after a detailed consideration of the evidence on record, sentenced the accused as under:-

Accused	Penal Provisions u/s.	Punishment
Accused Nos.1 to 6	120(b) of I.P.C.	To undergo 2 years R.I.
Accused Nos.1 to 5	395 of I.P.C.	To undergo 5 years R.I. with fine of Rs.1,000/-, in default to undergo 3 months R.I.
Accused No.6	395 r/w 120(b) of I.P.C.	To undergo 5 years R.I. with fine of Rs.1,000/-, in default to undergo 3 months R.I.
Accused No.6	412 of I.P.C.	To undergo 2 years R.I. with fine of Rs.1,000/-, in default to undergo 3 months R.I.

Challenging the Judgment dated 31.03.2010, this Criminal appeal has been filed.

3. Even though the appeal was filed through a counsel, when the matter was taken up for hearing, there was no representation on the side of the accused. Therefore, this Court directed the Registry to appoint a Legal Aid Counsel to represent the case of the appellants. Today when the matter was taken up for hearing, the learned Legal Aid counsel appeared and contended that having regard to the evidence on record and having regard to the fact that the



sentence imposed on them has already been served, he would not challenge the conviction and sentence imposed on accused Nos.2 and 3, namely, Thiagarajan and Ramani.

4. In view of the said submission of the learned Legal Aid counsel, this Court sustains the conviction as well as the sentence imposed on accused Nos.2 and 3. Since they have already served the entire terms of sentence, this appeal is dismissed as far as accused Nos.2 and 3 are concerned.

5. Coming to the first appellant Nagarajan, this Court posed a direct question to the learned Government Advocate to indicate the evidence on record for fastening the liability. Accused Nos.1, 4 and 5 have all been convicted not only for the offence under Section 120(b) of I.P.C. but also under Section 395 of I.P.C. The learned Government Advocate would submit that Nagarajan was identified during the Test Identification Parade conducted by P.W.4. But then, an identification made during the Test Identification Parade is not substantive evidence. The identification of an accused before the trial Court alone would be the substantive evidence. In this case, P.W.1 Palani could not identify any of the accused before the trial Court. Therefore, there is no substantive evidence implicating accused Nos.1, 4 and 5.

6. In fact the entire case of the prosecution rested on the statement recorded under Section 164 of Cr.P.C. from one Sikkandharkani. The said Sikkandharkani was examined as P.W.6. But he turned hostile before the Court. As regards accused No.6, the learned Government Advocate would contend that the idol in question M.O.1 was seized only from the house of the sixth accused and that is why the charge under Section 412 of I.P.C. was also framed against him. But then, the learned Legal Aid counsel appearing for the appellants drew my attention to the testimony of P.W.17, namely, investigation officer who had stated that on the date when M.O.1 2½ Kg. silver Vinayagar idol was seized, no confession was obtained from accused No.6 Ramachandra Prabhu. Therefore, the recovery of M.O.1 from the house of accused No.6 is not in terms of Section 27 of the Indian Evidence Act 1872.

7. Looked at from any angle, I am of the view that the impugned Judgment cannot stand as far as accused Nos.1,4, 5 and 6 are concerned and the same is set aside as far as they are concerned. The Criminal appeal stands allowed as far as accused Nos.1,4, 5 and 6 are concerned. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //



To

1. The District Munsif cum Judicial Magistrate,
Thirumayam.

2. The Additional District and Sessions Judge cum
Fast Track Court, Pudukkottai.

3. The Principal District and Sessions Judge, Pudukkottai.

4. The Inspector of Police, Panaiyappatti Police Station,
Pudukkottai District.

5. The Superintendent, Central Prison, Trichy.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr. P. SARAVANAKUMAR, Advocate SR-76828.

Cr1. A. (MD) No. 127 of 2010
22.07.2019

CS(30.08.2019) 4P 10C