



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.137 of 2013

WEB COPY

Shanmugam @ Samukku Shanmugam

... Appellant/Sole Accused

Vs

State through
The Inspector of Police,
C2, Supramaniyapuram Police Station,
Madurai District.
(In Crime No.169 of 2008)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records connected with Judgment dated 13.06.2011 in S.C.No.309 of 2010 on the file of the Hon'ble Additional Sessions Judge cum Fast Track No.1, Madurai and set aside the same and acquit the Appellant/Sole Accused.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Robinson

Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 397 r/w 392 of IPC and was sentenced to seven years rigorous imprisonment and levied with fine of Rs.2,000/-, vide Judgment dated 13.06.2011 in S.C.No.309 of 2010 on the file of the Additional District and Sessions Judge/Fast Track Court No.1, Madurai.

2.The prosecution case is that on 22.02.2008 at about 6.30 p.m., in front of the Indian Bank at TVS Nager, Madurai, the appellant threatened P.W.1 to part with a sum of Rs.100/-. Since P.W.1-Sathasivam refused to, he showed M.O.3-Knife and relieved P.W.1's gold chain worth about four sovereign. P.W.1 raised an alarm and the appellant was caught on the spot. He was then taken to C2 Subramaniapuram Police Station in an auto and Ex.P1-complaint was filed. Based on the same, Crime No.169 of 2008 was registered for the offences under Sections 392 r/w 307 of IPC and 506(ii) of IPC. Investigation was undertaken and final report came to be laid before the Judicial Magistrate No.4, Madurai. The case was committed to the Sessions Court in P.R.C.No.30 of 2009. It was made over to Additional Sessions Judge cum Fast Track Court No.1, Madurai in S.C.No.309 of 2010. Charges were framed against the appellant for the offences under Sections 392 r/w 397 and 506 (ii) of IPC. The appellant denied the charges and claimed to be



tried. The prosecution examined P.W.1 to P.W.8 and marked Ex.P1 to Ex.P6. M.O.1 to M.O.3 were also marked. The learned trial Judge, convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal has been filed.

3.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the impugned Judgment and allow this appeal.

4.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not call for any interference.

5.I carefully considered the rival contentions and perused the evidence on record.

6.It is relevant to note here that the entire prosecution case rests only on the testimony of P.W.1 and P.W.2. P.W.3 is only a mahazer witness. P.W.4 who was said to be an eye witness, turned hostile. P.W.5 turned hostile. P.W.6 turned hostile. P.W.7 also turned hostile. P.W.8 was the Investigating Officer. P.W.2 is none other than the brother of P.W.1. According to P.W.2, he was having tea in TVS Nagar, Madurai on 22.02.2008 at about 6.30 p.m. The appellant, according to P.W.2, came to the spot in a drunken condition and he demanded money from P.W.1. P.W.1 refused to give any money. Thereupon, the appellant is said to have threatened P.W.1 with knife and took away his gold chain and a sum of Rs.100/-. It is not as if the appellant snatched the gold chain from P.W.1. P.W.1 admittedly did not suffer any injury. The appellant also does not appear to have made any attempt to run away from the spot.

7.It is the case of the prosecution that the appellant, after committing the robbery, ran away and tried to escape from the spot and that he was chased by the people and the members of the public and caught. Nothing of the sort appears to have happened. The appellant, after getting the gold chain and Rs.100/- from P.W.1, appears to have been standing in the very same place. All these appear highly artificial.

8. More than anything else, P.W.1, in his testimony, stated that he had not seen the appellant. But in the very same breadth, P.W.1 also stated that it was the appellant who threatened him and took away his gold chain and the money. All the eye witnesses turned hostile and the only corroborating witness is P.W.2 who is none other than the brother of the victim. P.W.1 did not suffer any injury. The appellant did not appear to have made any attempt to run away from the spot. I find it very difficult to believe the prosecution case that the appellant had committed the crime in question. It is quite possible that in a drunken condition, the appellant had misbehaved with P.W.1. Even according to P.W.1, the appellant did not intend to snatch the chain of P.W.1. The only

Sustainability Section

9. With this modification in the matter of sentence, this criminal appeal is partly allowed.

10. The case however cannot rest there. The appellant was convicted and sentenced by the Court below on 13.06.2011. He was granted bail by this Court on 06.06.2013. While granting bail, this Court had directed that the appellant should mark his attendance before the trial Court at 10.30 a.m., on the first working day of every English Calendar month till modification or till the disposal of the appeal. Admittedly, the condition imposed on the appellant was not modified. But then, the appellant had not been complying with the bail condition. The facts are a little disturbing. The appellant had already come under adverse notice of the Police in a quite few cases. His antecedents apart from the case on hand, are as follows:-

Previous Case : 1).C5 Karimedu-1) 538/06-U/s.379 IPC-Disposal
 2) 537/06-U/s.379 IPC-Disposal
 3) 423/01-U/s.380, 457 IPC-NTF
 4) 523/01-U/s.380, 457 IPC-PT
2) C3.S.S.Colony-274/01-U/s.380 IPC-Disposal
3) B1.Villakuthoon-388/01-380,457 IPC-Disposal

11. According to Police Standing Order 745, the Police ought to have maintained a General Conviction Registry and persons convicted of the offence under Chapter XII and Chapter XVII of the Indian Penal Code, for which, a punishment of three years or upwards is prescribed ought to find their names in the said registry. As per the Police Standing Order 770, the convict on release must be shadowed. In this case, it is unfortunate that the jurisdictional Police is not even aware that the appellant has not been complying with the bail conditions. Like wise, the trial Court ought to have informed the Registry of this Court as well as the respondent Police that the appellant was not complying with the condition. Unless there is a coordinated mechanism, one will not know as to whether the convict who is granted bail by this Court, is adhering to the condition imposed by this Court. This is not the first time, I am coming across such a situation. In a number of cases, I do find that after getting the suspension of sentence from this court, the convicted accused absconded with impunity. This Court grants bail subject to the condition that the appellant or the revision petitioner has to appear before the Court concerned. Since there is no coordination, even when the accused is not complying with the



condition, no follow-up action is taken for cancelling the bail. Therefore, in order to avoid such situation from occurring in future, the following directions are issued:-

1.The trial Courts ought to oversee, if the convicted accused are regularly complying with the bail conditions imposed on them by this Court.

2.If accused do not appear or fail to comply with the conditions, the trial Court must promptly send a communication both to the Registry of this Court as well as the Jurisdictional Police Station about the non-compliance of the condition.

3.On receipt of such communication from the trial Court, the jurisdictional Police will take prompt steps to apply for cancellation of bail and take effective follow-up action.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Inspector of Police,
C2, Supramaniyapuram Police Station,
Madurai District.
2. The Additional Sessions Judge cum Fast Track No.1,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

Crl.A(MD)No.137 of 2013
30.07.2019

rmi

MK (30.09.2019) 4P 4C