



Bail Slip

1.Muthukumar @ Silpha Kumar, S/o. Shanmugam 2. Mariappan @ Katta Mariappan, S/o. Chinnasamy, Appellants/Accused No.1 & 2, were released on Bail vide Court Order dated 15.04.2013 made in MP(MD) No.1 of 2013 in Crl A(MD)No.28 of 2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.28 of 2013

1.Muthukumar @ Silpha Kumar
2.Mariappan @ Katta Mariappan

... Appellants
Accused No.1 & 2

Vs

Stater rep. by
The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi District.
Cr.No.166/2010

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to admit this appeal on file, call for the records in S.C.No.136/2012 on the file of the I Additional District and Sessions Judge, Thoothukudi and set aside the Judgment passed by the learned I Additional District and Sessions Judge, Thoothukudi dated 20.12.2012 by allowing this appeal.

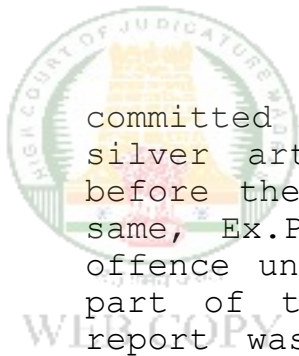
For Appellant : M/s.K.Aniya,
Legal Aid Counsel

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellants were convicted for the offences under Sections 392 r/w 397 IPC and sentenced to seven years rigorous imprisonment and levied with fine, vide Judgment dated 20.12.2012 in S.C.No.136 of 2012 on the file of the First Additional District and Sessions Judge, Thoothukudi.

2. The prosecution case is that A1 and A2/appellants herein entered the jewellery shop owned by P.W.1 in the guise of customer at around 03.00 p.m. on 21.05.2010. A1 hacked P.W.1 with knife on the back side of his head, while A2 punched him repeatedly and



committed robbery of jewellery worth about Rs.4,00,000/- and 3kg of silver articles. In this regard, P.W.1 lodged Ex.P1-Complaint before the Pudukkottai Police Station, Thoothukudi. Based on the same, Ex.P18-FIR was registered in Crime No.166 of 2010 for the offence under Section 397 of IPC. Investigation was taken up and part of the stolen articles were recovered. Hence, alteration report was filed vide Ex.P25 and Section 414 of IPC was also incorporated. Final report came to be laid against as many as seven accused before the Judicial Magistrate No.1, Thoothukudi. Cognizance of the offence was taken for the offences under Sections 392 r/w 397 and 414 of IPC and the case was committed to the Sessions Court in P.R.C.No.9 of 2011. It was made over to the First Additional District and Sessions Judge, Thoothukudi for trial in S.C.No.136 of 2012. Charges under Section 392 r/w 397 of IPC were framed against A1 and A2. Against A3 to A7, Charge under Section 414 of IPC was framed. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P1 to Ex.P25 and M.O.1 to M.O.6. On the side of the defence, Ex.D1 and Ex.D2 were marked. The recovered articles were shown as unmarked items. The learned trial Judge, by the impugned Judgment dated 20.12.2012, acquitted A3 to A7, but convicted and sentenced the appellants as mentioned above. Challenging the same, this appeal came to be filed.

3. When the appeal was taken up for disposal, there was no representation on the side of the appellants. This Court, therefore, directed the Registry to appoint a Legal Aid Counsel.

4. Today, when the appeal was taken up for hearing, the learned Legal Aid Counsel appeared and reiterated the contentions set out in the appeal memorandum. He pointed out that there are certain serious discrepancies vitiating the prosecution case. From the Accident Register entry/Ex.P7, it can be seen that even according to the victim, assault was by two known persons. But then, in Ex.P18-FIR, it has been made to appear as if he was not aware of the details of the accused persons. He also pointed out that the weapon said to have been used by A1 for attacking the victim was not recovered. He also would submit that the other accused namely, A3 to A7 were rightly acquitted. This was because, the case of the prosecution was that the accused had given the stolen jewellery to A3 to A7. But then, P.W.12-V.A.O did not support the prosecution case as regards recovery from A3 to A7. That is why, the Court below acquitted them and submission of the appellant's counsel is that the very same benefit of doubt should be extended to the present appellants also.

5. Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not call for any interference and that, the appeal should be dismissed.



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

7. It is true that as contended by the appellant's counsel, there are some discrepancies with regard to the question as to whether the victim knew the appellants herein earlier or not. Even in his testimony before this Court, P.W.1 had stated that he knew A2. In AR entry, it is also mentioned that the assault was by known persons. But as rightly pointed out by the learned Government Advocate (Crl.side), in the cross examination, the victim had clarified that he had not seen A2 prior to the occurrence. However, the case against the appellants cannot rest on the identification by P.W.1 alone. But this Court will have to see if there is any other supporting evidence to sustain the prosecution case against the present appellants. The learned Government Advocate (Crl.side) pointed out that the occurrence took place on 21.05.2010 at about 03.00 p.m. FIR was registered on the same day at about 21.00 hours. P.W.1 was running a jewelry shop in the name and style of S.M.Jewellers. Immediately, after the FIR was registered, at about 22.00 hours, the police inspected the occurrence spot and took the finger prints. The finger prints were gathered under Ex.P13 by the Inspector of Police, District Finger Print Bureau, Thoothukudi. The finger prints were noted as N1 to N6. When they were verified and compared with the data already maintained by the Bureau, it was noted that N3 and N4 matched with that of A1-Muthu Kumar @ Silpha Kumar. A report to that effect was submitted vide Ex.P14. A2-Mariappan @ Katta Mariappan was arrested on 03.06.2010 and sample impressions were taken and they matched with that of N1 and N2. A report to that effect was submitted vide Ex.P15. It is true that A3 to A7 were acquitted. But then, unmarked items 1 to 10 were recovered and they were identified by P.W.1 also. Recovery was made vide Ex.P20 in respect of A1. In respect of A2, recovery was made vide Ex.P23. The recovered articles were also handed over to P.W.1. Therefore, the Court below did not base its conviction on the mere identification of A1 and A2 by the victim. The impugned Judgment of conviction rests on the testimony of Finger Print Inspector, namely P.W.10 and also based on recovery. The prosecution has thus proved the involvement of the appellants herein beyond reasonable doubt. In the occurrence in question, the victim was attacked by using deadly weapon and was also grievously injured. I find no ground to interfere. The appeal is dismissed. The learned trial Magistrate shall take steps to enforce this order.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The I Additional District and Sessions Judge,
Thoothukudi.
- 2.The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi District.
- 3.The Judicial Magistrate No.I, Thoothukudi.
- 4.The Superintendent of Police,
Thoothukudi District.
- 5.The Additional Public Prosecutor,
Madrurai Bench of Madras High Court,
Madurai.
- 6.The Superintendent, Central Prison,
Palayamkottai.

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

+1 CC to M/s.K.ABIYA, Advocate SR-84467.

Crl.A(MD)No.28 of 2013
29.08.2019

CS(09.10.2019) 4P 10C