



BAIL SLIP

The Appellant/Sole Accused namely Thaibu, S/o.Jamal, aged about 29 years was released on bail 16.12.2013 by order of this court made in MP(MD)No.1 of 2013 in Crl.A(MD)No.317 of 2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.317 of 2013

Thaibu

... Appellant/Sole Accused

Vs.

The Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C, to call for the records from the Lower Court and set aside the judgment of the Lower Court by the Honourable Principal Assistant Sessions Judge, Nagercoil in its judgment dated 19.09.2013 in S.C.No.50 of 2011, by allowing this appeal.

For Appellant : Mr.S.I.A.K.Bagadur Sha

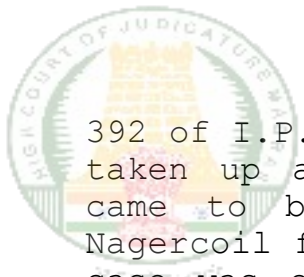
For Respondent : Mrs.S.Bharathi

Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offences under Sections 392 and 397 of I.P.C. and sentenced to undergo ten years rigorous imprisonment, vide judgment dated 19.09.2013 in S.C.No.50 of 2011, on the file of the learned Principal Assistant Sessions Judge, Nagercoil.

2.The case of the prosecution is that on 03.05.2010 at about 10.30 a.m., the appellant demanded money from P.W.1/defacto complainant namely., Gajendran when he was walking at Malikthinar nagar in front of Fathima. When P.W.1 stated that he was not having money, the appellant is said to have brandished M.O.1/Knife and threatened him and took away a sum of Rs.300/- from his pocket and also his mobile. In this regard, P.W.1/Gajendran lodged Ex.P.1/complait before Kottar Police Station. Ex.P.7/FIR in



392 of I.P.C. on the same day at about 11.30 a.m. Investigation was taken up and after completion of usual formalities, final report came to be laid before the learned Judicial Magistrate No.II, Nagercoil for the offences under Sections 392 and 397 of I.P.C. The case was committed to Sessions Court in P.R.C.No.9 of 2011. The case was made over to Principal Assistant Sessions Court, Nagercoil for trial in S.C.No.50 of 2011. Charges were framed against the appellant for the aforesaid offences. The appellant denied the charges and claimed to be tried.

3.The prosecution examined as many as nine witnesses and marked Exs.1 to 10. M.O.1 to M.O.3 were also marked. On the side of the accused no evidence was adduced.

4.The learned Trial Judge by the impugned judgment convicted and sentence the appellant as mentioned above. Challenging the same, this criminal appeal has been filed.

5.Heard the learned counsel appearing for the appellant, who contended that the impugned judgment will have to be reversed and the appellant should be acquitted in toto.

6.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference and wanted this Court to dismiss the appeal.

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

8.The learned counsel appearing for the appellant submitted that Ex.P.1/complaint is very descriptive and that it gives full particulars regarding the appellant. It mentions the names of the appellant and also describes him as the son of Jammal. But in his evidence, P.W.1 had stated that he knew about the appellant only after the occurrence and that he had merely seen him earlier. It is not known as to how the defacto complainant was able to identify not only the name of the appellant but also his father's name.

9.The appellant's counsel pointed out that in his evidence, the appellant had not mentioned that P.W.2/Jeyanthan also witnessed the occurrence. As rightly pointed out by the appellant's counsel that Ex.P.1/complaint on the very face of it appears to be a tutored one. The appellant's counsel further contended that the occurrence had taken place at a busy locality. But not even one independent witness has been examined. It is true that in Ex.P.1/complaint the name of Jeyanthan is mentioned but in his testimony, P.W.1 does not mention that Jeyanthan was present. In any event, Jeyanthan appears to be a chance witness.



10.A careful reading of the entire evidence on record leads one to the irresistible conclusion that the appellant has been falsely implicated. The learned Trial Judge had taken the prosecution version as the gospel truth and convicted and sentenced the appellant. The impugned judgment is set aside and the appellant is acquitted and the criminal appeal is allowed. The fine amount, if any paid by him shall be refunded forthwith. The bail bond, if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1.The Principal Assistant Sessions Judge,
Nagercoil.

2.The Inspector of Police,
Kottar Police Station,
Nagercoil,
Kanyakumari District.

+1 CC to Mr.S.I.A.K. BAGADUR SHA, Advocate (SR-82345[F] dated 20/08/2019)

Crl.A. (MD)No.317 of 2013
19.08.2019

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