



BAIL SLIP

The Petitioner/Petitioner/Accused No.3 namely Mohan S/o.Natarajan was released on bail by this Hon'ble Court dated 02.03.2017 made in CRL MP(MD).9527 of 2016 in CRL RC(MD).169 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.10.2020**

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.R.C. (MD)No.169 of 2016

Mohan ...Petitioner/Appellant/Accused No.3

-Vs-

The State rep.by
The Inspector of Police,
East Police Station,
Thanjavur.

(Crime No.134/2010) ... Respondent/Respondent/Complainant

Prayer: Petition filed under Section 397 r/w 401 of Cr.P.C, to call for the records of the learned I-Additional District and Sessions Judge (PCR), Thanjavur in Crl.A.No.22 of 2013 by judgment dated 26.08.2015, confirming the conviction and sentence imposed by the learned Additional Assistant Sessions Judge, Thanjavur in S.C.No.224 of 2010 by the Judgement dated 24.01.2013 and set aside the judgments of the Courts below and acquit the petitioner.

For Petitioner : Mr.M.Karunanithi

For Respondent : Mr.A.Robinson,

Government Advocate (Criminal Side)

O R D E R

This Revision case is filed by the Accused No.3 as against the findings of the trial Court in S.C.No.224 of 2010, dated 24.01.2013 and the judgment passed by the I Additional District Sessions Judge, (P.C.R) Thanjavur in C.A.No.22 of 2013 dated 26.08.2015.

2.This revision petitioner along with two other accused were tried for the offence under Sections 394 and 397 r/w 34 IPC. The trial Court found the petitioner not guilty for the offence under Section 394 IPC and found him guilty for the offence under Section 397 IPC, convicted and sentenced him for 7 years Rigorous Imprisonment. As against the order of the trial Court, the petitioner preferred an appeal before the Court of Sessions in C.A.No.22 of 2013 and the same was also dismissed by judgment dated



26.08.2015 by the learned I Additional District and Sessions Judge (PCR), Thanjavur.

3.As against the concurrent findings of the trial Court as well as the Appellate Court, the petitioner/A3 preferred the present revision, on the grounds that the name of the petitioner is not mentioned in the complaint [Ex.P.1], the First Information Report was registered with delay and test identification parade was not conducted.

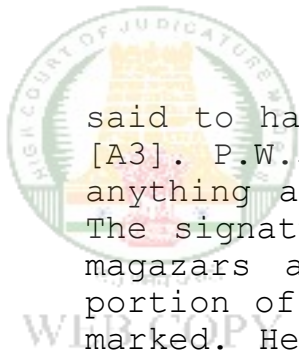
4.Mr.M.Karunanithi, learned counsel appearing for the revision petitioner in support of this petition submitted that the name of the revision petitioner does not find place in F.I.R, though this petitioner was known to P.W.1 and P.W.2, the admissible portion of the confession statement has not been marked rather. There is no evidence to invoke Section 27 of Indian Evidence Act and the recovery, without confession statement being marked, is inadmissible. He further submitted that the confession of the co-accused [A1] is not a substantive evidence against the petitioner [A3] and there is no positive evidence unerringly pointing towards the guilt of the petitioner[A3].

5.The learned counsel also submitted that Section 394 IPC is punishable with an imprisonment for life or with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine. In this case, the trial was conducted by the Additional Assistant Sessions Court, Thanjavur. As per Section 28(3) Cr.P.C, an Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding ten years. Therefore, according to the learned counsel, the charge framed by the learned Additional Sessions Judge, Thanjavur under Section 394 IPC is without jurisdiction and hence the entire proceedings is conducted without jurisdiction. Therefore, the learned counsel submitted that the conviction and sentence is liable to be set aside.

6.The learned counsel further submitted that no doubt, the learned Assistant Sessions Judge is also a Sessions Judge, but if a penal law prescribes punishment of imprisonment for life, that offence cannot be tried by the Assistant Sessions Judge.

7. The learned counsel also submitted that the material objects namely M.O.1 and M.O.2 have not been shown to P.W.2 and identified by her. Hence, the prosecution has miserably failed to prove that M.O.1 is the robbed jewel and M.O.2 is the weapon said to have been used by the accused and there is a delay in forwarding the material objects to the Court and the delay is also not explained, which is fatal to the prosecution's case.

8. He further submitted that Section 27 of the Indian Evidence Act is invoked in order to give weightage to the recovery



said to have been made on the information given by the petitioner [A3]. P.W.5, the witness to the arrest and recovery, has not stated anything about the admissible portion of the confession statement. The signatures alone are marked as Ex.P.3 and Ex.P.4. The recovery magazars are marked as Ex.P.5 and Ex.P.6. Unless the admissible portion of the confession is marked, the recovery Mahazar cannot be marked. Hence, no reliance can be placed on the recovery mahazars [Ex.P.5 and Ex.P.6]. The recovery of M.O.1 is from a open place and the Accused No.3 cannot have exclusive knowledge of the same. In support of his contention, the learned counsel has also relied upon the following judgments :

- (1) ***N.Banu Vs. State - reported in 2017 (2) MWN (Cr1) 338.***
(2) ***Puranlal Vs. State of Uttarpradesh - 1997 Cr1 LW 3813***
(3) ***Kanabhai Vs. State of Gujarat 2018 (Cr1) LW 1138.***

9. Per contra, Mr.A.Robinson, learned Government Advocate (Criminal Side) submitted that P.W.2 has identified the accused in the Court and she has also identified the jewels robbed by the accused. Admittedly the accused was working in the Grocery shop of P.W.1 and the identity of the accused cannot be denied and the evidence of the P.W.2 is corroborated by the Doctors [P.W.7 and P.W.8], who treated the P.W.2.

10.He further submitted that the entire robbed articles were recovered from the petitioner/accused and the same is proved through the evidence of V.A.O [P.W.5]. The disclosure statement made by the accused is admissible under Section 27 of the Indian Evidence Act and the testimony of P.W.5 coupled with the recovery and the disclosure statement, is pointing the petitioner/accused guilty of offence under Section 397 IPC. Having considered the overall evidence and materials, the trial Court has found him guilty and the appellate Court also confirmed the same.

11.The learned Government Advocate (Criminal Side) also submitted that unless plausible explanation comes from the accused for possession of stolen articles, the accused can be presumed to be a thief as enumerated under Illustration (a) of Section 114 of the Indian Evidence Act. He also relied upon the decision of the Honourable Supreme Court, in ***Geejaganda Somaiah Vs. State of Karnataka*** (12.03.2007 - S.C) : MANU/SC/7211/2007, wherein it has been held as follows:

"24.In the instant case also, the disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. In the same affect are the judgments in Mukund Alias Kundu Mishra and Anr. Vs. State of M. P. 1997 Cri LJ 3182 and Ronny Alias Ronald James



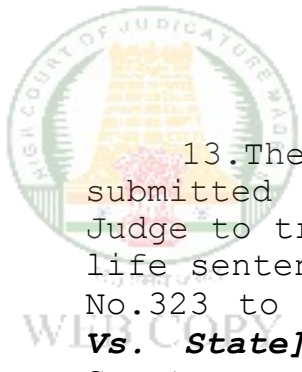
Alwaris and Ors. Vs. State of Maharashtra : 1998 Cri LJ 1638.
In the later case the Court held:

Apropos the recovery of articles belonging to the Ohol family from possession of the appellants soon after the robbery and the murder of the deceased (Mr.Mohan Ohol. Mrs.Runil Ohol and Mr.Rohan Ohol), which possession has remained unexplained by the appellants the presumption under Illustration (a) of Section 114 of the Evidence Act will be attracted. It needs no discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would therefore, be that the appellants and no one else had committed the three murders and the robbery."

12.He also submitted that the acquittal of the co-accused by the appellate Court can not absolve the petitioner from the criminal liability and in this regard, he has relied upon the decision of the Honourable Supreme Court in **Gurcharan Singh and Ors. Vs. State of Punjab**, reported in **AIR 1956 SC 460**, wherein, the Honourable Supreme Court has held as follows:

"9.The case in hand is similar to the case reported as Dalip Singh V. State of Punjab MANU/SC/0031/1953 : [1954]1SCR 145 in so far as it was found in that case, as we are inclined to hold in this case, that the acquittal of the other two accused by the High court may not have been entirely correct. Reference to that reported case is only by way of illustration and not by way of an appeal to precedent, because on the facts no two cases can be similar. Each case has its own peculiar facts and it is therefore always risky to appeal to precedents on questions of fact. The highest that can be or has been said on behalf of the appellants in this case is that two of the four accused have been acquitted, though the evidence against them, so far as the direct testimony went, was the same as against the appellants also; but it does not follow as a necessary corollary that because the other two accused have been acquitted by the High Court the appellants also must be similarly acquitted."

The Honourable Supreme Court in Megh Singh Vs. State of Punjab (2003 8 SCC 666) has held that the Acquittal of co-accused does not by itself entitle the other accused in the same case to acquittal as a single significant details may alter the entire case. Yet another case the Honourable Supreme Court in GORLE S.NAIDU vs. State of Andhra Pradesh and others (2003 12 SCC 449) held that mere acquittal of a large number of co-accused does not per se entitle others to acquittal and admittedly entire robbed article were recovered from him. Hence in the absence of explanation for having possession of robbed article he cannot be acquitted.



13.The learned Government Advocate (Criminal Side) further submitted that the jurisdiction of Additional Assistant Sessions Judge to try the cases in which punishment is prescribed 10 years or life sentence has already been decided by this Court in Crl.R.C.(MD) No.323 to 326 of 2013, dated 14.05.2020, **[Santhanasamy and others Vs. State]** by referring the Full Bench judgment of other High Courts, as follows:

"14.A joint reading of the above quoted Sections 26 and 28 of the Code shows that all offences under the Indian Penal Code are to be tried by the High Court or Court of Sessions or any other Court by which such offence is shown in the First Schedule to be triable. And, although a High Court or a Sessions Judge or an Additional Sessions Judge may pass any sentence authorized by law, an Assistant Sessions Judge is restricted from passing a sentence of death or of imprisonment for a term exceeding 10 years. In the First schedule, all the offences under the Indian Penal Code are classified by what Courts they are triable. This schedule, nowhere distinguishes the Court of Additional Sessions Judge or the Assistant Sessions Judge from that of Court of Sessions. Also, there are many offences in the First Schedule classified to be triable by the Sessions Court and for such offences, no minimum sentence of imprisonment, particularly, less than 10 years, are prescribed. This is because it is not necessary that every case made over to the Assistant Sessions Judge may end up in conviction or in cases regarding the offences, where no minimum sentence of imprisonment is prescribed, the Assistant Sessions Judge may pass any sentence of imprisonment not exceeding 10 years. Also Section 28 of the Code does not say that offence which prescribes the minimum sentence of 10 years of imprisonment cannot be tried by the Assistant Sessions Judge or is not triable by the Assistant Sessions Judge. It only restricts an Assistant Sessions Judge from passing a sentence of imprisonment for a term exceeding 10 years. Section 28 is a procedural provision and must be liberally interpreted. It thus becomes clear that if a case is made over by the Sessions Judge or the High Court under Section 194 of the Code to the Assistant Sessions Judge for trial, the latter is competent to try the same, provided the offence is triable by the Sessions Court irrespective of the prescribed minimum sentence of imprisonment. And, in the event of Assistant Sessions Judge holding the accused guilty of an offence, which deserves a sentence of imprisonment for a term exceeding 10 years, he shall send the case to the Sessions Judge, who is authorized by law to pass any sentence. This view was also taken by the Andhra Pradesh High Court in the case of Jasti Punnarao (supra)."



14. He also reiterated that the Assistant Sessions Judge can very well try any case assigned to him/her by the Sessions Judge and if the Assistant Sessions Judge is of the view that the sentence above 10 years imprisonment has to be imposed, the learned Assistant Sessions Judge can always refer the matter back to the Sessions Judge. Considering the over all aspects, the trial Court as well as the Appellate Court, rightly convicted the petitioner/accused. The prosecution has proved the case beyond all reasonable doubt and there is no reason to interfere with the orders of the Court below and prays for dismissal.

15.This Court paid its anxious consideration to the rival submissions made and also perused the available records.

16.This revision case is filed as against the concurrent findings of the Courts below. The trial Court as well as the Appellate Court found the petitioner guilty, based on the evidence of the victim [P.W.2] and the complainant [P.W.1] and the evidence of the Doctors [P.W.7 and P.W.8].

17.The accused 1 to 3 were working in the Grocery shop of P.W.1. They were also assigned with the duty to take care of P.W.2/aged mother of P.W.1 and P.W.3. The petitioner[A3] and the other accused had to arrange food for the aged woman[P.W.2]. On the date of occurrence, on 10.03.2010 at about 08.00 pm, the accused had gone to the house of P.W.2 with Idlies for providing her dinner. P.W.2 after having some idlies, provided the remaining idlies to the accused and also gave milk to them. After taking the milk, the accused No.1, from her back, covered her face with his lungi and accused No.2 pressed the chest of P.W.2 with a pillow. A2 has also assaulted P.W.2 on her face and she became unconscious. Thereafter, the accused have taken away the jewels from the Almirah and absconded. P.W.3/son of P.W.2 found his mother lying unconscious, informed the same to his brothers P.W.1 and P.W.4 and all the brothers took her to a private hospital, namely, Rohini Hospital at Thanjavur. The Doctor, Rathinasabapathi[P.W.7] attended P.W.2 on 10.03.2010, admitted her as an inpatient and noted down the injuries, in the accident register [Ex.P.8] as follows:

"(i) On touching, the left chest the victim suffered pain, (ii) burn injury on the left leg, (iii) an abrasion 1x1 cm on her left lip."

18.The victim has also taken to Cauvery hospital at Trichy for further treatment. On 14.03.2010, Dr.Sivamani [P.W.8] provided her treatment and he has noted down the injuries of P.W.2 as follows:

"(i) X-Ray report reveals that the ribs 4, 5, 6 and 7 were found broken and in view of that patient is suffering for breath."



(ii) In view of the consequences, oxygen level on her blood circulation is decreased and the patient is not with clear mind. In view of the injuries, she suffered a cervical myelopathy due to the compression of neck and she was not in a position to left her hand and also noted down lacerated injury on the jaws.

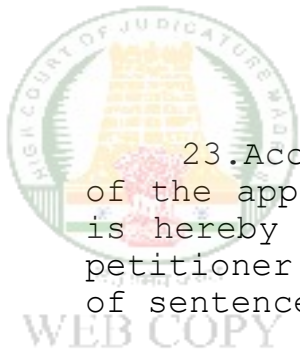
(iii) Doctor [P.W.8] in his accident register [Ex.P.8] has opined that the injuries Nos. 1 to 3 observed by him are grievous in nature. On the complaint of P.W.1/son of the victim, the case was registered in Crime No.134 of 2010 on the file of the East Police Station, Tanjore for the offence punishable under Sections 394 and 397 of IPC. On 10.03.2010 at about 08.00.pm, the finger prints were also collected from the place of occurrence through the finger print Inspector[P.W.6]."

19.The respondent Police has also arrested Santhosh [A1] and Saravanan [A2], on 11.03.2010 and recorded their confession statements in the presence of Village Administrative Officer [P.W.5]. involvement of this petitioner[A3] is revealed from their confession statement and subsequently, this revision petitioner was also arrested and all the stolen jewels [M.O.1 series] were recovered, pursuant to the confession of this petitioner from his house.

20.As rightly pointed out by the learned Government Advocate, the 3rd accused/appellant has not seen any plausible explanation for the possession of stolen articles and therefore, as per the Illustration (a) to Section 114 of the Indian Evidence Act and as per the dictum laid down by the Honourable Apex Court in **Geejaganda Somaiah Vs. State of Karnataka**, the appellant/3rd accused can be presumed to be a thief. One of the finger prints lifted from the almirah tallied with the finger print of Saravanan [A2]. The respondent Police has also recovered a pillow cover and lungi used for the commission of offence, pursuant to the disclosure statements made by A1 and A2.

21.The other grounds raised by the appellant regarding the jurisdiction of the trial Court to try this matter and the acquittal of the co-accused in the opinion of this Court, does not hold much water in view of the authoritative pronouncement in **Gurcharan Singh and Ors Vs. State of Punjab** and in **Santhanasamy and others Vs. State** (supra).

22. Based on the available materials, the trial Court as well as the Appellate Court rightly found, this revision petitioner guilty, convicted and sentenced him as stated supra. There is no error apparent on the orders of the trial Court and the appellate Court warranting any interference of this Court.



23. Accordingly, this Revision case is dismissed. The judgment of the appellate Court dated 26.08.2015 made in Crl.A.No.22 of 2013 is hereby confirmed and the trial Court is directed to secure the petitioner and confine him to prison to undergo the remaining period of sentence. Bail bonds, if any executed, shall stand terminated.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The I-Additional District and Sessions Judge (PCR),
Thanjavur.
- 2.The Additional Assistant Sessions Judge, Thanjavur.
- 3.Do through the Principal District Judge, Thanjavur.
- 4.The Judicial Magistrate No.I,Thanjavur.
5. Do Through the Chief Judicial Magistrate,
Thanjavur at Kumbakonam.
- 6.The Superintendent, Central Prison, Trichy.
- 7.The Inspector of Police,
East Police Station,
Thanjavur.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 9.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

CRL.R.C. (MD) No.169 of 2016
01.10.2020

sr(CO)

TR(29.12.2020) 8P 11C