



BAIL SLIP

That the Appellant/Sole Accused, namely B.Krishnan, S/o.Boja Gowder, aged about 39 Years was enlarged on Bail by the Order of the Court dated 07/12/2016 made in CLR.M.P.No.12998 of 2016 in CLR.A.No.799 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	23.07.2021
DELIVERED ON	04.08.2021

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

CRL.APPEAL NO.799 OF 2016

B.Krishnan

... Appellant/Sole Accused

Versus

State, by its Inspector of Police,
CBCID Nilgiris District,
(Cr.No.39/2008 on the file
of Masinakudi PS)

... Respondent/Complainant

PRAYER:-

Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure against the judgment, dated 15.11.2016 in S.C.No.39 of 2011 on the file of the learned Sessions Judge, Mahila Court, Ootacamund, Nilgiris District.

For Appellant : Mr.P.Tamilavel

For Respondent : Mr.J.C.Durai Raj
Govt. Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been directed against the judgement of conviction and sentence dated 15.11.2016 in S.C.No.39 of 2011 passed by the learned Sessions Judge, Mahila Court, Ootacamund, Nilgiris District.



2. The appellant herein is the sole accused in Sessions Case No.39 of 2011. The prosecution case, in nutshell, is that on 16.06.2018 at about 18.30, one Jogi, Village Administrative Officer (VAO), having received information through one Pasuvan, who was working as a Village Assistant, lodged a complaint against the accused alleging that the accused has committed theft of stones by illegally cutting and unearthed from the Government land at Boothanatham in S.No.402 belonging to forest land and transported the same through his lorry bearing Regn.No.Tn 74 L 0084 and TMP 2338 and stored the same in S.No.359. Based on the said complaint, a case was registered against the accused in Crime No.39 of 2008 for the offences punishable under Sections 447, 379 IPC r/w 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1984.

2.1 Later, the case was transferred to CBCID, The Nilgiris Unit for further investigation. During investigation, it is revealed that the accused had illegally trespassed into Revenue land and quarried about 200 lorry loads of rough stones and caused wrongful loss to the Government to the tune of Rs.2,14,700/-. After completion of the investigation, a charge sheet was laid against the accused under Sections 447, 379 IPC r/w 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1984 before the learned Judicial Magistrate Court, Gudalur and the same was taken on file by the learned Judicial Magistrate Court, Gudalur and committed the same to District Sessions Court, Ootacamund, in turn, it was made over to Fast Track Mahila Court, Ootacamund.

3. On appearance of the accused, copies of documents were furnished to the accused u/s.207 Cr.P.C. after hearing both sides and perusal of the charge sheet, connected records and statements filed along with charge sheet, charges were framed against the accused and since the accused pleaded not guilty, trial was conducted.

4. In order to prove the guilt of the accused, the prosecution examined PWs.1 to 18 and marked Exs.P1 to P23 and MOs 1 to 3. On the side of accused, no witnesses were examined nor any documents were marked.

5. After closure of the evidence, the accused was examined under Section 313 Cr.P.C. in regard to the incriminating material found in the evidence of prosecution witnesses, wherein, the accused denied his complicity in committing the offences. The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty of offences and accordingly, convicted and sentenced him to undergo rigorous imprisonment for a period of two months for the offence u/s 447



IPC, rigorous imprisonment for a period of two years for the offence u/s 379 IPC and to pay a fine of Rs.1000/- in default, to undergo simple imprisonment for a period of two years for the offence u/s 3(1) of the Tamil Nadu Public Properties (Damages & Loss) Act, 1984 and to pay a fine of Rs.1000/- in default, to undergo simple imprisonment for a period of two months.

6. Challenging the judgment of conviction and sentence of the trial Court, Mr.P.Tamilavel, learned counsel appearing for the appellant would contend that the basic information which was said to have been given by one Pasuvan, who is a Village Assistant, based on which, the case was registered, was neither cited as a witness on the side of the prosecution nor examined during the trial of the case and as such, there is no eye witness to the alleged occurrence. He would also contend that PW.1, Village Administrative Officer, who is the complainant, in his evidence, has clearly deposed that he did not see the occurrence, but only on the instructions of RDO, he lodged the complaint against the appellant, which is based on hearsay evidence which cannot be admissible under the Evidence Act. The learned counsel also contended that Nell Yuwan Neel and Nell Issac Peter are the owners of the S.No.359 where the alleged broken stones were stored by the appellant, were neither implicated as accused nor examined as witnesses on the side of the prosecution and as such, the prosecution failed to prove the recovery of the stolen property. He would also point out that PW.2, who is the Revenue Inspector, has stated in his cross-examination, that he only instructed PW.1 to lodge the complaint against the accused and that he did not see the place of occurrence where stones were broken and it could not be said from which place exactly the stones were broken. Therefore, the learned counsel would submit that PW.2's evidence is also based on hearsay which cannot be relied upon. In the same way, PW.3 who is Inspector, working in Survey Department also did not say anything about the extent of land in which stones were taken away. The learned counsel for the appellant would submit that PWs 4 to 11 did not support the prosecution case and they turned hostile, which would fatal the prosecution case and therefore, the appellant is entitled to the benefit of doubt.

7. The learned counsel referred to the evidence of PW.13, Assistant Director, who deposed in his evidence that on measuring the place of occurrence, he came to know that about 106 loads of stones had been taken away from the place of occurrence. However, he further deposed that about 190 loads of stones were stored in S.No.359 which belongs to Nell Yuwan Neel and Nell Issac Peter, whereas, PW.1 in his cross-examination, stated that about 40 loads of stones were stored in S.No.359. Therefore, the learned counsel for the appellant pointed out that there is contradiction in the evidence of PW.1 and 13 in



regard to loads of stones taken away and stored in S.No.359 which creates suspicion over the prosecution case. In support of his contentions, the learned counsel for the appellant relied upon a decision reported in "Sujit Biswas versus State of Assam" reported in 2013 CrI.L.J.3140, wherein, the Hon'ble Supreme Court has held in para 6 as under:

6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State through CBI v. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)."

8. The learned counsel also relied upon a decision reported in "Sharad Birdhichand Sarda versus State of Maharashtra" reported in AIR 1984 SC 1622, wherein, the Hon'ble Supreme Court has held as under:



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"The facts so established should be consistent only with the hypothesis of the guilt of the accused. There should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

9. Therefore, the learned counsel for the appellant would urge this Court to set aside the judgment of conviction passed by the trial Court.

10. On the other hand, the learned Government Advocate (Crl.side) would submit that the trial Court has dealt with the evidence tendered both oral and documentary by the prosecution in proper perspective and rightly held the appellant was guilty of the offences 379 and 411 IPC and convicted and sentenced him appropriately, which requires no interference. He would submit that the prosecution has proved its case beyond all reasonable doubt though there is discrepancy in the evidence of the prosecution witnesses. He pointed out that PW.12 Village Administrative Officer deposed that while he was in service, the appellant along with others approached him and requested to break the stones and take away for building the temple and this would go to prove that except the appellant, no other person was involved in the offence. He also submitted that non-implication of the owners of the land where the alleged broken stones were stored either accused or witnesses would no way affect the case of the prosecution. The prosecution has proved the case beyond all reasonable doubt. Hence, the learned Government Advocate prays for dismissal of the appeal.

11. Heard the learned counsel for the appellant and the learned Govt. Advocate (Crl.side) and perused the entire materials available on record.

12. Absolutely, there is no direct evidence placed by the prosecution to show that the appellant had trespassed into the government land, had broken the stones and illegally transported the same and thereby committed the offences. The witnesses produced by the prosecution have not directly implicated the appellant in the offence. The implication of the appellant comes only in the form of the circumstantial evidence. It is settled law that every accused is presumed to be innocent unless the guilt is proved. The presumption of innocence is a human right. In a case where the statute thus not provide for burden of proof



on the accused, it is always lies on the prosecution.

13. As regards placing reliance on the circumstantial evidence, in "Krishnan v. State, represented by Inspector of Police" (2008) 15 SCC 430, the Hon'ble Supreme Court after considering large number of its earlier judgments, observed as follows:

"This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;

(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. (See Gambhir v. State of Maharashtra, AIR 1982 SC 1157)".

14. In "Sharad Birdhichand Sarda v. State of Maharashtra" reported in AIR 1984 SC 1622, while dealing with circumstantial evidence, it has been held by the Hon'ble Supreme Court that the onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent before conviction could be based on circumstantial evidence, must be fully established. They are :

(i) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established;



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(ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) the circumstances should be of a conclusive nature and tendency;

(iv) they should exclude every possible hypothesis except the one to be proved; and

(v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

15. In this case, it is clear from the record that the conviction of the appellant is based on the circumstantial evidence. The trial Court mainly relied upon the evidence of PWs.1, 12, 13 and 15 to connect the accused to the alleged offences. It is not in dispute that PW.1, V.A.O., who lodged the complaint against the appellant is not an eye witness to the occurrence and based on the information received from one Pasuvan, Village Assistant and as per instructions of PW.2 Revenue Inspector, PW.1 has lodged the complaint. But for the reasons best known to it, the prosecution has not cited Pasuvan as witness nor examined him on the side of the prosecution. Further, in his cross-examination, PW.1 has categorically admitted that he did not mention in the complaint about the days during which, the broken stones were illegally transported. PW.12 Thiru Rajan, who is a retired V.A.O., deposed that during his tenure, the appellant along with three others approached him and requested him to permit to break the stones and take it away for building a temple. By this, the trial Court drew the presumption that it was the appellant only, who indulged in committing the offence. Mere based on this hypothesis, it cannot be held that the prosecution has proved that the appellant alone was the person who committed the offence and none else. PW.13 Thiru Gopikrishnan, Asst. Director of Geology and Mining Department, who visited the scene of occurrence and measured the stones stolen and its value. But in his evidence, PW.13 stated that by engaging persons and by using chisel and hammers, stones were broken, but it cannot be said that as to how many persons were engaged and how many days were taken for the purpose of cutting the stones. But no material objects which were used in cutting the stones, were seized and marked during the course of evidence by the prosecution. PW.13 also deposed



that on measuring the place of occurrence, he came to know that about 106 loads of stones had been taken away from the place of occurrence, whereas, he further deposed that about 190 loads have been stored in S.No.359, which belong to Nell Yuvan Neel and Nell Issac Peter. While so, PW.1 in his cross-examination, deposed that 40 loads of stones have been stored in S.No.359. Therefore, there are contradictory versions made by PW.13 and PW.1 as regards taking away the loads from the place of occurrence and storing the loads in S.No.359, which creates a doubt over the prosecution case. Further, Thiru Nell Yuvan Neel and Nell Issac Peter who are the owners of the land in S.No.359 where the alleged broken stones were stored by the appellant, were neither implicated as accused nor examined as witnesses on the side of the prosecution in order to prove the recovery of the stolen property and further, PWs.4 to 11 who were cited as witness to the magazar and recovery proceedings had turned hostile and not supported the prosecution case, which are fatal to the prosecution case.

16. In view of the above discussion, this Court comes to the conclusion that the prosecution has not established its case beyond reasonable doubt and the appellant is entitled to the benefit of doubt. In fact, in the case of circumstantial evidence, the burden on the prosecution is always greater. The trial Court has erred in holding that the appellant failed to satisfy the Court by giving plausible explanation as to who other person, other than him, had cut and removed the stones. The law does not insist the accused to prove his innocence, but it is for the prosecution to prove its case beyond all reasonable doubt. Accordingly, the conviction and sentence imposed on the appellant are liable to be set aside.

17. For the foregoing reasons, the Criminal Appeal is allowed. The judgment of the trial Court, dated 15.11.2016 in S.C.No.39 of 2011 is hereby quashed. Consequently, the conviction of the appellant for the offences under Sections 447 and 379 IPC and under Section 3(1) of the Tamil Nadu Public Properties (Damages & Loss) Act, 1984 and sentence thereof, are set aside. The appellant shall be released forthwith if he is in custody and not wanted in any other case. Fine amount, if any, paid by the appellant shall stand refunded. Bail bonds, if any, executed by the appellant shall stand terminated.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Mahila/Sessions Court,
Ootacamund,
Nilgiris.
2. The Inspector of Police,
CBCID, Nilgiris District.
3. The Public Prosecutor,
Madras High Court.
4. The Section Officer,
Criminal Section,
High Court, Madras.

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