



Bail Slip

The Petitioner/accused namely Suresh @ Karuvayan M/25 years S/o.Kathavarayan was directed to be released on bail in and by the order of this Court dated 12/01/2016 and made in CrI.MP.NO.292 of 2016 in CrI.R.C.No.46 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.R.C.No.46 of 2016

Suresh @ Karuvayan

... Petitioner

Versus

The State
Rep. by Inspector of Police,
Karungalpalayam Police Station,
Erode District.
(Crime No.139/2014)

... Respondent

PRAYER: Petition filed under Sections 397 & 401 of the Criminal Procedure Code, against the Judgment of the learned 2nd Additional Sessions Judge at Erode in C.A.No.96 of 2015 by Judgment dated 05.11.2015 convicting the petitioner under Sections 341 and 392 r/w 397 IPC and 506(ii) IPC and sentenced to undergo one month simple imprisonment and seven years rigorous imprisonment and one year rigorous imprisonment respectively and also to pay a fine of a sum of Rs.500/- in default to undergo one month simple imprisonment, confirming the order made in S.C.No.94 of 2014 dated 18.11.2014 on the file of the Principal Assistant Sessions Judge, Erode.

For Petitioner: Ms.K.Vijayalakshmi, Legal Aid Counsel
For Respondent: Mr.A.Gopinath,
Government Advocate (CrI.side)

O R D E R

This Criminal Revision Case has been preferred, challenging the judgment of the learned 2nd Additional Sessions Judge at Erode in C.A.No.96 of 2015 by Judgment dated 05.11.2015 confirming the judgment of the learned Principal Additional Sessions Judge, Erode, in S.C.No.94 of 2014 dated 18.11.2014.

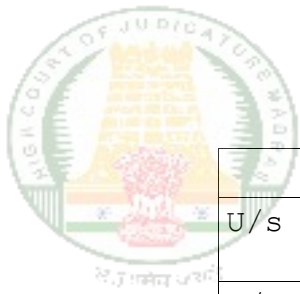


2.The case of the prosecution is that on 19.03.2014 at about 9.00 am., at Thirunagar Colony Bus Stop, within the jurisdiction of Karungalpalayam Police Station, when the P.W's.1 and 2 were standing and conversing with each another, the accused/petitioner suddenly appeared and restrained them and kept a knife over the neck of P.W.1. He threatened him to hand over any money kept in his pocket. When, P.W's.1 and 2 refused to give money, the accused threatened P.W.1 that he would kill him by stabbing on his stomach and thereafter, he took away Rs.350/- from P.W.1's shirt pocket along with his Black colour Nokia Cell Phone. At that time, P.W.2 raised an alarm by shouting loudly. Noticing the same, the public came to the rescue of P.W.1. The accused threatened the public by showing knife and ran away from the place of occurrence. Based on the complaint given by P.W.1, a case was registered against the accused for the offences under Sections 342, 392 read with 396 and 506 (ii) of IPC in Cr.No.139 of 2014, by the respondent police.

3.Thereafter, P.W.8-Agastin Peter, Inspector of Police took up the case for investigation and visited the place of occurrence, prepared observation mahazar-Ex.P.6 in the presence of witnesses and recorded their statements. On the same day, he arrested the accused at about 12.15 hours; recorded his confession statement in the presence of the witnesses and also recovered the knife used for the occurrence and the money extorted by him, under Seizure Mahazar. He sent the case properties to the Court under Form-95 and after completing the investigation, the respondent police laid the charge sheet for the offences under Sections 341, 392 read with 397 and 506 (ii) of IPC.

4. After the case was taken on file and on being satisfied with the materials available on record, the learned Trial Judge framed charges under Sections 342, 392 read with 396 and 506 (ii) of IPC. When the accused was questioned, he pleaded innocence and claimed to be tried.

5.During the course of trial, on the side of the prosecution, 8 witnesses were examined as P.W.1 to P.W.8; 7 documents were marked as Exs.P1 and P7 and 3 Material Objects were marked as M.O's.1 to 3. On the side of the defence, no witness was examined and no document was marked. After completion of trial and after considering the materials available on record, the learned trial Judge found the accused guilty for the offence under Sections 341, 392 read with 397 and 506(ii) of IPC and convicted the accused and sentenced him as under:



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Offence	Punishment Imposed
U/s 341 of IPC	To undergo one year simple imprisonment
U/s 392 read with 397 of IPC	To undergo seven years Rigorous Imprisonment
U/s 506 (ii) of IPC	To undergo one year rigorous imprisonment and to pay a fine of Rs.500/- in default simple imprisonment of one month.

6. Aggrieved over the same, the accused preferred an appeal in C.A.No.96 of 2015 before the 2nd Additional Sessions Judge at Erode and the same was also dismissed by confirming the judgment of the trial Court. Hence, the petitioner/accused had preferred the present Criminal Revision Case.

7. Heard, the learned counsel for the petitioner; learned Government Advocate appearing for the respondent and also perused the materials available on record.

8. The learned counsel for the petitioner would submit that there are contradictions in the evidence of P.W.1 and the witnesses; the learned Trial Judge has not properly given credit to the contradictions and also the benefit of doubt to the accused; despite the case property was recovered within one hour from the time of occurrence, the extorted money of Rs.350/- was not recovered then and there; Hence, it creates a doubt on the case of the prosecution. It is also submitted that this case has been registered by the prosecuting agency, just for statistical purposes and the accused has not involved in the offence as alleged.

9. The learned Government Advocate would submit that the evidences of P.W's.1 and 2 are clear and that the alleged contradictions are not a material contradiction and the Courts below has correctly appreciated the evidence and convicted appropriately.

10. The specific case of the prosecution is that on 19.03.2014, when P.W.1 was standing near the Thirunagar Colony Bus Stop and was conversing with his friend-P.W.2, the accused came there and kept the knife on the neck of P.W.1 and threatened him to give any money kept in his pocket. In the complaint given by P.W.1, it is mentioned that the accused kept the knife over the neck. But, in the evidence of P.W.1, he has stated that the accused kept the knife over his hip. The one and only eye witness, who is said to have been witnessed the occurrence is P.W.2. But, P.W.2 has not supported the

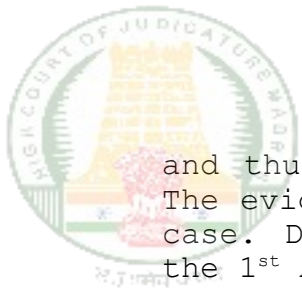


prosecution case. However, P.W.3 has stated in his evidence that he saw the accused running from the place of occurrence. But in his cross examination, he has stated that when he went to the place of occurrence, only by hearing the noise of people who had already gathered there. So, he could have joined the group after the occurrence and it could not have been possible for him to notice the accused running from the place of occurrence. Further, it is stated that the police arrived to the place of occurrence, immediately after 10 minutes and they got a written complaint. P.W.3 affixed his signature as a witness. But, no such document has been produced before the Court and in fact, a complaint has been given by the P.W.1, i.e., at 10 a.m., that too after an hour of the alleged occurrence.

11.The learned counsel for the petitioner attracted the attention of this Court to the Rough Sketch, which is marked as Ex.P.6, in which the shop of P.W.3 is shown behind the bus stop. Since the bus stop is in front of the shop of P.W.3, it is not possible for him to see the alleged occurrence. The Investigation Officer was examined as P.W.8 and he stated that he had arrested the accused on 19.03.2014 on the same day itself, immediately after 15 minutes of registering the case, i.e., at 12.15 hours.

12.The only direct evidence is the oral evidence of P.W.1. He has stated in his cross examination that when he went to the police station to lodge the complaint, the accused was already there and he was asked to identify the accused. When the Investigation Officer has stated that the accused was arrested only at 12.15 hours, P.W.1 has stated that even when he went to the police station at about 10.00 am., to lodge the complaint, he saw the accused kept in the police station. This contradiction in the evidence of P.W.1 and the Investigation Officer no doubt creates a doubt in the case of the prosecution. If the accused was secured immediately after the occurrence, it would have been possible for the police to recover the entire amount of Rs.350/- which is alleged to have been extorted from P.W.1. So, the self contradictions in the evidence of P.W.1 and the contradictory evidence of P.W.1 and P.W.8 would only weaken the case of the prosecution. Further, the place of occurrence seems to be a busy area which has a lot of every day happenings. In such a busy area, the accused had threatened P.W.1 and extorted money from him. Though the Material Objects are alleged to have been recovered from the accused on the basis of the confession statement, recovery witnesses did not identify the Material Objects during their evidence.

13.The learned Trial Judge has not appreciated the contradictions in the evidence of the complainant and other witnesses before proceeding to record the decision of the case



and thus it has been confirmed by the 1st Appellate Court also. The evidence of the prosecution is not sound enough to prove its case. Due to the reasons stated above, I feel the Judgment of the 1st Appellate Court is liable to be reversed.

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14. In the result, this Criminal Revision Case is Allowed and the judgment dated 05.11.2015 made in C.A.No.96 of 2015 on the file of the 2nd Additional Sessions Judge at Erode, is hereby set aside. Fine amount if any, paid by the petitioner shall be refunded to him. Bail bond already executed if any, shall also be canceled.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

- 1) The 2nd Additional Sessions Judge,
Erode.
- 2) The Principal Assistant Sessions Judge
Erode.
- 3) The Judicial Magistrate,
No.1, Erode.
- 4) The Chief Judicial Magistrate,
Erode(For Information)
- 5) The Superintendent
Central Prison, Coimbatore.
- 6) The Inspector of Police,
Karungalpalayam Police Station,
Erode District.
- 7) The Public Prosecutor,
High Court of Madras.
- 8) The Secretary,
Tamil Nadu Legal Services Authority,
High Court, Madras-104.



Copy to: The Section Officer,
Criminal Section,
High Court, Madras.

Crl.R.C.No.46 of 2016

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PL(CO)
CB(04/02/2022)