

BAIL SLIP

The Appellant/Accused namely Sakthivel S/o Palanisamy was directed to be released on bail as per order of this court dated 28/03/2014 made in CrI Mp.1/14 in CrI.Rc.293/14 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2021

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.R.C.No.293 of 2014

Sakthivel
S/o.Palanisamy

...Petitioner/Appellant/Accused - 1

Vs.

State by Inspector of Police
Malayampalayam Police Station
Erode District
Crime No.23 of 2012

...Respondent/Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 and 401 Code of Criminal Procedure to set aside the conviction imposed in the Judgment dated 09.01.2014 made in C.A.No.66 of 2013 on the file of the Principal Sessions Judge, Erode, modified the conviction imposed in Judgement dated 04.09.2013 made in C.C.No.66 of 2012 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Petitioner : Mr.M.Guruprasad
For Respondent : Mr.T.Shunmuga Rajeshwaran
Government Advocate (CrI. Side)

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O R D E R
(The case has been heard through video conference)

This revision petition has been filed seeking to set aside the conviction imposed in the Judgement dated 09.01.2014 made in C.A.No.66 of 2013 on the file of the Principal Session Judge, Erode, modifying the conviction imposed in Judgement dated 04.09.2013 made in C.C.No.66 of 2012 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

2.The brief facts of the case is that PW1 Periasamy is
<https://hcservices.courts.gov.in/hcservice/2514> Saraswathi. On 03.02.2012 at about 4.00 p.m.,

when PW4 was removing weeds in her field, P.W.1 and his friend P.W.3 Nanthakumar, P.W.7 Nataraj, P.W.8 Sakthivel, P.W.6 Vadivel and one Sankar were chatting near the field. At that time, both the accused came in a motor Cycle (MO2) bearing No.TN 28 AA0055 and one of the accused went to the field and snatched the gold chain (MO1) weighing 4 sovereigns from the P.W.4. and attempted to escape from the scene of occurrence in the motor cycle. On hearing the cry of P.W.4, P.W.1, P.W.3, P.W.6 and P.W.7 have followed the accused in their vehicles to apprehend them. When the accused were fleeing in the motor cycle near Karumandampalayam speed breaker, they fell down running the bike over the speed breaker and again they tried to escape from the place, at that time, all the witnesses, including P.W.2 and P.W.3 and the villagers, chased both the accused and caught hold of them and they had found that the accused had sustained injuries due to the fall from the speed breaker and they were apprehended at the spot and the 2nd accused Suresh, handed over MO1/chain to P.W.1. After giving first aid to the accused 1 and 2, P.W.1 and others, handed over the accused to the police station along with the motor cycle and lodged a complaint, which has been marked as Ex.P.1.

3. On 03.02.2012, P.W.1 appeared before P.W.9, the Inspector of Police, at about 7.00 p.m. along with the accused and their two wheelers and handed them over to P.W.9. P.W.9 received a complaint from P.W.1. and registered a case in Crime No.23 of 2012 under Section 379 IPC which has been marked as Ex.P3 (printed FIR) and he forwarded the complaint and printed FIR to the Court. When PW.9 examined the witnesses, all of them gave statements about the occurrence and the same was recorded. He has also seized MO1/chain handed over by P.W.1 and MO2/motorcycle bearing registration No.TN 28 AA 0055 and forwarded the same to the Court under form 95 (Ex.P4). He has also recorded the statement of witnesses. On 04.02.2012, he prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P5) in the presence of witnesses and recorded their statements. He has also sent the accused to the judicial custody. After his transfer, his successor PW10 conducted further investigation and finally laid the charge sheet against the accused on 28.04.2012 under Section 392 IPC.

4.The petitioner along with other accused was tried and after completion of evidence on the side of the prosecution, the incriminating evidence was put to the accused by the lower court. The accused had denied the same. No oral and documentary evidence were adduced on the side of the accused. Thereafter, the learned District Munsif cum Judicial Magistrate, Kodumudi, on the basis of the available evidence and materials, found the accused guilty and convicted them vide C.C.No.66 of 2012 by Judgement dated 04.09.2013 for the offence under Section 392 IPC and sentenced them to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for three months. Against the conviction and sentence, the

petitioner preferred a C.A.No.66 of 2013 before the learned Principal Sessions Judge, Erode.

5.The appellate Court on finding that there was no injury on the P.W.4 and also finding that the Accident Register was not marked and holding that the ingredients of offence under Section 392 have not been proved by the prosecution, had modified the conviction to one under Section 379 IPC vide order dated 09.01.2014 in C.A.No.66 of 2013. However, the sentence imposed by the lower Court was unaltered. Against which, the present revision has been filed.

6.The learned Counsel for the petitioner would submit that the Courts below have failed to take into consideration the inconsistency between the witnesses. Further, after having found that the petitioner was not guilty under Section 392 IPC, the Courts below ought to have acquitted the petitioner. He would further submit that in the alternative if the Court is not convinced, some leniency may be shown to the petitioner in view of the fact that the occurrence had happened during the year 2012 and thereafter, the petitioner had not been brought to any adverse notice for the past eight years.

7. The learned Government Advocate (Crl. Side) would submit that in this case, the prosecution has categorically proved the case by cogent evidences. The petitioner and other accused were caught red handed at the place of occurrence and recovery was also made from them and they have also been identified by the witnesses. However, only for the reason that the Accident Register was not marked, the appellate Court had modified the conviction to one under Section 379 IPC instead of 392 IPC. He would submit that the petitioner is a habitual offender and that he is also involved in three previous cases. Out of which, he has been convicted in one case and pleaded guilty in another case and he has been acquitted in yet another case. Hence, he would vehemently object to set aside the order of conviction.

8. Heard the Counsels. Perused the materials on record.

9. It is the specific contention of the prosecution that on 03.02.2012 at about 4.00 p.m., while PW4 was working in the field, the 2nd accused in this case had gone near her and snatched the chain from her neck and thereafter, he along with the petitioner attempted to escape in a motor cycle. On hearing her alarm, all the witnesses have chased the accused in their respective vehicles and apprehended them and retrieved MO1/chain from them. Thereafter, the case came to be registered against the accused.

10. Perusal of evidence, shows that P.W.1 is the son of P.W.4 whose chain has been snatched by the accused. He had deposed that at about 4.00 p.m. while his mother was removing

the weeds from the field, he was chatting with P.W.3, P.W.6, P.W.7 and P.W.8 in the nearby place. At that time, both the accused came in a motor cycle bearing Registration No.TN 28 AA 0055 and gone near the field of P.W.4 and one of the accused had snatched the chain from the mother of P.W.4 and thereafter, they had attempted to leave the place in their vehicle. On hearing the alarm of P.W.4, P.W.1 and others chased the accused in their motor cycle, while the accused were crossing near the place called Karumandampalayam, they were thrown while running over a speed breaker and they had fallen down from the motor cycle. At that time, the witnesses and other villagers caught hold of them and they have also retrieved the chain/MO1 from the 2nd accused. Thereafter, the accused were treated in the hospital and handed over to the police and P.W.1 had lodged a complaint.

11. P.W.2 in his evidence, has clearly spoken about following the accused at the relevant point of time in his motor cycle and catching the accused near Karumandampalayam. He has also stated that the accused fell down from the motor cycle while they were crossing the speed breaker near Karumandampalayam.

12. P.W.3 also corroborated the version of P.W.1 and P.W.2. He has also clearly stated that the accused were chased and caught hold near Karumandampalayam.

13. P.W.4, the mother of P.W.1, has clearly stated that while she was working in the field, the accused came near her and snatched the chain and thereafter, ran away from the scene of occurrence and she raised alarm.

14. P.W.5. also spoken about the incident. She had stated that while she was working nearby field, she had seen one of the accused snatching the chain and ran away along with other accused.

15. P.W.6 and P.W.8 in their evidence have categorically stated that the accused were caught hold near Karumandampalayam speed breaker when they fell down from the vehicle.

16. P.W.9 /The Sub Inspector of Police who received the complaint on the same day along with the accused, vehicle, and chain, registered the case and thereafter conducted the investigation and sent the accused to judicial custody and the properties to the Court under Form 95.

17. From the evidence of witnesses, it could be seen that both the accused have committed offence of snatching a chain and thereafter, both of them have attempted to run away from the place of occurrence in a motor cycle and thereby, the witnesses have chased them. While chasing, the accused have fallen down near the speed brake, during that time they were

caught red handedly by the witnesses and thereafter the accused were treated in the hospital and handed over to the police.

18. The Court below have also found that there was no motive what so ever for the witnesses to falsely implicate the accused in this case. The petitioner /accused when questioned under Section 313 Cr.P.C. had only stated that he is no way connected with the said occurrence. However, the Appellate Court taking into consideration of the inconsistency with regard to the injuries and non marking of the Accident Register, had modified the conviction to one under Section 379 IPC.

19. It is a case of chain snatching and the accused have been caught red handedly by the witnesses at the time of occurrence. The Courts below have rightly found the appellant guilty for the offence and convicted him and this Court finds no infirmity in the modification of conviction made by the Appellate Court and there is no illegality or perversity in the order of the Courts below. However, while confirming the conviction, this Court is of the opinion that taking into consideration the long gap of eight years, it would be appropriate to reduce the sentence.

20. Accordingly, this Criminal Revision Petition is partly allowed and while confirming the conviction for the offences, the sentence of imprisonment alone is modified from Three Years to two years. The Bail bond if any executed by the petitioner/accused, shall stand cancelled. The Trial court shall take steps to secure the petitioner/accused to undergo the remaining period of sentence. The period of sentence already undergone is set off under Section 428 Cr.P.C.

21. Registry is directed to return the available records to the respective Courts.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sessions Judge,
Erode

2. The District Munsif cum Judicial Magistrate,
Kodumudi

3. The Chief Judicial Magistrate,
Erode.

4. The Inspector of Police
Malayampalayam Police Station
Erode District

5. The Public Prosecutor
Madras High Court, Chennai.

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

+1cc to Mr.M.Guruprasad, Advocate, SR.No.6446.

Cr1.R.C.No.293 of 2014

KV(CO)
KKV/10/03/2021



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