



BAIL SLIP

The Petitioners/Accused namely

1. Siva @ Track Siva
S/o.Veerappan
2. Anandkumar @ Anand
S/o.Nanadagopal
3. Pandian
S/o.Sundar
4. Manikandan
S/o.Velu

Were directed to be released vide order dated 06.04.2015 in MP.No.1 of 2015 in CrI.A.No.147 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.147 of 2015

- 1.Siva @ Track Siva
- 2.Anandkumar @ Anand
- 3.Pandian
- 4.Manikandan

... Appellants

Vs.

State Rep. By,
SHO, Grand Bazaar P.S. Through Public
Prosecutor, Pondicherry
in Cr.No.491/2011 u/s.395 IPC.

... Respondent

PRAYER:

Criminal Revision Petition filed under Section 374(2) of Criminal Procedure Code, to call for the records and set aside the judgment dated 04.03.2015 passed in Sessions Case No.55/2014 by the learned Principle Sessions Judge, Pondicherry thereby acquitting the accused.

For Appellants : Mr.K.Gandhi Kumar
For Respondent : Mr.V.Balamurugane,
Public Prosecutor, Puducherry.



JUDGMENT

The appellants/A1, A2, A4 & A5 preferred this Criminal Appeal aggrieved by Judgment of Conviction and Sentence passed by the learned Principal Sessions Judge, Puducherry (trial Court) in S.C.No.55 of 2014, dated 04.03.2015, convicting and sentencing the appellants to undergo Rigorous Imprisonment for a period of ten years and each to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for six months by each for offence under Section 395 IPC and acquitting A3 and A6.

2.The facts of the case is that on 05.11.2011, at about 05.00 p.m., the appellants along with two other accused entered the textile shop of the defacto complainant/PW1 situated at Ambour Salai, Puducherry. The 1st appellant is a well known person in that locality. The appellants purchased ready made cloths worth of Rs.15,000/- (Rupees fifteen thousand only) in PW1's shop. When PW1 asked for money for the clothes purchased by showing the bill receipts (Ex.P2), the 1st appellant threw the bills (Ex.P2) on his face, took away the articles by brandishing two knives and fled away from the shop. This was witnessed by PW2, the Salesman in PW1's shop and PW3, a customer in PW1's shop. A complaint (Ex.P1) was lodged by PW1 to PW6, Assistant Sub Inspector of Police attached to the respondent Police Station. On receipt of the complaint, PW6 visited the scene of occurrence (PW1's shop), collected the bill receipts (Ex.P2), prepared Observation Mahazar, Rough Sketch (Ex.P4) in presence of PW3, arrested A2, A4 to A6 on 12.11.2014. In presence of PW4, A2 gave confession statement, which was marked as Ex.P6. Pursuant to his confession statement (Ex.P6), MO1 to MO3 were recovered. During investigation, A3 surrendered and obtained bail from the concerned Court. Thereupon, A1 was arrested on 05.01.2015. Pursuant to A1's confession statement (Ex.P8), MO4 and MO5 were recovered in presence of PW5. Initially, the investigation was carried out by PW7, Sub Inspector of Police and on his transfer, PW8, the Inspector of Police conducted further investigation and filed the charge sheet before the learned Judicial Magistrate No.II, Puducherry and it was taken on file as P.R.C.No.14 of 2012. On committal, the case was transferred to the trial Court and renumbered as S.C.No.55 of 2014.

3.To prove the guilt of the accused, on the side of the prosecution, as many as 8 witnesses examined as PW1 to PW8 and 8 documents marked as Exs.P1 to P8 and 9 Material Objects marked as MO1 to MO9. On the side of the accused, one witness examined as DW1 and one document marked as Ex.D1.



4. When the accused were questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against them, they denied the same.

5. The trial Court, on the basis of the oral and documentary evidence, acquitted A3 and A6 and convicted and sentenced the appellants as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellants.

6. The submissions of the learned counsel for the appellants are as follows:-

(i) In this case, PW1/defacto complainant admitted that he could not identify the Material Objects (MO1 to MO9), which were collected and marked in this case. In the case of dacoity, the identification of the seized articles will confirm the act and role played by the accused, which is an important linking material. PW1 confirmed that the knife (MO1) produced is not the knife which was used by the accused during the occurrence. In this case, the bills receipts (Ex.P2), were not signed by any one from PW1's textile shop and the description of the Material Objects not properly recorded. He further submitted that the bill receipts (Ex.P2) is a got up document for the purpose of the case. The bill receipts (4 in Nos.) (Ex.P2) are not serially numbered. The first bill number is 1658, second one is 1662, third one is 1663 and fourth one is 1664. PW1 admitted that the bills are used serially and there is no reason given to whom the bill Nos. 1659 & 1661 issued. Further, in the bill receipts (Ex.P2), it is not mentioned that what are the articles purchased by the appellants in PW1's shop. PW1 admitted that all the accused were identified by him in the Police Station, which is confirmed by PW6, the Assistant Sub Inspector of Police. Further, in this case, no Test Identification Parade was conducted to confirm the identity of the accused.

(ii) The learned counsel further submitted that in this case, PW4 and PW5 are the witnesses for the arrest and confession statements (Exs.P6 & P8) of the 1st and 2nd appellants. PW4 and PW5 admitted that they were standing outside the house of 1st and 2nd appellants/A1 and A2, from where the Material Objects were recovered. It was the Police, who seized the Material Objects (MO1 to MO9). While this being so, they cannot be witness for recovery and seizure of the Material Objects (MO1 to MO9). PW1 in his complaint as well as in his evidence admitted that at the time of occurrence, his elder brother Sriram and his mother were present in his textile shop, but none of them examined as witness, on the side of the prosecution. PW2 is the Salesman in the textile shop of PW1, who has not supported the case of the prosecution and turned hostile. During trial, the mother of PW1



was examined as DW1, through whom the Bill No.3999, dated 17.01.2015 was marked as Ex.D1. DW1 does not identify the accused, despite she was present at the time of occurrence. The other eyewitness to the occurrence is PW3, whose evidence is unbelievable and highly artificial. PW3 stated that he is a Reporter and Social Worker and, was present at the time of occurrence. He further stated that only two persons brandishing the knife, took away the articles from PW1's shop. With regard to other accused, he does not say anything. He further stated that at about 06.30 p.m., he entered the textile shop of PW1, at that time the occurrence took place. The FIR in this case shows that the information was received by the Police at about 06.10 hours. Thus, the presence of PW3 in the textile shop of PW1 at about 06.30 p.m., is highly doubtful. PW1 stated that he informed the emergency Police and thereafter, the Police came to his shop, received the complaint and proceeded with the investigation. On the other hand, PW6 stated that PW1 came to the Police Station and gave a complaint (Ex.P1) along with the bill receipts (Ex.P2). This vital contradictions will disprove the entire case of the prosecution.

(iii)The learned counsel further submitted that in the Alteration Report, seven persons are shown as accused, in which one Thirumoorthy was shown as A4. His name was not found in the charge sheet and he is neither an accused, nor a witness to this case. The respondent Police, without giving any reason, deleted the name of Thirumoorthy and filed the charge sheet before the trial Court. In the complaint (Ex.P1), PW1 refers to only four persons, who came to his shop and took away the articles by brandishing the knives. In his evidence, he stated that he is unable to identify the other two persons, who were standing outside. Accepting the same, the trial Court acquitted A3 and A6. Section 391 Cr.P.C., states that 'when five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity"'. In this case, only four persons were convicted and sentenced for the offence of dacoity. In view of the same, the appellants cannot be convicted under Section 395 IPC. Ex.D1 was marked to prove the fact that the bill receipts (Ex.P2) is a got up one. In Ex.D1, the signature of the Salesman (PW2) as well as the description of the articles purchased, are clearly mentioned.

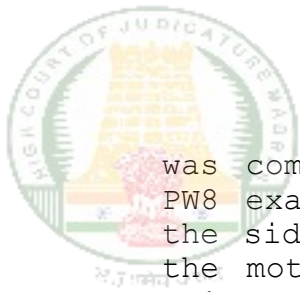
(iv)The learned counsel further submitted that earlier, PW4 was employed under PW1 and PW5 is a street vendor, who is at the mercy of the Police. Thus, the seizure of Material Objects in presence of PW4 and PW5 becomes highly doubtful and further, the seizure was not done in presence of independent witnesses. The



Observation Mahazar and Rough Sketch (Ex.P4) does not give any correct details of PW1's shop. In this case, the FIR was registered on 05.11.2011, but it reaches the trial Court with delay of three days on 08.11.2011, for which, no reason given. Initially, the FIR was registered against the accused for offence, under Section 386 r/w 34 IPC and the Alteration Report was prepared on 12.11.2011. While this being so, in the Seizure Mahazar (Ex.P5) for MO1 to MO4, dated 05.11.2011, the offence under Section 395 IPC is included. Thus, the investigation was not conducted in fair and proper manner, the documents were prepared to suit the case of the prosecution. PW1 admitted that he identified the accused in the Police Station at the instance of the Police, which is confirmed by PW6. Added to it, MO2 to MO4 and MO6 to MO9 does not correlate with the bill receipts (Ex.P2) and the same were not identified by PW1. Thus, the trial Court failed to look into these aspects and merely convicted and sentenced the appellants.

(v) In support of his submission, the learned counsel for the appellants relied on the decision in the cases of "Manmeet Singh Alias Goldie Versus State of Punjab in Criminal Appeal No.505 of 2015, dated 24.03.2015" and "Balba and Others Versus State of U.P in Criminal Appeal No.648 of 1983, dated 09.07.2020" for the point that with reference to the offence of dacoity under Section 395 IPC, there should be five or more persons committed the offence.

7. Per contra, the learned Public Prosecutor, Puducherry appearing for the respondent Police submitted that on the complaint (Ex.P1) of PW1, a case in Crime No.491 of 2011 was registered by PW6. Thereafter, PW6 took up the investigation, visited the scene of occurrence, examined the witnesses present in the scene, recorded their statement, prepared Observation Mahazar, Rough Sketch (Ex.P4), arrested A1, A2, A4 to A6 in presence of PW4 and PW5. In presence of PW4, A2 gave confession statement, which was marked as Ex.P6. Pursuant to his confession statement (Ex.P6), MO1 to MO3 were seized through the Seizure Mahazar (Ex.P5). Thereafter, A1 was arrested in presence of PW5. Pursuant to his confession statement (Ex.P8), MO5 and MO9 were seized through Seizure Mahazar (Ex.P7). In this case, A3 surrendered and obtained bail from the concerned Court. PW1 and PW3 have spoken about the occurrence took place on 05.11.2011. The evidence of PW3 is natural, who came to PW1's shop for purchasing articles. He further submitted that PW6 arrested the accused and PW1 identified them in the Police Station. Thereupon, PW6 handed over the investigation to PW7, who conducted major portion of the investigation and on his transfer, he handed over the case diary to PW8. PW8 conducted further investigation and filed charge sheet before the learned Judicial Magistrate No.II, Puducherry and thereafter, the case



was committed to the Court of Sessions. During trial, PW1 to PW8 examined and Exs.P1 to P8 marked and MO1 to MO9 marked on the side of the prosecution. On the side of the defence, DW1, the mother of PW1 was examined, through her Ex.D1 was marked. DW1 stated about the occurrence, which had taken place on 05.11.2011. By examining DW1, the accused confirmed the occurrence and the offence committed by them. Thus, the trial Court, on the evidence and materials produced, had rightly convicted the appellants.

8.The Public Prosecutor placed reliance on the decision of the Hon'ble Apex Court in the case of "Raj Kumar Alias Raju Versus State of Uttaranchal reported in AIR 2008 SC 3248".

9.This Court considered the rival submissions and perused the materials available on record.

10.In this case, PW1 is the defacto complainant, in whose shop, the appellants and other accused said to have committed the offence under Section 395 IPC. The 1st appellant/A1 is the known person in the locality, where the PW1's textile shop is situated. The appellants entered into the textile shop of PW1 along with other accused on 05.11.2011 at about 05.00 p.m., and purchased ready made clothes valued around Rs.15,000/-. When PW1 gave bill receipts (Ex.P2) for purchasing the articles to the 1st appellant, he threw the same on the face of PW1 and took away the articles by brandishing two knives. In this case, PW1 admitted that the accused were shown and identified by him in the Police Station and the same is confirmed by PW6, the Assistant Sub Inspector. The FIR in Crime No.491 of 2011 was registered by PW6. Admittedly, in this case, no Test Identification Parade was conducted.

11.PW1 in his evidence stated that nearby shopkeepers informed emergency Police and the Police reached his textile shop immediately and proceeded with the investigation. Contrary to the same, PW6 in his evidence stated that PW1 came to the Police Station and gave a written complaint (Ex.P1) along with bill receipts (Ex.P2) series. The other witnesses, who were present at the time of occurrence are PW2 and PW3. During trial, PW2 failed to support the case of the prosecution and turned hostile. PW3 in his evidence stated that when the occurrence took place, he was present in the PW1's textile shop and the Police reached PW1's shop by 06.30 p.m. On perusal of FIR in Crime No.491 of 2011, it is seen that the occurrence had taken place at about 05.00 p.m., and the Police received information at about 06.10 p.m., and FIR was registered. If that is so, the presence of PW3 in the scene of occurrence is highly doubtful. PW3 stated about only two persons who were present in the shop and committed the offence and he is silent



about the other accused. PW4 and PW5 are the witnesses to the arrest and confession statements (Exs.P6 & P8) of A1, A2, A4 to A6. PW4 and PW5 admitted that both of them were standing outside of the house of the 1st and 2nd appellants, it was the Police who entered the house and seized the Material Objects (MO1 to MO9) in this case. Hence, PW4 and PW5 cannot be termed as witnesses to the seizure of articles. More so, PW1 is unable to identify the Material Objects during trial. Thus, the Material Objects (MO1 to MO9) collected by the prosecution are not supported by any witness or document. From the Alteration Report, it is seen that totally seven persons shown as accused, in which one Thirumoorthy was shown as A4. The respondent Police, without any reason, deleted the name of Thirumoorthy and filed the charge sheet before the concerned Court.

12.The trial Court on appreciation of evidence and materials, acquitted two accused A3 and A6 and convicted four persons, the appellants herein under Section 395 IPC. The primary requirement to convict a person under Section 395 IPC is that five or more persons who conjointly said to have committed the offence. In this case, the prosecution has failed to either prove the participation of five or more persons in the commission of offence or establish their identity. The Material Objects seized are not identified to link and connect the accused to the crime, which is an important factor in a case of dacoity. Further, the seizure of Material Objects are highly doubtful and the identify of the accused creates doubt in the absence of Test Identification Parade. The above mentioned vital aspects have not been considered by the trial court while appreciating the prosecution evidence. In such circumstances, the conviction and sentence passed against the appellants by the trial Court for offence under Section 395 IPC, cannot be sustained in law and the same is liable to be interfered with.

13.Consequently, this Criminal Appeal is allowed. The judgment of conviction and sentence passed against the appellant/accused by the trial court in S.C.No.55 of 2014 for the offence punishable under Section 395 IPC is set aside. The appellants are acquitted from the aforesaid offence. The bail bond executed by them are cancelled and they are set at liberty. Fine amount, if any, paid by them, shall be refunded.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv2



To

1. The Principal Sessions Judge,
Puducherry.

2. The Judicial Magistrate-II,
Pondicherry.

3. The Station House Officer,
Grand Bazaar P.S.,
Puducherry.

4. The Superintendent,
Central Prison, Kalapet, Pondicherry.

5. The Public Prosecutor,
High Court, Pondicherry.

Copy To

The Section Officer,
Criminal Section(Records), High Court,
Madras.

CRL.A.No.147 of 2015

MT(CO)
PM/13/04/2022