



BAIL SLIP

The Appellant / Accused Namely, 1.Saravanan S/o Suerendiran 2. Prabhu S/o.Late Anjaiya were directed to be released on bail in and by the order of this court dated 18.11.2016 and made in Crl.MP.No.11899/2016 in Crl.R.C.No.1319 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl.R.C.No.1319 of 2016

1. Saravanan
2. Prabhu

... Petitioners/Accused

Vs.

State by
Inspector of Police,
Thiruvannamalai Town Police Station,
Thiruvannamali.

... Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 Cr.P.C praying to call for the records and set aside the judgment in Criminal Appeal No.07 of 2010 dated 21.06.2015 on the file of the learned District and Sessions Judge, Thiruvannamalai confirming the sentence in S.C.No.269 of 2007 on the file of the learned Additional Assistant Sessions Judge, Thiruvannamalai order dated 17.08.2010.

For Petitioners	: Mr.S.Ananthanarayanan Senior Counsel for Mr.S.M.Nandhie Devan
For Respondent	: Mr.A.Gopinath Government Advocate (Crl. Side)

O R D E R

This Criminal Revision case has been preferred challenging the judgment of the learned Sessions Judge, Tiruvannamalai dated 21.06.2016 made in C.A.No.7 of 2010 which confirmed the judgment of the learned Additional Assistant Sessions Judge, Tiruvannamalai dated 17.08.2010 made in S.C.No.269 of 2007.

2. The revision petitioners are the accused before the trial Court. The case of the prosecution is that on 11.09.2006 at about 10.30.a.m the accused 1 and 2 with an



intention to rob a sum of Rs.2,00,000/- kept in the motor cycle of the de facto complainant/PW1-Pandurangan bearing registration No.TN25-D-0271, tried to open the motor cycle box with a screwdriver; when PW1 saw this and rushed near his motor cycle by shouting, the accused showed knife and threatened him that they would kill him and took away Rs.2,00,000/- which was kept in the motor cycle; the witnesses by name Murugesan, Subramani and Elumalai were tried to catch hold of them, but the accused threatened them by throwing away the soda bottles kept in a shop and escaped from the spot. Thus the accused have committed the offence under Sections 392, 392 read with 397 read with 34 IPC.

3. On the complaint (Ex.P1) given by PW1-Pandurangan, PW7-Venkatachalam, Sub Inspector of Police registered a case in Crime No.588 of 2006 of Tiruvannamalai Town Police Station under Sections 392, 397 read with 34 IPC and prepared FIR (Ex.P10). PW8-R.Natarajan, Inspector of Police took up the case for investigation, went to the place of occurrence and prepared the observation mahazar and rough sketch in the presence of the witnesses. He also collected the glass pieces from the scene of occurrence under a Mahazar in the presence of witnesses. He enquired the witnesses and recorded their statements. On the same day evening at about 5.00 p.m when he was involved in vehicle check, the accused came in a motor cycle. When they were intercepted by PW8, they voluntarily gave a confession statement. By virtue of their confession, Rs.1,00,000/- out of the robbed sum along with screwdriver was recovered under mahazars in the presence of witnesses. The recovered properties were sent to the Court vide Form-95. After completing the investigation, he filed the charge sheet against the accused under Sections 392, 397 read with 34 IPC. The learned Judicial Magistrate-I, Tiruvannamalai took cognizance of the case in PRC.No.60 of 2006. After furnishing the copies to the accused and complying all other legal mandates, the case was committed to the file of the learned Principal Sessions Judge, Tiruvannamali. From there, the case got assigned to the file of the learned Additional Assistant Sessions Judge, Tiruvannamalai for trial. On perusal of the records and on being satisfied with the evidence available on record, the learned trial Judge framed charges against the first accused under Sections 392, 397 read with 34 IPC and against the second accused under Sections 392 read with 34 IPC and 397 read with 34 IPC. When the accused were questioned, they pleaded innocence and claimed to be tried.

4. During the course of trial, on the side of the prosecution, 8 witnesses were examined as PW1 to PW8, 17 documents were marked as Exs.P1 to P17 and 6 material objections have been marked as M.O.1 to 6. When the incriminating materials found from the prosecution evidence were put to the accused under Section 313 Cr.P.C, they denied their involvement. On the side of the defence, no witness was examined and no document was marked.



5. At the conclusion of the trial and after considering the evidence available on record, the learned trial Judge found the accused guilty for the offence under Sections 392 read with 397 IPC and convicted and sentenced them to undergo Rigorous Imprisonment for Seven Years and imposed a fine of Rs1,000/- in default to undergo Rigorous Imprisonment for Six Months. The appeal filed by the accused was also dismissed by confirming the judgement of the trial Court. Aggrieved over that, the present Revision has been preferred.

6. Heard the learned counsel for the revision petitioners and the learned Government Advocate (Crl. Side) appearing for the respondent. Perused the entire materials available on record.

7. The learned counsel for the revision petitioners submitted that no independent witness has been examined and material witnesses were omitted to be examined before the trial Court; though the accused were strangers to PW1, no identification parade was conducted; the pen knife that is alleged to be used by the accused during the occurrence is not deadly weapon and hence, the accused ought not to have been punished for the offence under Section 397 IPC; there are material contradictions in the evidence of the witnesses and PW3 and 4 are interested witnesses, who are already known to PW1. Hence, this revision should be allowed.

8. The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the witnesses, who had witnessed the occurrence were examined despite the evidence of PW1 itself is cogent, clear and reliable; the recovery witness PW6 has also stated about the recovery; the non conduction of identification parade is not fatal to the case of the prosecution; the complainant has no motive against the accused to implicate them falsely in this case; the Courts below have appreciated the evidence in a right perspective and convicted the accused and hence, the judgement of the Court below does not require any interference.

9. Point for consideration:

Whether the confirmation of the guilt of the accused for the offences under Sections 392 read with 397 IPC by the learned Appellate Judge is fair and proper?

10. The evidence of PW1 would reveal that he had previously worked as an Assistant at Kallakurichi Cooperative Sugar Mill. After retirement, he was procuring Sugarcane from the agriculturists and supplying it to the Sugar Mills. For the purpose of disbursing amount to the agriculturists, on 11.09.2006 he withdrew a sum of Rs.7,00,000/- from his account at State Bank of India, Tiruvannamalai Branch. After withdrawing the amount, he kept a sum of Rs.2,00,000/- in the



box of the motor cycle and Rs.5,00,000/- in the petrol tank cover. After stopping the vehicle at his house, he took Rs.5,00,000/- for the purpose of keeping it inside his house. Thereafter, when he came out to take Rs.2,00,000/-, which was kept in the motor cycle for the purpose of disbursing it to the agriculturists, the first accused was seen to be opening the motor cycle box with a screwdriver. The second accused was also nearby to him. On seeing that PW1 shouted and came near to his vehicle, the accused 1 and 2 threatened PW1 by showing knife and thereafter, they stole the money and went away in their motor cycle. When PW1 and others chased them, they stopped the vehicle near a petty shop and took soda bottles from the shop and threw it on the road and threatened everyone by stating that if they dared to come near, they would kill them. By making such threatening gestures, the accused escaped from the place of occurrence. The above cogent evidence of PW1 would convince that he is narrating an incident which he had already witnessed.

11. No motive is attributed against PW1 that he had given false evidence against the accused. The accused are totally strangers to PW1. Ex.P17/Bank Account Statement of PW1 would show that on the alleged day of occurrence, he had withdrawn a sum of Rs.7,00,000/- from his State Bank of India account, Tiruvannamalai branch. That would corroborate the evidence of PW1 that he had withdrawn the amount just for the purpose of disbursing it to the agriculturists from whom he purchased sugarcane. PW2 is the shop owner of the shop from which the accused 1 and 2 had taken away the soda bottles and thrown away. But, he turned hostile. However, PW3/Gajendiran and PW4/Subramani have stated in their evidence that they had witnessed the occurrence and their evidence would show that they have given the ocular account of what they had seen at the time of occurrence.

12. The conjoint reading of the evidence of PW3 and PW4 would show that the case of the prosecution is true. Though it is alleged that PWs3 and 4 are known to PW1, it is not unusual for them to be present at the house of PW1. Being agriculturists, they could have come to the house of PW1 for the purpose of collecting money for the sugarcane supplied by them. Since PWs3 and 4 are incidental witnesses, their presence in the place of occurrence is quite natural. Apart from the evidence of the eye witnesses, the evidence of the recovery witnesses would also show that the weapon used for the occurrence and the part of the amount robbed by the accused have been recovered. Though the learned counsel for the revision petitioners has stated that the evidence of witnesses have got lot of contradictions, on perusal of records, it is seen that the evidence of witnesses does not suffer from any material contradictions so as to disprove the case of the prosecution. It is submitted by the learned



counsel for the petitioners that the non conduction of the identification parade would earn a suspicion in the matter of identity in favour of the accused. The evidence of PW1 would show that he has no doubt as to the identity of the accused. PW1 had seen them closely at his house when he came to take his motor cycle. Even if identification parade is conducted and a report is filed, that can only be held as a corroborative piece of evidence. The non conduction of identification parade alone cannot make the identification of the accused at court by PW1 untrustworthy. Though the conduction of identification parade would strengthen the case of the prosecution, the absence of identification parade alone will not render the prosecution an unbelievable one.

13. It is stated that the accused had taken some soda bottles from the shop of PW2 and thrown it on the road in order to threaten people who gathered there. The shop owner/PW2 had turned hostile. But the knife used for the occurrence has been recovered on the confession given by the accused and that has been substantiated from the evidence of PW6 and by production of M.Os.2 and 3.

14. The learned counsel for the petitioners submitted that the pen knife alleged to have been used by the accused cannot be classified as a deadly weapon and hence the accused ought not to have been convicted for an aggravated form of robbery under Section 397 IPC. Apart from the knife, screw driver has also been recovered on the confession of the accused. But the screwdriver was used by the accused only to open the box of PW1's motor cycle. The pen knife was used by the accused for the purpose of threatening PW1. However, they have not caused any injury on anyone including PW1. Though the accused have not injured PW1 or other witnesses, they restrained them from approaching them, for the purpose of recovering the money taken away by them. Obviously the act of the accused would have caused fear in the mind of PW1 that the accused would injure him with knife.

15. Though pen knife is not as deadly as a regular big knife, the fact that the weapon was used to cause fear in the mind of PW1 cannot be denied. The learned trial Judge found the accused guilty for the offence under Sections 392, 392 read with 34 and 397 read with 34 IPC in order to convict the accused under Section 397 IPC. Since it is not proved that the accused had used any deadly weapon for the occurrence, the Courts below are not correct in convicting the accused for the offence under Sections 397 read with 34 IPC. Instead the accused ought to have been convicted under Section 392 read with 34 IPC alone. To that extent, I feel that the judgment of the Court below needs modification.



16. In the result, this Criminal Revision is partly allowed and the judgment of the learned Sessions Judge, Tiruvannamalai made in C.A.No.07 of 2010 is modified to the effect that the accused are found guilty for the offence under Section 392 read with 34 IPC and convicted and sentenced to undergo Rigorous Imprisonment for Three(3) years and to pay a fine of Rs.5,000/- each in default to undergo Rigorous Imprisonment for Three Months. If the fine amount is paid already, need not be paid again. If the accused are in bail, the trial Court is directed to issue warrant to secure the petitioners/accused to undergo remaining period of incarceration.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmi

To

- 1.The Sessions Judge,
District and Sessions Court,
Tiruvannamalai.
- 2.The Additional Assistant Sessions Judge,
Tiruvannamalai.
- 3.The Judicial Magistrate I,
Tiruvannamlai.
4. Do through the Chief Judicial Magistrate, Tiruvannamalai.
- 5.The Inspector of Police,
Tiruvannamalai Town Police Station,
Tiruvannamalai.
- 6.The Superintendent,Central Prison,Vellore.
- 7.The Public Prosecutor,
High Court of Madras, Chennai-104.

Copy to:

The Section Officer,
Criminal Section,
High Court,Madras

+2 ccs to Mr.S.M.Nandhie Devan, Advocate Sr.NO. 7574

Cr1.R.C.No.1319 of 2016

mt(CO)

A.SK(17/03/2022)