

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.242 of 2008

Dilip Kumar @ Dilip ... Appellant/Accused

vs.

State by
The Inspector of Police,
R-4, Pondy Bazaar Police Station,
Chennai.
(Crime No.1076 of 2005) ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 17.03.2008 passed by the learned III
Additional Sessions Judge, Chennai, in S.C.No.337 of 2007.

For Appellants : Mr.K.Vishwajeeth Yogeshwaran,
Legal Aid Counsel

For Respondent : Mr.R.Sekar
Government Advocate

JUDGMENT

The first accused, in Sessions Case No.337 of 2007, on the
file of the learned III Additional Sessions Judge, Chennai, is
appellant herein. He stood charged for the offence under Sections

392 r/w 377 of IPC. The trial Court, after trial, by Judgment dated 17.03.2003, convicted the appellant/accused under Section 392 r/w 397 and sentenced him to undergo seven years rigorous imprisonment and imposed a fine of Rs.5,000/- in default to undergo simple imprisonment for six months. Challenging the above said conviction and sentence, the appellant/1st accused is before this Court with this Criminal Appeal. Totally, there are four accused in this case. The appellant is the first accused and other three accused are juvenile accused. The Juvenile Justice Board conducted trial separately for other three Juvenile accused.

2. The case of the prosecution, in brief, is as follows:

(i) On 04.12.2005, at about 7.30 p.m., while P.W.2 alone in her house, all the accused went inside the house and put a knife on her neck, then they tied her hands, poured acid on her face and pushed her down in a room. Thereafter, they have stolen nearly 600 grams gold jewels, and fled away from the occurrence place. Thereafter, P.W.1, the husband of P.W.2, returned back to the house at about 8.30 p.m., and found the door locked, then he open the door with another key, found P.W.2 in the room with acid burn injuries on her face, chin and injuries on her neck. Immediately, P.W.1 took P.W.2 to the Apollo Hospital thereafter he had filed a complaint [Ex.P1] before the respondent police.

(ii) P.W.10, the then Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.1076 of 2005 for the offence under Section 397 of IPC, prepared first information report [Ex.P18], commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P2] and rough sketch [Ex.P9]. On the same day at about 1.00 p.m., he recovered a rope [M.O.1], Knife [M.O.20] under the covered of mahazar from P.W.2 house. Then, he examined the witnesses and recorded their statements. Further, he examined the Doctor, who gave treatment to P.W.2 and recorded his statement. On 06.01.2006, he arrested the accused and on such arrest, he voluntarily given confession statement, based on the disclosure statement[Ex.P9], P.W.10 recovered the stolen articles from the accused house and also recovered the jewels from a pawn broker shop, whereby the accused pledged the stolen gold jewels. Then, he made a request for conducting a test identification parade on 10.01.2006.

(iii) P.W.9, V Metropolitan Magistrate, Chennai conducted the test identification parade, where, P.W.2, identified all the accused. Then, he handed over the investigation to P.W.11, another Inspector of Police.

(iv) P.W.11, then Inspector of Police, working in the respondent police station, examined the remaining witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 11 witnesses were examined, 27 documents were exhibited and 20 material objects were marked.

4. Out of the witnesses examined, P.W.1 is the husband of P.W.2. According to him, on 04.12.2005 at about 2.30 p.m., he left the house for some work and P.W.2 alone in the house, and he returned back home at 8.30 p.m., and found the door was locked, using the another key, he opened the door and found P.W.2 in a room with her hands tied, and she was unconscious, he found burn injuries on her face and chin, other injuries on her neck. Immediately, he took P.W.2 to Apollo hospital. Thereafter, he has given complainant before the respondent police station. Subsequently, the stolen articles were recovered from the house of the accused.

5. P.W.2 is the victim in this case. According to her, on the date of occurrence, she was alone in her house and at about 7.30 p.m., the accused pressed the calling bell, when she open the door, the accused pushed her down, poured Acid on her face and chin, tied her hands and then pushed her in to a room. Then, the accused have stolen the gold jewels. Subsequently, she was taken to the Hospital by P.W.1. In the test identification parade, she has identified all the accused and thereafter she identified the stolen articles in the Police Station. P.W.3 is the witness to the observation mahazar and also recovery of M.O.1 Rope and M.O.20 knife from the house of P.W.1. P.W.4 turned hostile. P.W.5 is the witness to the confession statement of the accused and also recovery of stolen articles from the house of accused and also pawn broker shop. P.W.6 running a pawn broker shop at T.Nagar. According to him, one Balaji has pledged some gold jewels and one Marimuthu also pledged some jewels. Subsequently, the stolen articles were recovered by the respondent police. P.W.7 is running another pawn broker shop. According to him, the accused sold two mobile phone and the same was recovered by the respondent police. P.W.8, the Doctor working in Apollo Hospital. He has given treatment to the accused. According to him, he admitted the victim in the hospital and examined her, found Acid burn injuries around the mouth, tongue and eyes of the victim and she complained impairment of

vision. He issued Accident Register Ex.P15 and he is of the opinion that the injuries are grievous in nature. P.W.9, V Metropolitan Magistrate, who conducted test identification parade, in which P.W.2 identified all the accused.

6. P.W.10, the Inspector of Police, on receipt of the complaint from P.W.1, registered a case in Crime No.1076 of 2005 for the offence under Section 397 of IPC, prepared first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar and rough sketch. He examined the witnesses and recorded their statements, recovered the stolen articles, arrested the accused and sent him to the Judicial custody. Then, he examined the Doctor, who has given treatment to the victim and recorded his statement. Then, he handed over the investigation to P.W.11, the Inspector of Police. P.W.11, the Inspector of Police, examined the remaining witnesses, recorded their statements and after completion of investigation, he laid charge sheet.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial and he examined his father as D.W.1.

his house and took the appellant for the purpose of investigation. Subsequently, he was detained under Goondas Act. The accused did not mark any documents.

8. Having considered all the above, the Trial Court convicted the accused/appellant for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court with this appeal.

9. Earlier, the matter was taken up for hearing, the learned counsel for the appellant withdraw his appearance and also filed a memo to that effect. Hence, Mr.K.Vishwajeeth Yogeshwaran, Advocate was appointed as Legal Aid Counsel for the appellant.

10. I have heard Mr.K.Vishwajeeth Yogeshwaran, the learned counsel appearing for the appellant and Mr.R.Sekar, learned Government Advocate appearing for the respondent and perused the materials available on record.

11. The learned counsel appearing for the appellant would contend that the recovery mahazar witness, namely, P.W.4 has turned hostile. P.W.5, the another witness to the recovery of stolen articles is only a stock witness and his evidence was not relied upon

to prove the recovery of stolen articles, and P.W.2 also did not identify the knife. The learned counsel for the appellant further contended that the injuries suffered by P.W.2 are not grievous in nature and do not take any one of the injuries found under Section 320 IPC and hence the appellant cannot be convicted for the offence under Section 397 IPC. Further, from the evidence of D.W.1, the father of the accused has clearly stated that the accused was taken by the respondent police much earlier to the date of arrest and hence the arrest and recovery is totally false. The Court below without considering the evidence in proper perspective, convicted the accused. Hence, he prays for allowing this appeal.

12. Per contra, the learned Government Advocate appearing for the respondent would contend that P.W.2 is the victim in this case. She sustained grievous Acid burn injuries on her face, tongue and eyes. P.W.8, the Doctor also corroborated the evidence of P.W.2. Apart from that the stolen articles were recovered immediately after the arrest of the accused in the presence of P.W.5, the mahazar witness and he was also examined by the prosecution. The stolen articles were also identified by P.W.2 and she has also identified the accused in the test identification parade conducted by the learned V Metropolitan Magistrate. Apart from that

are grievous in nature. In the above circumstances, the prosecution has clearly proved that it is only this accused along with juvenile accused have committed robbery and the trial Court has rightly convicted the accused and there is no reason to interfere with the judgment of the trial Court. Hence, he prays for dismissing the appeal.

13. I have considered the rival submissions.

14. P.W.2 is the victim in this case. According to her, on the date of occurrence, at about 7.30 p.m., she was alone in the house, the appellant/accused along with juvenile accused entered the house and the accused put knife on her face. Thereafter, they have tied the hands of P.W.2 and pushed her to in the room and locked. Then, the accused have stolen the gold jewels. Thereafter, at about 8.30 p.m., the husband of P.W.2 returned home and found the door locked, he open the door with the help of another key and found P.W.2 was in unconscious stage. Immediately, P.W.1 took P.W.2 to the Apollo Hospital and thereafter he has given complaint before the respondent police station. P.W.8, the Doctor who gave treatment to P.W.2 and he has also issued accident register Ex.P15 stated that the injuries are grievous in nature.

15. Subsequently, the accused was arrested on 06.01.2006 by P.W.10, the Inspector of Police and on such arrest, he has voluntarily given confession and based on the disclosure statement, P.W.10 recovered the stolen articles from the house of appellant and two pawn brokers shop. The Pawn brokers also examined as P.Ws.6 and 7. Even though, P.W.4 one of the attesting witness turned hostile, but P.W.5 another attesting witness clearly deposed that the stolen articles were recovered from the house of the accused as well as pawn broker shops. Apart from that P.W.2 identified the stolen articles recovered from the house of the appellant and also identified the accused in the test identification parade conducted by the learned V Metropolitan Magistrate and I find no reason to disbelieve her evidence. From the above materials the prosecution has proved that the stolen articles are found in the possession of the accused, in this regard there is no explanation on the part of the accused for the possession of the stolen articles. Hence, there is a presumption under Section 114(a) of the Evidence Act that only this accused has stolen the property.

16. So far as the contention of the learned counsel appearing for the appellant that one of the attesting witness P.W.4 turned hostile, the other attesting witness, namely, P.W.5 is stock witness. Even though, P.W.4 is turned hostile, P.W.5 has clearly

deposed that the stolen articles were recovered from the house of the accused. Even though, it is contended that P.W.5 is the stock witness, there is no materials available on record to prove the same and he has deny the same in his cross examination. Hence, I am of the considered view that the recovery is proved by the prosecution. The next contention of the learned counsel for the appellant is that the accused was taken for investigation prior to the date of arrest. Even though, D.W.1, the father of the appellant/accused deposed to that effect. But, absolutely there is no materials to show that the appellant/accused was taken for investigation on 04.01.2006.

17. It is the next contention of the learned counsel for the appellant that the injuries found on P.W.2 are not grievous injuries as enumerated under Section 320 IPC, and the learned counsel for the appellant contended that the Court below ought not to have convicted the accused under Section 397 IPC. Considering the medical evidence, the nature of injuries suffered by P.W.2 squarely fall under Section class 8 of Section 320 IPC. Apart from that P.W.8, the Doctor also has given opinion that the injuries are grievous in nature. In such circumstances, the contention of the learned counsel for the appellant cannot be accepted. In the above circumstances, considering the materials available on record, I am of the considered view that the prosecution has clearly established

that it is only this accused has committed the offence and the prosecution has clearly proved the guilt of the accused beyond any reasonable doubt and the trial Court rightly convicted the accused, I find no illegality or perversity in the judgment passed by the trial Court. Hence, this appeal fails and the same is liable to be dismissed.

18. In the result, this Criminal Appeal is dismissed. The conviction and sentence imposed in S.C.No.337 of 2007 by the learned III Additional Sessions Judge, Chennai, stands confirmed. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison so as to serve the remaining period of sentence imposed on him.

19. While parting with the case, this Court appreciates the services rendered by Mr.K.Vishwajeeth Yogeshwaran, Advocate, who appeared on behalf of the appellant/accused as Legal Aid Counsel. The Tamil Nadu State Legal Aid Services Authority is directed to pay his remuneration as per rule.

13.11.2017

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To

- 1.The III Additional Sessions Judge,
City Civil Court, Chennai.
- 2.The Inspector of Police,
R-4, Pondi Bazaar Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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V.BHARATHIDASAN.J.,

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