

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.Nos.593 and 683 of 2008

Shagul @ Shagul Hameed ...Appellant / A1
in Crl.A.No.593/2008

Ismail ...Appellant / A2
in Crl.A.No.683/2008

Vs

State rep. By
The Inspector of Police,
Egmore Railway Police Station,
Egmore, Chennai-8.
(Crime No.229/2007) ...Respondent/Complainant
in both appeals

Prayer:- These Criminal Appeals are filed under Section 374 (2) of Cr.P.C, against the judgement of conviction and sentence, dated 24.07.2008, made in SC.No.197/2008, by the Additional District and Sessions Judge Fast Track Court NO.1, Chennai.

For Appellants in
both the appeals : Mr.S.N.Arunkumar,
Legal Aid counsel

For Respondent in
both the appeals : Mr. K.Prabakar, APP

COMMON JUDGMENT

1.These Criminal Appeals are filed against the judgement of conviction and sentence, dated 24.07.2008, made in SC.No.197/2008, passed by the Additional District and Sessions Judge Fast Track Court No.1, Chennai, finding that the appellants guilty for the offences under Section 392, 394 r/w 397, 34 and 506(ii) and 336 IPC and convicting and sentencing the appellants as hereunder:-

Rank of the Accused	Conviction	Sentence
A-1 & A-2	394 r/w 397 and 34 IPC	Each of the accused to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1000/- with a default sentence of 2 months rigorous imprisonment.
A-1 & A-2	506[ii] & 336 IPC	No separate sentences awarded for the offences u/s.506[ii] and 336 IPC since the maximum punishment of imprisonment, viz., 10 years, has been awarded for the offence u/s.394 r/w 397 and 34 IPC

Aggrieved against the same, the appellants/A-1 and A-2 have preferred these appeals.

2.The brief facts of the case of the Prosecution are as follows:-

- a) on 31.05.2007, at about 13.45 hours when PW.2/Shiny (minor girl) was waiting to receive her relative one Balaji/PW.3, A-1-Shagul @ Shagul Hameed had brandished a knife and threatened PW.2 stating that if she raises an alarm, he would kill her and during that time, A-2-Ismail had snatched the gold chain worn by PW.2, which resulted the chain getting broken and also resulted in PW.2 sustaining simple injuries on her neck. Further, when the accused had attempted to escape from the place along with the gold chain, the other witnesses attempted to apprehend them and the accused had also threatened them to do away with them, if they attempt to catch them.
- b) At the same time, the A-2 had taken jelly stones lying down and hurled it on the public who attempted to apprehend them, thereby attempted to endanger the life and person safety the others and thereby, the final report was filed against the accused persons for offences under section 392, 394 r/w 397, 34 and 506(ii) and 336 of IPC before the learned XIV Metropolitan Magistrate, Egmore, Chennai. On appearance of the accused, the learned Magistrate, in due compliance of section 207 Cr.P.C. furnished copies and finding that the charges were exclusively triable by the Court of Sessions, forwarded the case to the Principal Sessions Court, Chennai and thereafter, it was made over to the Additional District and Sessions Judge (Fast Track Court No.1) Chennai for trial.
- c) After hearing the accused, charges were framed against them for offences under Section 392, 394 r/w 397, 34 and 506(ii) and 336 of IPC.
- d) When the accused were questioned in respect of the charges,

the appellants/accused had denied the charges and thereby sought to be tried. On the side of the prosecution PW.1 to PW.10 were examined and Exs.P1 to P12 and M.Os. 1 to 4 were marked. No evidence were let in on the side of the defence.

3. The trial Court questioned the appellants/accused with regard to the incriminating circumstances, found in the evidences and after hearing the arguments, convicted the appellants/accused as stated above. The above appeals have been filed challenging the judgment of conviction and sentence dated 24.07.2008.

4. The learned counsel for the appellants/accused while assailing the impugned judgment of conviction and sentence, made the following submissions:-

- a) The conviction and sentence imposed by the learned Trial Judge against the appellant on 24.07.2008 in SC.No.197/2008 is illegal and contrary to the evidence before the Court.
- b) The prosecution has failed to prove its case beyond reasonable doubt.
- c) The victim girl/P.W.2 had not identified the appellants/accused and that P.W.3 was not present at the time of occurrence.
- d) The complaint under Ex.P.1 was not lodged by the person aggrieved, viz., P.W.2/victim girl and that it was given by P.W.1, her father on the basis of the hearsay information.
- e) There is an inordinate and unexplained delay in lodging the complaint and admittedly, the occurrence took place on 31.05.2007 at about 1.45 p.m. However, the complaint was given on the same day at about 8.30 p.m.
- f) There is also a considerable delay in FIR and other statements recorded from the witnesses in reaching the jurisdictional Court.
- g) The evidence of the prosecution witnesses are not corroborative with each other and are not trustworthy.
- h) The prosecution has failed to offer plausible explanation for the injuries sustained by the appellants/accused and it is not known as to whether the appellants/accused were given treatment for the injuries sustained by them?
- i) The victim/P.W.2 who is a star witness in the case, had failed to attribute the specific overt act on the part of each of the appellants/accused and thereby she had treated as hostile
- j) The appellants/accused were arrested on mistaken identity and that they have been falsely implicated in this case as they were already involved in a theft case of motorcycle in Cr.No.336/2007 on the file of Tambaram Police Station.
- k) The entire case is a fabricated one and the documents in the case were prepared in the police station.
- l) P.W.3 had also not specifically stated as to which accused was in possession of the knife and who hurled the stone.
- m) P.W.5 in his evidence had given an exaggerated version

about the measurement of the knife [M.O.3].

- n) Further, the knife in question was not recovered as per the known procedure and no signatures were obtained in Form 95 and that form 95 has been seen to the court on 22.04.2008 along with the knife after four months during the month of September 2007 creating a grave doubt and suspicion with regard to using of deadly weapon-knife and thereby the prosecution has failed to prove the case beyond reasonable doubt.
5. Pointing out the above discrepancies, the learned counsel for the appellants/accused prayed for allowing of the appeals and setting aside of the impugned judgment.
6. Per contra, the learned additional Public Prosecutor would submit that it is the case were the appellants were caught red handed by the public and PW.3, 4, 5, while they committed robbery of a gold chain from PW.2 threatening her by knife. He would submit that the case of the prosecution has been cogently proved by the evidence of the witnesses and that it is the crime committed in a broad day-light the railway station where a girl of 17 years old had come to receive her relative and was threatened by knife and robbery was committed. He would further submit that the prosecution has proved the case and thereby the trial Court has rightly convicted the appellants/accused.
7. At this juncture, the learned counsel for the appellants/accused would submit that assuming for a moment but not admitting the appellants were alleged have been arrested in the same place, the evidence with regard to using of deadly weapon-knife has not been proved by the prosecution beyond reasonable doubt and thereby the appellants cannot be convicted for offence under section 397 IPC. Further, the victim/P.W.2 has not sustained any other injuries other than the injury on the neck at the time of snatching chain and the injury were also simple in nature and when the evidence of the prosecution is not clear with regard to the possession of a deadly weapon, the trial court had erred in convicting the appellants for offence under section 397 IPC.
8. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.
9. The point now arises for consideration is whether the prosecution has proved the case beyond reasonable doubt and whether the trial Court is right in convicting the appellants for offence under section 397 IPC based on available evidence and material?
10. While analysing the evidences let in on the side of the prosecution, PW.1/Pradeep Kumar had deposed that he is working as Collection Manager in ICICI bank and that on 31.05.2007,

his daughter/PW.2 had gone to the Light House Mass Rapid Transport System railway station, to receive their family friend one Balaji/PW.3 and that he had gone to his office and that around 1.45 p.m., he had received a telephonic information that somebody has snatched the gold chain belonging to his daughter and thereby he had rushed to the Light House railway station and he had seen a crowd along with the railway police, his daughter and two other persons. The railway police had recovered the chain from the accused and that the chain was broken into four pieces and his daughter was in a state of shock and she had told him that while she was standing near the ticket counter, one person had come and snatched her chain and another person had threatened her with knife and that a railway police personnel and the person in the ticket counter and some of the public had chased and apprehended the accused and one person had hurled the stones and the other had threatened her with a knife. He had give a complaint to the Railway Police, which is marked as Ex.P.1. Thereafter they filed a petition before the Court and got the return of the chain worn by his daughter and the broken pieces of gold chain were marked as M.O.1 series (four pieces) out of which one was white gold. The cross attached to the chain was marked as M.O.2. He had further deposed that the weight of the chain was 1.34 sovereigns and that the incident is known to his daughter/PW.2 and one Balaji /PW.3.

11. PW.2/Shiny/Victim had deposed that PW.1 is her father and that on 31.05.2007 around 1.45 P.M. she had gone to the Light House MRTS station to receive her distant relative one Balaji/PW3 and while standing near the ticket counter, she had seen Balaji coming at a distance. At that time, one of the accused persons had brandished a knife and threatened her not to shout and that if she raises alarm, he would stab her and at that time, another person had snatched the chain worn by her. Further she had deposed that since the occurrence had happened prior to one year she was unable to identify them. She had deposed that the said persons had got down the stairs and went away and when she had raised alarm, her relative Balaji and another person in the ticket counter, a railway police personnel and the public had chased the accused, caught them and at that time, A-2 had hurled the stones and another person had threatened them with knife and that all the persons have over powered them and apprehended them. She had deposed that at the time when the chain was snatched, she sustained injury on the right side of her neck and thereafter the railway police had informed her father and the police had also recovered the chain from the accused and that her father had given complaint to the police and thereafter she was taken to Government Hospital for treating the injuries and that she was treated as an out patient. She had identified M.Os.1 and 2. In her cross-examination, she had stated that she is not able to identify

the accused.

12.P.W.3, Balaji had deposed that he is a resident of Vyasarpadi and had completed his Degree in Loyala College and that he was acting in movies and that PW.1 and PW.2 are known to him and that he had seen the accused. On 31.05.2007 at about 1.30 to 1.45 hours, while he had come to the Light House MRTS station, PW.2 had come to receive him and at that time she had been standing near the ticket counter in the first floor and that he was coming down from the upstairs from the second floor and at that time one person had snatched the chain worn by PW.2 and another person had threatened her with a knife. At the same time one Benz Raj from the ticket counter and the railway police attempted to apprehend the accused and that he had also followed them and that one person had snatched the chain and the other person hurled stones on the persons who had attempted to catch them and that he had identified A2 as the person who had snatched the chain and that he had deposed that he knew the person who was standing as the first person ; however he had deposed that he is not aware whether the said person had threatened with the knife or not. He had further deposed that PW.1 had given a complaint and that PW.2 sustained injuries in her neck.

13.PW.4, Benz Raj had deposed that he is working as commercial clerk in the southern railways and he was posted at Light House MRTS station and that he was duty on 31.05.2007 and around at 1.30 p.m. while he had come from the toilet, he had seen PW.2 standing on the left side and then noted the accused stand near PW.2 and at that time he had seen PW2 raising alarm and at that time, one person had snatched the chain worn by PW.2 and another person was running with the knife and he had seen PW.2 was crying and since his counter was closed he had followed the accused to apprehend them and one Kumaresan, a railway police, also accompanied him to catch the accused. When PW4 raised alarm, some of the general public had come there and at that time, one of the accused had hurled stones towards them and another accused had threatened them by brandishing the knife. Subsequently, the accused were apprehended and the chain was recovered from the accused person wearing a T-shirt and the knife was recovered from the other person. He had deposed that PW.2 sustained injuries on her neck and that her T-Shirt was torn. Thereafter, the accused were taken to the police station and later, P.W.4 came to know that PW.2 was waiting at the scene of crime for Balaji. However he had deposed that he could not identify the stones and the knife.

14.PW.5, Kumaresan had deposed that he is a railway police, working at Light House MRTS station from 1p.m. To 9 p.m. On 31.05.2007, between 1.30 to 2.30 p.m while he was on patrolling in the platform, he had heard the noise of a lady from the first floor and he had come down from the stairs and when he had questioned the girl she had told him that some

persons have snatched her chain and had run away and thereafter, P.W.5 followed them and they were running in front of him within the distance of 5 feet and at that time, one of the accused had hurled the stone and another person had threatened them with the knife and thereafter, the public apprehended the accused and chain was recovered from A-2 and A-1 was having the knife. He had further deposed that he has not aware as to why PW.2 had come to the place and that he and PW.4 knows about the incident and that he knows about his officer informing the parents of PW.2.

15.PW.6 is a sweeper on contract duty and that she had not supported the case of the prosecution and thereby, she was treated as hostile.

16.PW.7 is the escalator operator in the railway station and he has also not supported the case and he was treated as hostile.

17.PW.8 had deposed that he is having a juice shop opposite to Egmore railway station and that he had been examined to speak about the confession statement of the first accused and his signature, Ex.P2 and to speak about the confession of second accused and his signature, Ex.P3. Since he had not supported the case of the prosecution, he has been treated as hostile. On cross examination by the respondents he had admitted that he had signed the mahazar, Ex.P4 in respect of the recovery of the motor cycle in Cr.No.266/2007.

18.P.W.9, Dr.Arun Babu had deposed that on 31.05.2007 he was working in the Casualty of Government Hospital and that the railway police has brought one minor girl, PW.2-Shiny aged about 17 years and that she had told him that on the same day at about 1.45 p.m. some persons had snatched her chain from her neck and thereby, she had sustained an injury and she had come for treatment to the Casualty. He along with Dr.Hemaharini had examined the said Shiny and that he had noticed an abrasion measuring 4 cm on the right side neck and that she was treated as an out patient. The Accident Register was marked as Ex.P5.

19.P.W.10-Chinnapandi, was the Inspector of Police attached to the respondent Police station. When he was on duty on 31.05.2007, at about 8.30 p.m.,, the accused were brought before him by P.W.1, P.W.4 and P.W.5 and that P.W.1 had lodged a complaint under Ex.P.1, narrating that both the accused had snatched the chain of his daughter, P.W.2 and that they had threatened her of dire consequence by brandishing a knife. P.W.1 produced M.O.1-Knife seized from A-1 and the same was recovered under a Mahazar. Based on the complaint, he registered a case in Crime No.229/2007 for the offences u/s.392, 506[2] IPC. Printed FIR is marked as Ex.P.6. The accused were arrested and in the presence of the witnesses, they had come forward to give the confessional statements. Further, the accused also confessed about the theft of a motor cycle in connection with a case in Crime No.266/2007 registered

on the file of the Tambaram Police Station. The said Motor cycle was also seized in the presence of witnesses under the Mahazar [Ex.P.8]. He had prepared the Observation Mahazar [Ex.P.10] and Rough Sketch [Ex.P.9]. He had also examined the witnesses and recorded their statements and thereafter, sent the injured/P.W.2 to the hospital for treatment since she had sustained an abrasion. On 01.06.2007, he sent the accused for judicial remand. He also altered the FIR from one under sections 392 and 506[ii] IPC into one under sections 336, 397 and 506[2] IPC. Ex.P.11 is the Alteration Report. He recovered the 5 sample stones [M.O.4 series] under Ex.P.12. He also examined the doctor who treated P.W.2 and he had opined that the injury sustained by P.W.2 is simple in nature and received the Wound Certificate. On completion of the investigation, he filed the Final Report u/s.336, 397, 506[2] IPC read with 34 IPC.

20. In this case, the appellants/accused have been charged and convicted for the offences u/s.394 read with 397 IPC and 34 IPC and under section 506[ii] and 336 IPC. An offence under section 394 IPC has the following essential ingredients:-

- i. That the accused was one amongst others in committing or attempting to commit robbery ;
- ii. That the accused caused hurt to any other person while doing so ;
- iii. That he did so [caused hurt] voluntarily.

21. In order to bring home the offence u/s.394 IPC, the prosecution has to prove that:

- (a) more than one person were concerned in committing or attempting to commit robbery as defined section 390 IPC ;
- (b) that one of the aforesaid persons in committing or attempting to commit robbery caused hurt to the victim ;
- (c) that such hurt by any of the accused aforesaid was caused voluntarily.

22. An offence under section 397 IPC has the following essential ingredients:-

- i. that the accused committed robbery or dacoity within the meaning of section 392 and 395 IPC respectively ; and
- ii. that while committing such offence, the accused [a] used any deadly weapon or [b] caused grievous hurt to the person or [c] attempted to cause death or grievous hurt to any person.

23. To bring home the enhanced penalty under section 397 IPC, the prosecution has to establish,

1. that the accused persons committed robbery ; or
3. that any of them while committing robbery, either used a deadly weapon or caused grievous hurt to any person ; or
5. attempted to cause grievous hurt or death to any person.

24. In this case on hand PW.1 is the hearsay witness and on information from PW.2, he had given a complaint to the respondent/ police and PW.2, the victim from whom the chain is stated to have been snatched, has not supported the case of the prosecution and thereby she had been treated hostile and that she has neither identified the appellants nor identified as to which appellant/accused used M.O.3 knife.

25. PW.3, though has spoken about the incident, has not specifically spoken as to which appellant/accused used M.O.3 knife. PW.4 though had spoken about the occurrence, had deposed that he cannot identify the weapon being

used by the appellants. PW.5 though had spoken about the using of knife by one of the accused, his evidence is not clear with regard the recovery being made.

26. PWs.6,7 and 8 have been examined to speak about the arrest and recovery. P.Ws.6 and 7, the witnesses to the occurrence who has been examined, has not supported the prosecution. PW.8 who has been examined to speak about the arrest and confession has also turned hostile. Admittedly, as per the evidence of PW.10, the knife-M.O.3 had been stated to be recovered under Form 95 and strangely, Form 95 does not contain the signature of the witnesses in whose presence it was stated to be recorded. Further, Form 95 relating to seizure of MO.3 - knife has been sent to the Court after the period of 4 months from the date of recovery thereby creating a doubt with regard to the recovery of knife.

27. While appraising the evidence, the prosecution in the opinion of this Court has failed to prove beyond reasonable doubt that the appellants/accused were in possession of a knife [M.O.3], a deadly weapon and none of the witness was able to speak categorically about the appellants/accused having used a deadly weapon and they have also stated that they were unable to identify the weapon. Though P.W.5-the Railway Police Personnel speaks about one of the appellants having used a knife, his evidence is not categorical and further, it seems to be highly exaggerated and is not credible. Thus, the evidence let in by the prosecution with regard to the recovery and production of the weapon before the Court is also suspicious and doubtful. The

prosecution has not explained as to how and in what manner the appellants/accused were overpowered and none of the persons in the public have been examined to speak about the arrest and recovery of M.O.3-knife from the appellants/accused. However, taking into consideration the evidence of the other witnesses, this Court finds that there is enough evidence that the appellants/accused by threatening the victim/P.W.2, snatched the chain from her which resulted in her sustaining injury on her neck. The injury has been deposed by P.W.9-doctor. As per

his evidence and Ex.P.5-Accident Register, the injury sustained by P.W.2/victim is simple in nature. This Court finds that the prosecution has failed to prove the charges against the appellants/accused for the offence u/s.397 IPC beyond any reasonable doubt. However, the prosecution has let in sufficient material to prove the offence u/s.394 IPC. Further, the prosecution has also proved the offence u/s.506[ii] IPC and 336 IPC.

28.In the result, the criminal appeals are partly allowed. The impugned judgment of conviction and sentence is set aside insofar as the offence u/s.397 IPC is concerned and the conviction imposed on the appellants/accused under sections 394, 506[ii] and 336 IPC is confirmed and however, the sentence awarded u/s.394 IPC is modified to one of 2 years rigorous imprisonment. Fine amount imposed for the offence u/s.394 IPC is confirmed. The period already undergone by them, is given set off.

29.Since the appellants/accused are in jail in pursuant to the arrest under Non Bailable Warrants issued by this Court and that they are now confined in Central Prison, Puzhal, Chennai, the Registry is directed to send free copies of this judgment to the appellants/accused forthwith.

30.Before parting with the matter, this court is constrained to place it on record the commendable service rendered by Mr.S.N.Arunkumar, learned counsel as Legal Aid Counsel. He is entitled to a remuneration from the Tamilnadu Legal Aid Service Authority as per the norms.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

jrs

To:

- 1.The Additional District and Sessions Judge,
Fast Track Court No.1, Chennai.
- 2.The Principal District and Sessions Judge,
Chennai.
- 3.The XIV Metropolitan Magistrate,
Egmore, Chennai.

4.The Chief Metropolitan Magistrate,
Chennai.

5.The Inspector of Police,
Egmore Railway Police Station,
Egmore, Chennai-8.

6. The Superintendent,
The Central Prison,
Puzhal, Chennai. (3 Copies)

(The Superintendent, Central Prison is directed to
give a copy of this Judgment to each a copy of
this Judgment to each of the Accused/Appellant)

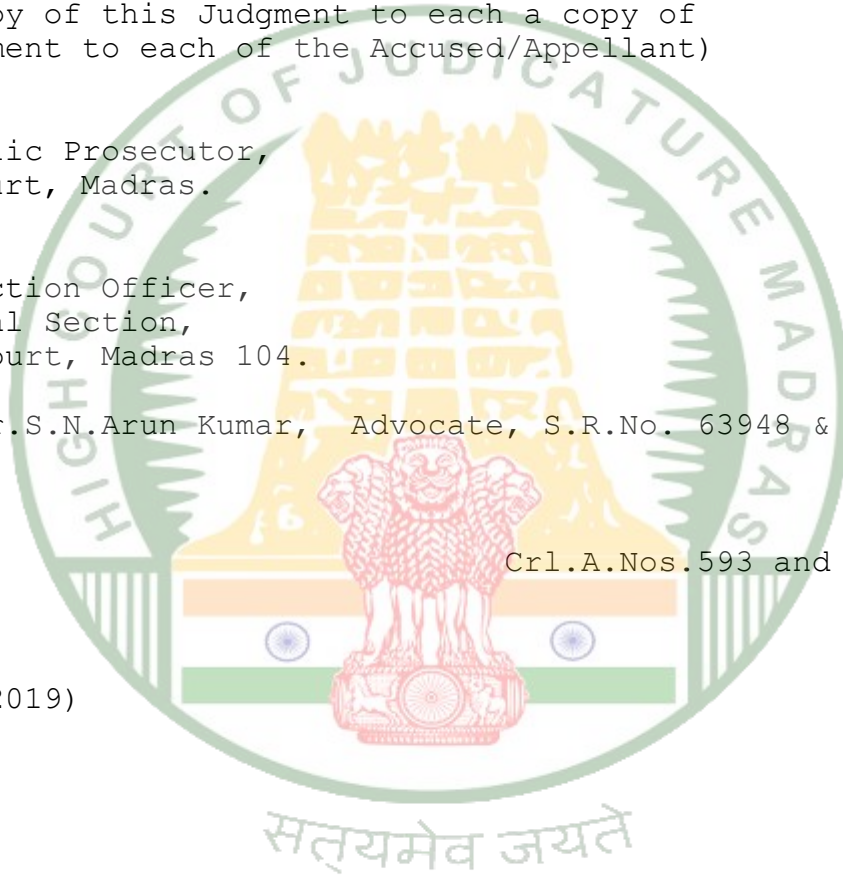
7.The Public Prosecutor,
High Court, Madras.

8. The Section Officer,
Criminal Section,
High Court, Madras 104.

+2cc to Mr.S.N.Arun Kumar, Advocate, S.R.No. 63948 & 63949

Crl.A.Nos.593 and 683 of 2008

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