



WEB COPY

Crl.A.(MD)No.335 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 29.04.2019
Dated:26.07.2019
CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A.(MD)No.335 of 2018

Amsa Hussain : Appellant/A1

Vs.

State through
The Inspector of Police,
K.Paramathi Police Station,
Karur District.
Crime No.78 of 2017

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgment made in S.C.No.24 of 2018, dated 21.06.2018 on the file of the Additional District and Sessions Judge, Karur.

For Appellant : Mr.N.Sathish Babu

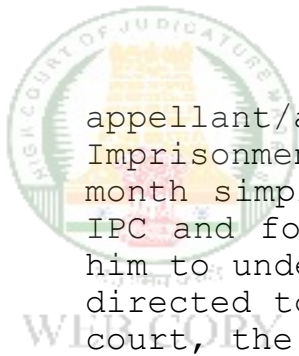
For Respondent : Mr.A.Robinson,
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal is directed against the judgment made in S.C.No.24 of 2018, dated 21.06.2018 on the file of the Additional District and Sessions Judge, Karur.

2.According to the prosecution, on 20.07.2017 at about 10.00 am, when the de-facto complainant Eswari went to his mother's home at Kidaikaranpalayam, in his two wheeler TN-47-AD-1734 in Ammapatti to Servaikaranpalayam road, at that time, the appellant along with the other accused minor Mohammed Pitha threatened her with knife, thereby snatched his 5-1//2 sovereigns of gold chain worth about Rs.1,00,000/- and also attacked her with knife and thereby caused grievous hurt on her left leg thumb finger. The Inspector of Police attached to K.Paramathi Police Station has filed a final report against accused examining the witnesses.

3.In the trial court, on the side of the prosecution, 8 witnesses were examined and 11 documents and 2 materials objects were marked. On the side of the accused, no witness was examined and no document was produced. The trial court convicted the



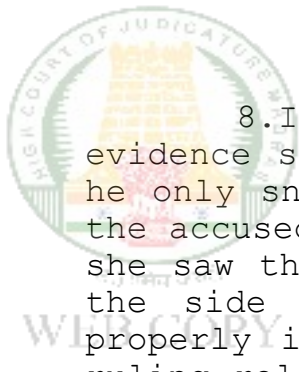
appellant/accused and sentenced him to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.500/-, in default to undergo 1 month simple imprisonment for the offence under Section 392 r/w 397 IPC and for the offence under Section 65 of the MCP Act, sentenced him to undergo 3 months of simple imprisonment and the sentences are directed to run concurrently. Aggrieved by the judgment of the trial court, the appellant is before this court.

4. Heard both sides and perused the materials available on record.

5. The contention raised on the side of the appellant/A1 is that there are contradictions in the evidence of PW1 and the contents found in Ex.P1 complaint and that PW1 did not depose properly in respect of the identification of the accused though the alleged occurrence took place in a day light between 9.00 am and 10.00 am and prays that the accused is entitled to acquittal. For that, the learned counsel submitted the unreported decision of this court made in Crl.A Nos.1832 of 2003 and 280 of 2004 and 18 of 2006, dated 20.01.2015, dated 20.01.2015 (***Chandur and three others Vs. State represented by The Inspector of Police, Avaniapuram Police Station, Madurai***).

6. PW1 is the complainant and he gave complaint to the police. PW1 in her complaint and evidence stated that on 20.7.2017 between 9.00 am and 10.00 am, she went to Perumal Temple at Paramathi and returned to her house in a two wheeler TN47-AD- 1734, at that time the accused followed in a two wheeler and came near her vehicle and the accused kicked her two wheeler and due to it, she fell down and the accused attempted to assault her with knife and when it was resisted by her, she sustained injury on her left leg and the accused snatched her Thali chain and the another person ready to start the vehicle and the accused went to climb on the vehicle, at that time the scarf on the face of the accused fell down, at that time she saw the face of the accused and then the accused along with the another person went in the two wheeler and afterwards, she informed the incident to his uncle and then her uncle came and searched for the accused when they were not found and then she was taken to Amaravathi Hospital at Karur and the police came and recorded her statement.

7. The learned counsel for the appellant/A1 submitted that PW1 in her complaint stated that the accused only drove the vehicle and the other person travelled as a pillion rider. But during her evidence, she stated that the accused only travelled as a pillion rider and the other person drove the vehicle and hence, it creates doubt about the prosecution case and benefit of doubt has to be given to the accused.



8. In this case, PW1 categorically stated in her complaint and evidence stated that the accused only assaulted her with knife and he only snatched the Thalli chain of PW1. Further, she identified the accused by stating that when the scarf of the accused fell down, she saw the face of the accused. Hence, the argument put forth on the side of the appellant/A1 stating that the accused was not properly identified by PW1 is not at all acceptable. Hence, the ruling relied on by the learned counsel for the appellant/A1 is not applicable to this case.

9. In the complaint, PW1 stated that the accused only drove the vehicle, but during her evidence, she has stated that the accused travelled in a vehicle as pillion rider. It is only a minor contradiction and it will not affect the case of the prosecution. PW1 categorically deposed that the accused only assaulted her with knife and snatched her Thali chain. From the evidence of PW1, it is revealed that the accused and the another person came in a two wheeler. In this case, PW1's evidence alone is available. When the solitary evidence is trustworthy, the evidence of solitary witness can be relied upon. Further, in this case, PW1 categorically deposed that the accused only assaulted her and snatched her Thali chain. Hence, the evidence of PW1 is trustworthy and it can be relied upon.

10. PW2 is the Uncle of PW1. He is only a hearsay witness. He deposed that after hearing the occurrence, he went to the place of occurrence and saw PW1 injury on her left hand and left leg and then he took PW1 to hospital. PW1 deposed that she sustained injury in her left leg by the accused with knife. Hence, from the evidence of PW1, it is revealed that when PW2 saw PW1, he found injury on the left leg and left hand of PW1.

11. The Doctor, who gave treatment to PW1 was examined as PW5. PW5 deposed that PW1 told him that she was assaulted by two unknown persons, when she came in her two wheeler and her two wheeler was kicked by the above two unknown persons and her Thali chain was snatched by one person and she sustained injury due to the assault by the above persons with hands and knife. He found the following injuries:-

1. Swelling, Tenderness & deformity (+) over the (L) wrist joint;

2. Abrasion of size 2 cm X 1 cm (+) over (L) great toe;

3. Abrasion of size 1cm X 1 cm (+) over the base of (L) great toe;

4. Abrasion of size 2 cm x 1 cm (+) over the ® foot.



12.PW5 stated that he found injury on the left wrist, left thumb finger on the left leg and abrasion on the right palm. PW1 deposed that the accused twisted her left hand and assaulted her with knife and due to it, she sustained injury on her left wrist and injuries on her left leg. Hence, the evidence of PW1 is corroborated with the evidence of PW5 Doctor.

13.PW4 is the arrest and recovery witnesses. PW4 deposed that when he was conducting vehicle inspection on 19.11.2017, at that time, the accused with another person came in a two wheeler and when they saw the police, they tried to turn back and then the police caught the accused and the another person and the police arrested the accused and the accused gave a confession and on the basis of the confession, the accused handed over the two wheeler, which was used for the occurrence and the Thali chain, which was snatched from PW1 and the police recovered the two wheeler, which was used for the occurrence and the Thali chain, which was snatched by the accused in the presence of the witnesses. Hence from the evidence of PW4, it reveals that the accused was arrested on 19.11.2017 and the vehicle, which was used for the occurrence and the Thali chain, which was snatched by the accused from PW1 were recovered from the police in the presence of the witnesses.

14.In this case, PW1 also deposed that the accused came in a two wheeler and assaulted and snatched her Thali chain. Hence, PW1 evidence is corroborated with the evidence of PW7.

15.The trial court on careful perusal of the entire materials available on record, both oral and documentary, had given a correct finding, which does not require any interference by this court. However, considering the fact that the appellant/accused is the sole breadwinner of the family, the punishment imposed on the appellant/A1 requires modification.

16.In the result, this Criminal Appeal is **partly allowed**. The punishment imposed on the appellant for the offence under Section 392 r/w 397 IPC is reduced to **7 years RI**. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant shall be given set off under Section 428 of Cr.P.C. The appellant, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The Additional District and Sessions Judge,
Karur.

2.The Judicial Magistrate No.2, Karur.

3.-D- Thro'
The Chief Judicial Magistrate, Karur.

4.The Inspector of Police,
Thennilai Police Station,
Karur District.

5.The Inspector of Police,
K.Paramathi Police Station,
Karur District.

6.The Superintendent Central Prison, Trichy.

7.The Superintendent of Police, Karur District.

8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer, Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to M/s.N.SATHISH BABU, Advocate SR-78298.

**Judgment made in
Crl.A. (MD) No.335 of 2018
26.07.2019**

CS (06.11.2019) 5P 12C