



Bail Slip

The Appellant/Accused namely MOHAN @ MOGANARANGAN S/o.Ganesan was directed to be released on bail as per order or this Court dated 17.02.2020 in CrI.M.P.No.1069 of 2020 in CrI.A.64 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	26.04.2021
Pronounced on	:	25.08.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.64 of 2019

MOHAN @ MOGANARANGAN
S/o.Ganesan

... Appellant/Accused

Vs.

State by the Inspector of Police
Arakkonam Town Police Station
Vellore District
(Crime No.337 of 201)

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire records in connection with the S.C.No.90 of 2015 on the file of the learned Fast Track Magalir Neethi Mandram (Sessions Judge), Vellore, Vellore District and set aside the Judgment dated 07.01.2019.

For Petitioner : Mr.E.Kannadasan

For Respondent : Ms.T.P.Savitha
Government Advocate (CrI.Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 07.01.2019 in S.C.No.90 of 2015 on the file of the learned Fast Track Magalir Neethi Mandram (Sessions Judge), Vellore, Vellore District.

2. The respondent police registered the case in Crime No.337 of 2014 against the appellant for the offence under Sections 394 IPC. After completing investigation the respondent police laid charge sheet for offences under Sections 391, 392, 394 read with 397 IPC before the Judicial



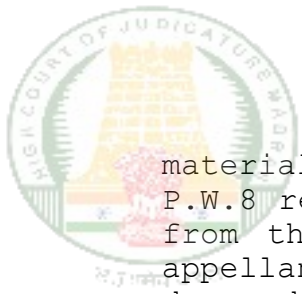
Magistrate, Arakkonam, and the learned Magistrate had taken up the charge sheet on file in P.R.C.No.6 of 2015 and after completing the formalities, since the offences are exclusively triable by the Court of Session, committed the case to the Principal District and Sessions Judge, Vellore. The learned Principal District and Sessions Judge had taken up the case on file in S.C.No.90 of 2015 and made over the case to the Fast Track Mahila Court, Vellore, since the offences are against a woman. The Special Court after completing the formalities, framed charges against the appellant for offence under Sections 450, 394 read with 397 IPC.

3. After framing charges, in order to prove the case of the prosecution during trial on the side of the prosecution as many as 8 witnesses were examined as P.W.1 to P.W.8 and 9 documents were marked as Exs.P1 to P9 besides 6 material objects were exhibited.

4. After examining the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant and questioned under Section 313 Cr.P.C. However, he denied the same as false and pleaded not guilty. On the side of the defence no oral or documentary evidence was produced.

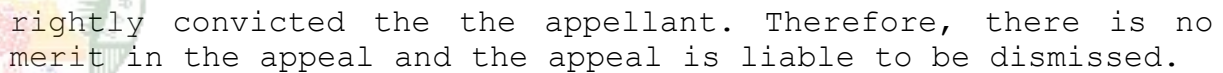
5. On completion of trial and hearing the arguments advanced on either side, considering the materials, the trial Court found guilty of the accused for offences under Sections 450, 394 read with 397 IPC and the appellant was convicted and sentenced to undergo three years rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo 3 months rigorous imprisonment for the offence under Section 450 IPC. Further, he was convicted and sentenced to undergo 7 years rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo 3 months rigorous imprisonment for offence under Section 394 read with 397 IPC. Challenging the side Judgement of conviction and sentence, the accused has filed the present appeal before this Court.

6. The learned Counsel for the appellant would submit that the trial Court convicted the appellant only based on interested and inconsistent testimony of witnesses i.e. P.W.1 and P.W.2. The evidence of P.W.8 namely the Inspector of Police categorically deposed in his chief examination that on 08.08.2014 at about 12 noon P.W.1, the husband of the victim P.W.2, appeared and gave the complaint and on receipt of the said complaint, the case was registered. Subsequently, he went to the scene of occurrence at about 1 P.M. and examined the witnesses and prepared the observation mahazar and sketch. Whereas, Ex.P.8-FIR shows that the complaint has been registered at about 3.30 p.m. The trial Court failed to see that prior to the receipt of the complaint and registration of FIR-P.W.8, the Inspector of Police has commenced the investigation at about 1 P.M. itself and examined the witnesses and prepared observation mahazar and sketch which is contra to the case of the prosecution. Further, there are



material contradictions between the evidence of P.W.2 and P.W.8 regarding the arrest and recovery of the stolen articles from the appellant. P.W.2 has categorically stated that the appellant was arrested by the respondent police on the same day and when she had gone to the police station, she had seen the appellant in the police station. Whereas, the evidence of P.W.8 differs from the evidence of P.W.2 wherein he has stated that the appellant was arrested on 09.08.2014 at about 10 a.m. near Arakkonam Sindhu Theatre. Further, P.W.6 not supported the case of the prosecution and therefore the investigation done by the prosecution is not established. Even P.W.7 Doctor who gave treatment to P.W.2 injured witness, deposed that P.W.2 had left the hospital within 10 minutes of admitting without any intimation. If the injury is serious and grave in nature, she might not have left the hospital without any intimation. Therefore the prosecution has failed to prove the case beyond all reasonable doubts. Whereas, the trial Court wrongly convicted the appellant based on assumption and sympathy, which warrants interference of this Court.

7. The learned Government Advocate (Crl. Side) submitted that P.W.2 is the injured witness, P.W.1 is the husband of P.W.2 and he is the one who gave the complaint. P.W.3 and P.W.4 are neighbours. P.W.2 injured witness has categorically stated the appellant is known to her, prior to the occurrence, appellant had done painting work in her house. On the date of occurrence i.e. on 08.08.2014 when the injured was alone at home, the appellant came to the house of P.W.2 and asked some money, but she denied. Since nobody was there in the house except P.W.2, taking advantage of the same, the appellant attacked P.W.2 and also snatched her Thali Chain and other jewels. P.W.3 who is the neighbour of P.W.2 has clearly stated that soon after the incident, P.W.2 victim came out of the house and called P.W.3 by hand gesture and when she went near P.W.2, she informed that the person who had worked earlier in her house has attacked her and snatched jewels from her. P.W.3 further stated that prior to the occurrence, she had seen the appellant coming out from the house of P.W.2. Therefore, the presence of the accused at the place of occurrence and on the date of occurrence is corroborated by the evidence of P.W.3. Thereafter, P.W.3 informed another neighbor P.W.4 who is a driver about the incident and the injury sustained by P.W.2 and he is the one who took the victim to the hospital. P.W.5 is mahazar witness and P.W.6 is confession and recovery witness. P.W.7 is the Doctor who admitted and given treatment to the victim and he has clearly stated about the nature of injury sustained by the victim. Subsequently, the stolen properties were recovered from the appellant by P.W.8 the Inspector of Police and thereby, the prosecution has proved its case beyond all reasonable doubts. Further, the contradictions pointed out by the learned counsel for the appellant are not material contradictions and they are only minor contradictions which will not go to the root of the prosecution and the trial Court



12. Out of the 8 witnesses, the injured was examined as P.W.2. She has spoken about the entire occurrence. She has stated that on the date of occurrence i.e. on 08.08.2014, when she was alone in her house, the appellant who is known person who had done some painting work in her house earlier, had come to her house and asked her some money and since she denied, he left the house. Thereafter, when P.W.2 was doing Pooja work, all of a sudden, he entered into the house and attacked her with nylon rope and when she was semi unconscious, he attacked her with scissor in her neck and thereby, she became unconscious. After some time, when she regained her conscious and woke up, she found her Thali Chain and other jewels missing. Immediately, P.W.2 Injured witness came out of the house and called her neighbour P.W.3 by hand gesture and informed her about the incident. Immediately P.W.3 in turn informed the same to another neighbour P.W.4. Thereafter, P.W.4 informed the same to P.W.1 husband of P.W.2 and took the



injured to the hospital and on the way to hospital, P.W.1 joined them. Thereafter, they went to Police Station where P.W.1 lodged the complaint and thereafter, admitted the injured P.W.2 in the Government Hospital.

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13. In the evidence of P.W.1, the husband of the victim, has clearly spoken about the complaint given by him. P.W.3 in her evidence has clearly stated that prior to the occurrence, while she was going to shop, she had seen the appellant coming out of the house of the victim and after sometime, the victim came out of the house and called P.W.3 by hand gesture. When she went near the victim P.W.2, she was found injured in her neck and her jewels were found missing and P.W.2 informed her about the offence committed by the appellant. Thereafter, P.W.3 informed the same to another neighbour P.W.4 who in turn informed the same to P.W.1 husband of P.W.2, thereafter, P.W.4 taken them to police station in his car.

14. P.W.4 in his evidence clearly stated that P.W.3 had informed him about the occurrence and thereafter, he took P.W.2 and P.W.3 to police station in his car and on the way, he informed P.W.1 husband of P.W.2 about the incident who also joined them at police station.

15. P.W.5 is the mahazar witness. He has spoken about P.W.8 coming to the scene of occurrence and preparing observation mahazar and sketch.

16. P.W.7 is the Doctor who admitted the victim in the hospital. He has stated that after 10 minutes of admitting the victim in hospital, she left the hospital without any intimation. He has stated that at the time of admitting the victim in the hospital, an entry was made in the Accident Register in which, he has noted about the injuries sustained by the victim P.W.2 and he has also noted that the injuries on the neck of the victim has been caused by a sharp edged weapon and rope and the copy of the said Accident Register is marked as Ex.P.7.

17. A reading of the evidence of P.Ws.1 to 4, 5 and 7 would go to show that they have spoken about the offence committed by the appellant. P.W.2 is the injured witness. Since, there is no other eyewitness, P.W.2 is the only sole witness for the occurrence. Therefore no corroboration is available for the occurrence. Even P.W.3 has categorically stated that she had seen the appellant coming out of the house of P.W.2 soon after the incident the injured P.W.2 called her by hand gesture and informed her about the offence committed by the appellant and thereafter, P.W.3 informed the same to P.W.4. Therefore, the presence of the appellant on the date of occurrence and at the place of occurrence is corroborated by the evidence of P.W.3. P.W.4 has stated that P.W.3 informed him about the incident and he in turn informed the same to P.W.1, the husband of the injured and thereafter, all the four went to police station and thereafter, admitted the victim in the hospital. Thereby, the evidence of P.W.3 is corroborated by P.W.4. Further, the evidences of P.Ws.1,2,3 and 4 are corroborated with the medical evidence of P.W.7



Doctor and the Accident Register Ex.P.7 in which the opinion of the Doctor is given.

18. P.W.3 has clearly stated that she saw the appellant coming out of the house of the victim P.W.2 soon after the occurrence and she also saw him prior to the incident near the house of P.W.2. From the evidence of P.W.3 and P.W.2, this Court finds that the appellant has trespassed into the house of P.W.2 and thereby, the appellant has committed offence under Section 450 IPC. P.W.2 injured witness has stated that the appellant attacked her with rope and scissor due to which, she sustained injury and became unconscious and at that time, the appellant has snatched her Thali chain and other jewels from her. Further, the evidence of P.W.7 Doctor corroborated the evidence of P.W.2. Subsequently, the Investigating Officer P.W.8 has made recovery of the stolen articles from the appellant. Therefore, it is proved that the appellant has committed the offences under Section 394 read with 397 of IPC.

19. Though there is no independent witness to the occurrence, the injured is the sole witness to the occurrence and the other witnesses are only hearsay witnesses.

20. It is settled proposition of law that if the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible. Though, in this case there is no eyewitness, the injured witness who is the sole witness, has categorically narrated the entire occurrence and the offence committed by the appellant and therefore, there is no reason to discard the evidence of the victim P.W.2. Thereby, the prosecution has proved its case with cogent and consistent evidence. The trial Court rightly appreciated the entire material evidence and convicted the appellant and this Court, on an independent application of mind to the entire materials, is of the considered view that the judgment of the trial court warrants no interference and finds no merit in the appeal.

21. Accordingly, this Criminal Appeal stands dismissed confirming the Judgment dated 07.01.2019 in S.C.No.90 of 2015 on the file of the Fast Track Magalir Neethi Mandram (Sessions Court), Vellore, Vellore District. It is reported that the appellant /accused is on bail since the sentence awarded, has been suspended by this Court vide order dated 17.02.2020. Hence, the trial Court is directed to secure the appellant/accused to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar



To

1. The Fast Track Magalir Neethi Mandram (Sessions Court),
Vellore, Vellore District.
2. -do-through the Principal District and Sessions Judge,
Vellore.
3. The Judicial Magistrate, Arakkonam.
4. -do- through The Chief Judicial Magistrate,
Vellore.
5. The Judicial Magistrate I,
Thruchirappalli.
6. -do- through The Chief Judicial Magistrate,
Tiruchirappalli.
7. The Superintendent Central Prison,
Vellore.
8. The Inspector of Police
Arakkonam Town Police Station
Vellore District.
9. The Public Prosecutor Officer,
High Court, Madras.

Copy To

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

+1cc to Mr.E.Kannadasan, Advocate SR.No.43122

Criminal Appeal No.64 of 2019

VSN II(CO)
GMY(18/10/2021)