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*Crl.A.No.146 of 2018*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2022

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.146 of 2018

Ramesh

... Appellant

Vs

State by:

The Inspector of Police,  
Avinashi Police Station,  
Tirupur District.

(Crime No.356 of 2013)

...Respondent

**PRAYER** : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to call for the records and set-aside his conviction made in the Judgment dated 07.10.2015 in S.C.No.174 of 2014 on the file of the learned first Additional District and Sessions Judge, Tirupur and acquits him from the offences.

For Appellant : Mr.A.Saranraj

For Respondent : Mr.A.Gopinath

Government Advocate (Crl. Side)

**JUDGMENT**

This appeal is directed as against the Judgment passed in S.C.No.174 of 2014 dated 07.10.2015, on the file of the First Additional District and Sessions Judge, thereby convicted the appellant for the offence punishable under Section



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2. The case of the prosecution is that on 08.07.2013 at about 11.00 a.m., the accused approached the victim's house for rent. They noticed that except the aged victim, none of them are present. At about 11.30 a.m., A3 was standing outside the house and noticed whether anyone is coming. At that juncture, A1 and A2 went inside the house and locked the door. Thereafter, they pushed the victim on the floor and tied her hand and leg in a cloth. When the victim shouted, A1 sat on her and shouted if they spare her, she would identify them. A2 had taken knife with an intention to stab her. But the victim moved and the knife hit on the floor. A1 pulled the knife from A2 and attacked the victim on her face. However, she again moved and escaped from any injury. Both the accused, with the intention to cause death, attacked her by cooker lid on her head. After causing injury, they severed 3 sovereign gold chain from her neck. Hence, the complaint.

3. On receipt of the complaint, the respondent registered an FIR in Crime No.356 of 2013 for the offence punishable under Section 307 r/w 34 of IPC and Section 397 of IPC. After completion of investigation, the respondent



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filed a final report and the same has been taken cognizance by the Trial Court in

S.C.No.174 of 2014.

4. On the side of the prosecution, they had examined P.W.1 to P.W.13 and marked Exs.P1 to P16. The prosecution also produced material objects 1 and 2. On perusal of material evidence, the Trial Court found A1 and A2 guilty for the offence under Section 397 of IPC and acquitted them for the offence under Section 307 r/w 34 of IPC. Aggrieved by the same, A2 preferred this present appeal.

5. The learned counsel for the appellant would submit that the appellant is arrayed as A2. Even according to the case of the prosecution, the alleged chain was recovered only from A1 and nothing was recovered from the appellant herein. There are contradictions between P.W.1 evidence and other witnesses to the occurrence viz., P.W.4 and P.W.6. According to P.W.1, immediately after occurrence, she got fainted and only after 10 minutes, she herself opened the door and P.W.4 and P.W.6 came for her rescue from the hands of the accused. Whereas, P.W.4 and P.W.6 deposed that they themselves opened the door and entered into the house of P.W.1. While they were entering



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into the house, they have also seen the accused 1 and 2, when they flew away from the backside door of the house. The evidence of P.W.1 is not at all supported by the evidence of the Doctor who treated her and who was examined as P.W.9. She never deposed that she was treated by P.W.9. When the Trial Court found the appellant not guilty for the offences under Sections 307 r/w 34 of IPC, there is no evidence to convict the appellant for the offence under Section 397 of IPC.

6. Per contra, the learned Government Advocate (Crl.Side) submitted that the evidence of P.W.1 was corroborated by P.W.4 and P.W.6, who rescued her. In fact, they also had seen the appellant. Therefore, the evidence are very clear and clinching to prove the case of the prosecution. Hence, the evidence cannot be said that it was cooked up. The prosecution failed to recover any weapon and as such the Court below acquitted the appellant for the offences punishable under Sections 307 r/w 34 of IPC.

7. Heard Mr.A.Saranraj, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent.

8. On 08.07.2013, at about 10.30 a.m., A1 and A2 came to the house



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of P.W.1 by way of searching house for rent. P.W.1 told them that no house is available for rent. She also identified A1 and A2 before the Court below. Again, within half an hour, while the victim was attending her household work, they entered into the house of the victim and pushed her down. Immediately, both A1 and A2 tied her hands and legs by cloth. When the victim was shouting, they tied her mouth by cloth and snatched 3 sovereigns of gold chain from her. A2 also stabbed her. The victim made an alarm and immediately the neighbours came there to rescue her. Thereafter, about 12 noon, she was taken to the hospital. The victim's daughter was examined as P.W.3. She heard the news through phone and immediately she had taken the victim to the hospital. After hearing the alarm, P.W.4, who is the neighbour to the victim, also rushed to the house of the victim and he had also seen A1 and A2 were escaping from the house of the victim. Since he was not able to chase them, other general public chased them. After hearing the alarm sound of the victim, P.W.5 had gone to the house of the victim and found that A3 was standing in his bike. After opening the door, he found that the victim was lying on the ground and A1 and A2 escaped from the house of the victim. P.W.6 also deposed that after hearing the alarm sound of the victim, he went to the house of the victim and he had also seen when A1 and A2 were escaping from the house of the victim. The victim was immediately taken to Shri



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Kumaran Hospital, Tiruppur and she was treated by P.W.9. He deposed that the victim came the hospital at about 11.30 a.m., and she stated that she was attacked by 2 unknown persons. He found 3 injuries and opined that those injuries are simple in nature. He issued wound certificate and the same was marked as Ex.P7. However, she was referred to Government Hospital.

9. Immediately, she was taken to Avinashi Government Hospital and P.W.11 recorded her statement in the Accident Register, which was marked as Ex.P9. It is also seen from the Accident Register that she was attacked by 2 unknown persons. Therefore, the prosecution proved its case beyond any doubt by examination of P.W.1 to P.W.13. The minor contradictions as pointed out by the learned counsel for the appellant are not fatal to the case of the prosecution since, the victim's evidence is the best evidence and she categorically deposed that her hands and legs were tied by A1 and A2 and they snatched the gold chain weighing 3 sovereigns. However, the snatched chain was recovered from A1 and it was produced before the Trial Court as material object 1 and it was also identified by P.W.1. Subsequently, it was returned to P.W.1.

10. Hence, the Court below rightly convicted the appellant for the



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offence punishable under Section 397 of IPC and this Court finds no infirmity or illegality in the order passed by the Court below and this appeal is liable to be dismissed.

11. Accordingly, this Criminal Appeal stands dismissed.

19.10.2022

Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

1. The First Additional District and Sessions Judge, Tirupur.

2.The Inspector of Police,  
Avinashi Police Station,  
Tirupur District.

3. The Public Prosecutor,  
High Court, Madras.

**G.K.ILANTHIRAIYAN, J.**

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