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Crl.A.No.428 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

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

Crl.A.No.428 of 2018

1.M.Pakirisamy

2.G.Selvam

... Appellants/accused 1 & 24

Vs.

State of Tamilnadu
Represented by its,
Inspector of Police,
Kalappal Police Station,
Thiruvarur District
(crime No.90 of 2008)

... Respondent

PRAYER:

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the judgment dated 28.06.2018 passed in SC.No.52 of 2012 by the learned District and Sessions Judge, Thiruvarur.

For Appellants : Mr.Swami Subramanian

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)



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JUDGMENT

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This criminal appeal is filed as against the judgment dated 28.06.2018 passed in SC.No.52 of 2012 on the file of the learned District and Sessions Judge, Thiruvavur, thereby convicting the appellants for the offence punishable under Section 379 of IPC.

2. The case of the prosecution is that one Mr.Rajendran, Secretary of CPI party was murdered and his funeral procession was held on 17.10.2008. In continuation of the same, on 17.10.2008, the accused persons in attendance of his funeral, gathered together at the house of the victim, assembled unlawfully with deadly weapons and trespassed into her house. They caused damage to the property and also snatched away her chain and necklace. On receipt of the said complaint, the respondent registered FIR in crime No.90 of 2008 for the offence punishable under Sections 147, 148, 448, 379, 506(ii) of IPC r/w 3(1) of TNPPDL Act, 1992. After completion of investigation, the respondent filed final report and the trial court had taken cognizance as against the first appellant for the offence under Sections 148, 379, 452, 436 of IPC and 3(1) of TNPPDL Act r/w Section 109 of IPC and as against the second appellant for the offence under Sections 147, 379, 452, 436 r/w 109 of IPC and 3(1) of TNPPDL Act r/w 109 of IPC.



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3. In order to bring the charges to home, the prosecution examined PW1 to PW7 and marked Ex.P1 to Ex.P10. The prosecution also produced material objects i.e. MO1 to MO17. On perusal of oral and documentary evidence, the trial court convicted the appellants under Section 379 of IPC and sentenced them to undergo two years simple imprisonment. Aggrieved by the same, the present appeal has been filed.

4. The learned counsel for the appellants would submit that the second appellant's name was not found place in the FIR. In fact, his name was not found place in the complaint lodged by the victim. There is absolutely no evidence to convict the appellants for the offence punishable under Section 379 of IPC. Except the evidence of PW1, no witness had spoken about the occurrence and corroborated the evidence of PW1. In order to prove the recovery, PW4 was examined, who is none other than the brother of PW1. There was no recovery from A1 i.e. the first appellant. There was no specific overt act against each of the appellants even according to the case of the prosecution. There are two Selvams and the prosecution failed to conduct identification parade to identify the second appellant as an accused since his name was not found in the complaint and the FIR. In fact there are totally 31 accused, in which except the appellants, all the accused were



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acquitted by the trial court for want of evidence. When the appellants are also standing in the same footing, they are also entitled for the same benefit of acquittal.

5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent / police would submit that though there are 31 accused, the appellants had specific overt act and as such, the trial court had rightly convicted them for the offence punishable under Section 379 of IPC. There was recovery from the second appellant and to prove the same, PW4 was examined. PW4 also corroborated the evidence of PW1 who is the victim. He further submitted that the accused caused damage to the properties belong to PW1 worth about Rs.1,37,000/- . The damage was assessed by Village Administrative Officer and it is corroborated by PW6, who was working as Assitant Village Administrative Officer. Therefore the trial court rightly convicted the appellants and it does not require any interference by this Court.

6. Heard, Mr.Swami Subramanian, the learned counsel appearing for the appellants and Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent / police.



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7. There are totally 31 accused, in which the appellants are arrayed as A1 and A24. Though all the accused persons were charged for various offences, except the appellants, the other accused persons were acquitted by the trial court. The appellants were convicted for the offences under Section 379 of IPC. Though the learned counsel for the appellants had taken specific stand that the name of the second appellant was not found in the complaint and the FIR, on perusal of the evidence of PW1 revealed that the second appellant only snatched one of the chains from PW1. Another chain was snatched by the first appellant. The victim's evidence is the best evidence and the recovery of the chain from the second appellant also proved by the prosecution. PW4 categorically deposed about the recovery from the second appellant. Though PW4 is the own brother of PW1, it cannot be discarded on the ground that he is an interested witness. Further, if the evidence is reliable and creditworthy, it cannot be discarded merely because that piece of evidence was not available in the statement recorded under Section 161 of Cr.P.C.

8. Admittedly the accused persons entered into the house of PW1 and completely ransacked the house after attending the funeral of their political party leader. Therefore, it is very difficult for PW1 to specify the specific allegations as against the each accused. However, she categorically deposed that the appellants



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only snatched her chains. The Village Administrative Officer assessed the value of the damages to the tune of Rs.1,37,000/-. The said assessment was marked as Ex.P7. Therefore, the trial court rightly convicted the appellants for the offence punishable under Section 379 of IPC and this Court do not find any infirmity or illegality in the conviction ordered by the trial court. However, this Court felt that it would be appropriate to reduce the sentence imposed on the appellants from two years to the period which was already undergone by them.

9. As such, the judgment dated 28.06.2018 passed in SC.No.52 of 2012 on the file of the learned District and Sessions Judge, Thiruvavur in respect of the appellants / A1 & A24 is modified as follows:

(i)	The conviction rendered by the trial court for the offence under Section 379 of IPC is confirmed.
(ii)	The sentence of imprisonment imposed by the trial court is reduced to the period already undergone by the appellants/A1 & A24 on condition that each of the appellants shall pay a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) as compensation to the victim directly by way of demand draft within a period of four weeks from the date of receipt of copy of this judgment and produce the receipt before the trial court, failing which the sentence imposed by the trial court



	shall stand automatically restored and the respondent is directed to secure the appellants to serve the remaining period of sentence.
	(a) If the victim refuses to receive the compensation, the appellants are directed to deposit the above amount before the trial court and the same may be treated as fine.
(iii)	On complying with the above condition, the appellants are directed to be set at liberty forthwith, unless their custody is required in connection with any other case and the bail bond, if any executed by the accused, shall stand cancelled.

10. Accordingly, this criminal appeal is partly allowed.

26.10.2022

Speaking/non-speaking
Index : Yes/No
Internet : Yes
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G.K.ILANTHIRAIYAN, J.
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To

- 1.The learned District and Sessions Judge,
Thiruvavarur
- 2.The Inspector of Police,
Kalappal Police Station,
Thiruvavarur District
- 3.The Public Prosecutor,
High Court of Madras

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