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Crl.R.C.No.875 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

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

Crl.R.C.No.875 of 2018

Thomas

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Chidambaram Town Police Station,
Chidambaram.
(Crime No.457 of 2015)

... Respondent

Prayer: Criminal Revision case has been filed under Section 397 r/w 401 of Cr.P.C, to call for the entire records in connection with the C.A.No.63 of 2017 on the file of the Second Additional District Sessions Court, at Cuddalore and set aside the conviction and sentence passed by the learned Second Additional District Sessions Judge, Cuddalore in C.A.No.63 of 2017 dated 20.06.2018 confirming the conviction and sentenced passed by the learned Judicial Magistrate No.II, Chidambaram in C.C.No.158 of 2015 dated 22.06.2017.

For Petitioner : Mr.V.Paarthiban

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)



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ORDER

This Criminal Revision case has been filed as against the judgment passed in C.A.No.63 of 2017 dated 20.06.2018 on the file of the II Additional District and Sessions Judge, Cuddalore, thereby confirming the judgment passed in C.C.No.158 of 2015 on the file of the Judicial Magistrate No.II, Chidambaram, thereby convicted the petitioner for the offence under Section 394 IPC.

2. The case of the prosecution is that on 16.10.2015 at about 9.00 p.m., the victim was sleeping by locking the door of the house from inside. However, the accused came inside her house already. At about 12.30 a.m., he attempted to rob her 2 ½ sovereign gold chain after attacking her. She sustained injuries on her head. Thereafter, he snatched away her chain. Hence the complaint.

3. On receipt of the complaint, the respondent registered FIR in Crime No.457 of 2015 for the offence under Section 394 IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial for the offence under Section 394 IPC.



4. On the side of the prosecution, PWs 1 to 17 were examined and Exs. P1 to 18 were marked and M.Os.1 to 3 were also produced and on the side of the petitioner no one was examined and no document was marked as exhibits.

5. On perusal of oral and documentary evidence, the trial found the petitioner guilty for the offence under Section 394 IPC and sentenced him to undergo three year rigorous imprisonment and imposed fine of Rs.2000/- in default to undergo one month simple imprisonment. Aggrieved by the same the petitioner preferred an appeal and the same was dismissed confirming the sentence imposed by the trial Court. Hence this revision.

6. The learned counsel for the petitioner would submit that the victim was examined as PW2, the victim's son was examined as PW1. After discussion with PW2, PW1 lodged a complaint. Even as per the prosecution PW2 locked her house from inside and had slept in her house. While being so, at about 12.30 a.m., the accused went into her house and after attacking her, robbed her chain. Further, the investigating officer completely failed to investigate in that aspect viz., as to how the accused entered into the victims house which was locked from inside. The version of PW2 is that she was threatened by the



accused and attacked by the accused while snatching her chain. Further, in the complaint PW1 did not even whisper that the accused allegedly shouted at her.

Whereas on her deposition, she deposed that he shouted at her and thus she identified his voice who was he. In fact, even before admitting her in hospital, she identified his voice and even then she failed to disclose the name of the accused since he was known to all.

7. The learned counsel for the petitioner would further submit that even after the occurrence the petitioner, used to supply milk and water cane to the victim and the victim failed to identify the petitioner as an accused. There were contradiction between PWs1 to 3 though they are close relatives. No independent witness was examined to prove the case of the prosecution. In fact, the investigating officer deposed that the petitioner supplied milk and water cane even after the occurrence for a period of one year. The investigating officer also failed to produce any call records of the mobile phone belonging to the victim prior to the occurrence. He produced call records only after ten day from the date of occurrence. The prosecution also failed to prove that the mobile phone belonged to the victim. Therefore, the prosecution failed to prove the case beyond any doubt.



8. Per contra, the learned Government Advocate (Crl. Side) submitted that in order to bring the charges to home the prosecution examined PWs1 to 17 and marked EXs.P1 to 18 and MOs.1 to 3. There was recovery of 19.5 grams gold chain which was duly identified by the victim. The accused was none other than a milk and water cane supplier to the victim and he knows that the victim was a single and aged person. Therefore, he planned to rob the victim, even before she could lock the doors, he was already inside her house and after the victim slept over, at about 12.30 a.m., the accused committed robbery by attacking the victim and therefore, the victim sustained injuries and she informed to PWs1 to 3. Thereafter, she was taken to hospital. PW4 examined her and he issued wound a certificate which has been marked as Ex.P12. Therefore, the prosecution proved its case beyond any doubt and both the Courts below rightly convicted the petitioner.

9. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent and perused the materials available on record.

10. It is seen that on 16.10.2015, the victim locked her house and she was sleeping in her bedroom. While being so, at about 12.30 a.m., the accused



who was hiding under her cot, snatched her gold chain. The victim woke up and shouted. The petitioner shutted her mouth by bed sheet and beat her. He also threatened her not to make noise and also hit her head on the wall. Therefore, she also sustained injuries on her back side of her head and he robbed 2 ½ sovereigns of gold chain. He also robbed two covering bangles from her hand along with Black colour Nokia cell phone. Immediately, the victim informed her neighbour and in turn who was examined as PW4, informed to PWs1 to 3 when the PW1 came to her house she sustained injuries on her head with broken teeth and also sustained injuries on her face. Immediately, PW1 went to the Police Station and lodged a complaint.

11. The victim was examined as PW2 she categorically deposed that the accused was supplying milk and water cane for the past three years and therefore, she was able to identify his voice easily. The cell phone which was taken by the accused was produced by her which was gifted by her son-in-law. She also identified the accused through his voice and identified the chain which was produced as MO.1, the cell phone and its cover were produced as MOs.2 and 3. PW3, brother of PW1 also corroborated with the evidence of PW1. The petitioner handed over the cell phone to his friend who was examined as PW7



he deposed that on 22.10.2015 when he informing about purchase of cell phone, the accused handed over the cell phone for his personal use. On confession, it was recovered from PW7. Thereafter, the investigating officer by IMEI No. and SIM card tracked the call details. PW13, who received the bangles and chain from the petitioner and he requested him to send the same. However, he found that two bangles were "covering one" and in so far as the chain is concerned, he pledged the chain with the PW8. PW8 deposed that the chain was received from PW13 and gave Rs.36,000/-. Therefore, the prosecution proved its case beyond any doubt.

12. That apart, the doctor, who treated the victim was examined as PW14, he deposed that on 17.10.2015 at about 2.30 a.m., the victim was admitted as in patient, the accused robbed a chain and two bangles and she was attacked by him therefore, she sustained injuries, she was taken to Government Hospital, Chidambaram, and referred to Annamalai Nagar Hospital for further treatment. He issued wound certificate which was marked as Ex.P12. Accordingly, she sustained injuries on her face and back side of her head. Further, there was no fracture on her skull. Therefore, the grounds raised by the learned counsel for the petitioner are not helpful to reverse the findings of the



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Courts below. Hence, this Court finds no infirmity or illegality in the orders passed by the Courts below.

13. However, the learned counsel for the petitioner prayed this Court for reduction of sentence. Considering the age of the petitioner and also considering the submission, this Court confirmed the conviction imposed by the Courts below. In so far as, the sentence is concerned, this Court is inclined to reduce the sentence imposed on the petitioner by the Court below. Accordingly, the sentence imposed by the Court below is reduced from three years to two years.

14. Accordingly, the criminal revision case stands partly allowed.

07.11.2022

Index: Yes/No
Speaking/Non speaking order
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To

- 1.The II Additional District and Sessions Court,
Cuddalore.
- 2.The Judicial Magistrate No.II,
Chidambaram.
- 3.The Inspector of Police,
Chidambaram Town Police Station,
Chidambaram.



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G.K.ILANTHIRAIYAN. J.

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