

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 42 of 2009

Sk. Munna

-Vs-

The State of West Bengal

Amicus Curiae : Mr. Sumanta Ganguly

For the State : Mr. Avishek Sinha

Heard on : 18.07.2023, 08.09.2023

Judgment on : 12.12.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 24.09.2008/25.09.2008 passed by the Learned Additional Sessions Judge, 6th Fast Track Court, Bichar Bhavan, Calcutta in Sessions Trial No. 1 of February 2008 which corresponds to Sessions Case No. 103 of 2007 convicting thereby the appellant for commission of an offence punishable under Section 392 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for six years and to pay fine of Rs. 2,000/- in default to suffer rigorous imprisonment for six months more.
2. The prosecution case precisely stated that on 21.09.2007 at about 1:45 p.m. when the de-facto complainant namely Sonali Pramanick (PW-1)

was proceeding along C.R. Avenue in her car, it came to a halt due to the signal at C.R. Avenue near Trust House. The de-facto complainant was sitting on the rear seat of the car and the window of the car was open. At that point of time when the car came to a halt, the accused/appellant committed robbery in respect of a gold neck chain which the de-facto complainant was wearing weighing about 8 gms. at the point of knife.

On hearing the shouts of the de-facto complainant, who screamed 'Chor Chor' her brother (PW-2) who was sitting beside her in the rear seat of the car, chased the appellant and the driver of the said car (PW-7) also chased the appellant but as the car was waiting at the signal, the driver had to come back. On hearing the shout of the de-facto complainant both the public and a police guard (PW-5) chased the appellant and he was apprehended near the crossing of B.B. Ganguly Street and C.R. Avenue. He was taken to Bowbazar Police Station where on the complaint of said Sonali Pramanick a case being Bowbazar Police Station Case No. 332 dated 21.09.2007 under Section 397 of the Indian Penal code was registered for investigation.

The accused/appellant was medically examined wherein X-ray was held which showed presence of the gold neck chain in the abdomen of the appellant. His stool was regularly checked and on 27.09.2007 the gold neck chain was found from the stool of the accused which was cleaned by the sweeper (PW-6) and thereafter in the presence of the said sweeper and other witnesses it was seized by the S.I. J.S. Mukherjee (PW-14) under a seizure list.

3. After completion of a purported investigation the Investigating Officer, S.I. J.S. Mukherjee submitted charge-sheet against Sk. Munna for the offence under Section 392 read with Section 397 of the Indian Penal Code.
4. Thereafter the aforesaid case was committed by the Learned Metropolitan Magistrate, 3rd Court, Calcutta vide order dated 17.11.2007 to the Court of the Learned Chief Judge, City Sessions Court, Calcutta as the said offence is exclusively triable by the Court of Session. On receipt of the case record the Learned Chief Judge, City Sessions Court, Calcutta transferred the same to the Court of the Learned Additional Sessions Judge, 6th Fast Track Court, Bichar Bhawan, Calcutta.
5. Thereafter charges were framed against the appellant by the Learned Judge vide order dated 14.02.2008 for commission of offences punishable under Section 392 read with Section 397 of the Indian Penal Code.
6. In order to prove its case the prosecution examined as many as 14 witnesses and exhibited certain documents while the defence adduced none and the specific case of the defence is one of innocence and false implication.
7. The Learned Trial Judge after perusing the evidence on record and also after examining the appellant under Section 313 of the Code of Criminal Procedure and after hearing the arguments advanced on behalf of both the parties, was pleased by his judgment and order dated 24.09.2008/25.09.2008 to hold the appellant guilty of the charge for

commission of offence punishable under Section 392 of the Indian Penal Code and was pleased to sentence him as specifically mentioned hereinabove.

8. Learned Amicus Curaie appearing for the appellant submitted that –

- i. The evidence on record does not justify the conviction of the appellant under Section 392 of the Indian Penal Code and as such the impugned order conviction and sentence is liable to be set aside.
- ii. The Learned Judge has failed to take into consideration that there is no such evidence produced by the prosecution that at the time of committing the extortion, the person was put to fear of instant death, or instant hurt, or of instant wrongful restraint and by so putting in fear, induced the person so put to fear, to deliver up the thing extorted. As such the judgment and order in question is bad in law and same is liable to be set aside.
- iii. The Learned Judge failed to appreciate the procedure as mentioned by the prosecution for recovery of the said alleged weapon was totally contrary to the law.
- iv. There was no such evidence as recorded by the Learned Judge for which it may come into conclusion that the victim was hurt or wrongfully restrained or fear of instant death, instant hurt or instant wrongful restraint by the appellant. In such circumstances the Learned Judge erroneously recorded an order of conviction and sentence.
- v. The Learned Judge failed to appreciate theft or extortion of alleged necklace which was not properly identified or rather to say there was no

such mark on the necklace from which the victim was properly identified the said necklace. In such circumstances the Learned Judge by recording an order of conviction against the appellant caused grave miscarriage of justice for which the interference of this Hon'ble Court was highly solicited.

vi. The Learned Judge erred in law and in fact that the alleged necklace was extorted from the back side of the de-facto complainant. So it was not possible for her to identify the appellant. In such circumstances the impugned judgment and order which was perverse and without any basis, was liable to be set aside.

vii. From the facts and circumstances of the case it could be seen that the prosecution miserably failed to bring home the charge as brought against the appellant and hence the interference of this Hon'ble Court was highly solicited.

viii. The impugned judgment and order of conviction and sentence is otherwise bad in law and hence the same is liable to be set aside.

9. The Learned Advocate for the State submitted that the victim as well as the other prosecution witnesses were independent eradicating the possibility of false implication. The offending weapon to cause threat i.e. the knife was recovered. Moreover the gold chain swallowed by the appellant was proved through X-Ray conducted by the Doctor i.e. PW-10 and its subsequent recovery from the stool of the appellant, left no doubt on the part of the prosecution to have proved its case and the appeal should be dismissed.

10. P.W.-1, the victim lady is the eye witness. On the relevant date and time, she was commuting in her own car and stopped at the signal on her way to Chadni Chowk metro station. She was accompanied by her brother while her driver drove the vehicle. Suddenly, one man snatched her neck chain through the window of the car that was open which compelled her to shout “Chor Chor”. The brother of PW-1 immediately alighted the car and chased the miscreant along with the public followed by police personnel who apprehended him. The evidence of P.W.-1 was corroborated by P.W.-2, her brother and also an eye-witness independent witness being P.W.-3, P.W.-4, P.W.-5 and P.W.-6.
11. P.W.-10, Dr Bibash Banerjee attached with Medical College and Hospital as emergency officer conducted X-Ray of the abdomen of the appellant who had consumed the gold neck chain. The X-Ray report revealed a radio opaque foreign body, and the medical document of emergency was marked as Exhibit-4. The appellant on his escape had thrown away the knife in his possession into garbage on the road which was recovered and was seized by the police and identified as MAT Exhibit-2.
12. On the basis of corroborative evidence of the prosecution witnesses and the seizure of the knife as well as the recovery of the gold chain from the stool of the appellant, indubitably proved his guilt. The prosecution was able to prove its case beyond reasonable doubt. The learned trial court, after proper appreciation of evidence convicted the appellant.
13. In view of the above discussions, the instant criminal appeal being CRA 42 of 2009 is dismissed.

14. There is no order as to cost.

15. I record my appreciation for the able assistance rendered by Mr. Sumanta Ganguly, Learned Advocate, as *Amicus Curiae* in disposing of the criminal appeal.

16. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

17. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)