



Crl.A.No.44 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.06.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

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Nandhakumar

.. Appellant

Vs.

State Rep., by
The Inspector of Police,
Tiruppur Central Police Station,
Tiruppur District.
(Crime No.89/2018)

..Respondent

PRAYER : Criminal Appeal has been filed under sections 374(2) of Criminal Procedure Code to set aside the judgment passed in S.C.No.39/2018 dated 27.05.2019 on the file of Mahalir Neethi Mandram (Fast Track Mahila Court), Tirupur.

For Appellant : Mr.T.Muruganantham

For Respondents : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is filed by the accused who was found guilty by the trial Court of the offences under Sections 454 and 392 r/w



397 IPC. The trial Court convicted and sentenced the accused to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.500/-, in default 6 months Rigorous Imprisonment for the offence under Section 454 IPC and 10 years R.I., and to pay a fine of Rs.500/-, in default 6 months R.I., for the offence under Section 392 r/w 397 IPC.

2. The case of the prosecution is that on 13.02.2018, the accused trespassed into the house of the *de facto* complainant knowing that the *de facto* complainant is alone and under threat, he removed 7 ½ sovereign gold chain from the *de facto* complainant. Further, he tied her with a saree to the chair and searched the Almirah for any other valuable things. Thereafter, he left the house with the 7½ sovereign gold chain robbed from the *de facto* complainant. Soon after he left the house, the *de facto* complainant was able to untie herself and raised alarm, then went to the KVR Nagar Police station and gave a complaint narrating the incident.

3. The Sub Inspector of Police, who received the complaint, registered the FIR and the investigation was taken up by the Inspector of



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Police [PW.8]. From the CCTV footage collected, the Investigating Officer was able to identify the accused, who was found near Sandhaipettai Wine shop. The accused was secured and based on his confession statement, 7 ½ sovereign gold chain and the green colour T.shirt concealed near a graveyard were recovered under Mahazar. Further, on the information given by the accused the knife used by the accused to intimidate the *de facto* complainant was recovered near electrical transformer on ABT road.

4. On completion of investigation, final report was filed and being an offence exclusively triable by the Sessions Judge, the learned Magistrate committed the case to the District Sessions Court. On committal, the Sessions Court has framed the charge against the accused for the offence under Sections 454 and 392 r/w Section 392 IPC.

5. To prove the charges, the prosecution has examined 8 witnesses, marked 8 exhibits and 5 Material Objects.



6. The trial Court based on the evidence held that though the investigation found to be perfunctory and lapsed, de hors of such lapse, the prosecution is able to prove that the chain of the *de facto* complainant / PW.1 was removed by the accused, who trespassed into her house and put her under threat. Based on the confession statement of the accused, the material objects were recovered and the recovery is proved by the Mahazar witnesses examined as PW.4 and PW.5. Hence held the accused guilty and sentenced as stated above.

7. Being aggrieved, the accused has preferred the appeal on the ground that the trial Court erred in appreciation of evidence and having found that the investigation is perfunctory and lapsed on the part of the Investigating Officer not producing the CCTV footage with the required certificate under Section 65 B of the Evidence Act, the version of the prosecution regarding identification of the accused has become highly doubtful. Pointing out that no identification parade was conducted and the accused was identified by PW.1/the victim only in the Court hall after more than 1 ½ years of the occurrence. The accused was working as a



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labourer in a hotel has been falsely fixed in this case.

8. The learned counsel appearing for the appellant submitted that even according to the complaint [Ex.P1] and the testimony of PW.1 few minutes prior to the occurrence, the housemaid by name Pushpa has left the *de facto* complainant's house at 10.20 a.m. Ten minutes after, it is alleged that the accused entered the back doors of the house and committed the offence. Strangely the said Pushpa was not examined by the Investigating Officer. The lapse on the part of the Investigating Officer not examined Pushpa and not producing the CCTV footage along with certificate under Section 65 B of Evidence Act, and not conducting the identification parade, were ignored by the trial Court. Contrarily, solely based on the confession statement and recovery, which was retracted, the trial Court convicted the accused. Hence the judgment warrants interference.

9. The learned Government Advocate (Crl.Side) appearing for the State submitted that the Investigating Officer [PW.8] has deposed that



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he was able to fix the accused from the CCTV footage. The T-shirt of the accused, which was concealed near graveyard, was recovered based on the information given by the accused and the said information was within exclusive knowledge of the accused. The said recovery has been corroborated through the Seizure Mahazar witnesses namely Karthik [PW.4] and Nataraj [PW.5]. Therefore, there is no infirmity in the case of the prosecution and therefore, the judgment and conviction of the trial Court is confirmed.

10. Point for consideration is *whether the evidence for prosecution is sufficient to prove that the accused guilty of offence under Sections 454 and 392 r/w Section 397 IPC?*

11. PW.1 is the victim and she has set the criminal law into motion by giving a complaint, which is marked as Ex.P1. The complaint though states that an adult male aged 25 years trespassed into her house from the back door and removed the gold chain weighing about 7 to 8 sovereign by placing the knife on her neck, there is no physical



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description of the offender or the chain alleged to have been removed from her.

12. The case of the prosecution is that, the accused was identified from the CCTV footage. As rightly pointed out by the learned counsel for the appellant, the Investigating Officer has not spoken about the CCTV footage either in his final report or in his chief examination. For the first time, he has revealed that he was able to identify the accused from the CCTV footage. The failure to place the CCTV footage along with necessary certificate required under the Evidence Act cannot be brushed aside as a minor lapse on the part of the Investigating Officer. More particularly, when the identification parade to ascertain the identification of the accused not conducted and for the first time PW.1 has identified the accused in the Court hall when she was examined on 20.05.2019 about 15 months after the occurrence.

13. The trial Court has wholly relied upon the testimony of PW.5 and PW.6 who are the witnesses in the Seizure Mahazar. PW.4, who is



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the witness for the recovery of T.shirt and gold chain, had deposed that the gold chain and T.shirt were kept in a polythene cover and concealed in the soil. Though the prosecution has produced the gold chain and T.shirt, the polythene cover has not been produced before the Court and in the cross examination, he has ascertained that the chain and T.shirt were in the polythene cover. Though non production of the polythene cover is not a significant omission, but when the alleged material objects were kept in a cover and concealed in the soil, entire content along with cover ought to have been placed before the Court, so that the Court could appreciate whether the said material objects were kept the manner in which the prosecution projected.

14. On cumulative assessment of the evidence, this Court finds that the perfunctory investigation and omission goes to the root of the prosecution case and it cannot be termed as a minor omission and de hors of the omission, the prosecution proved the guilt of the accused. Since the identification of the accused and the identification of the chain alleged to have been robbed from the victim not been properly proved, the case of



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the prosecution ought to have failed.

15. Accordingly, this Criminal Appeal is allowed. This Court set the appellant at liberty. The judgment of the trial Court is set aside. Fine amount, if any paid by the accused shall be refunded to them. Bail bond if any executed by the accused shall stand cancelled.

07.06.2023

Internet : Yes/No

Index: Yes/No

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To

1.The Mahalir Neethi Mandram (Fast Track Mahila Court), Tirupur.

2.The Inspector of Police,
Tiruppur Central Police Station,
Tiruppur District.

3.The Public Prosecutor,
High Court,
Madras-104.



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Dr.G.JAYACHANDRAN, J.

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