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Crl.A.No.126 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.126 of 2020

Kumar @ Aruppu Kumar

... Appellant

Vs.

The State represented by,
The Inspector of Police,
C1 Flower Bazaar Police Station,
Chennai.

... Respondent

Prayer:

Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction of the appellant in S.C.No.72 of 2018 dated 28.01.2020 by the learned XVIII Additional Sessions Judge, Chennai by allowing this appeal.

For Appellant : M/s.J.Sasilie
Legal Aid Counsel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

JUDGEMENT



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This Criminal Appeal has been filed against the judgment dated 28.01.2020 passed in S.C.No.72 of 2018 on the file of the learned XVIII Additional Sessions Judge, Chennai.

2. The respondent police registered the case against the appellant in Crime No.1350 of 2011 for the offences under Sections 341, 294(b), 336, 427, 392 read with Sections 397 and 506(ii) IPC. After investigation, laid the charge sheet before the VIII Metropolitan Magistrate, George Town. The learned Magistrate has taken the charge sheet on file in P.R.C.No.68 of 2012. After completing the formalities under Sections 207 and 209 Cr.P.C., committed the case to the learned Principal Sessions Judge, Chennai, since the offence under Section 392 read with 397 IPC is exclusively triable by the Court of Session. The learned Principal Sessions Judge has taken the case on file in S.C.No.72 of 2018 and made over the same to the XVIII Additional Sessions Judge, Chennai. The learned Additional Sessions Judge has taken the case on file and framed the charges against the accused and after conducting trial found the appellant guilty for the offences under Sections 341, 392 read with 397 IPC. He was convicted and sentenced to undergo ten years rigorous imprisonment and to pay



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fine of Rs.5,000/- in default to undergo three months simple imprisonment for the offence under Section 392 read with 397 IPC. Further he was convicted and imposed to pay fine of Rs.500/- for the offence under Section 341 IPC in default to undergo three months simple imprisonment. The appellant was not found guilty for the offence under Sections 294(b), 336, 427 and 506(ii) IPC. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

3. Learned counsel for the appellant would submit that except P.W.1/defacto-complainant, all other independent occurrence witnesses including Mahazar and recovery witnesses were turned hostile. They have not supported the case of the prosecution. The defacto complainant was examined as P.W.1 in this case. There is no corroborative evidence was present in this case. Without any corroborative evidence, the accused cannot be convicted especially, when the occurrence was said to have taken place in the public place. The prosecution has failed to prove its case beyond reasonable doubt. There are contradictions between the evidence of prosecution witnesses. The prosecution has not proved the recovery of the material, place and time of occurrence. The alleged confession statement recorded from the



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accused/appellant is inadmissible and the same is not valid. The Trial Court without any corroborative evidence, convicted the appellant based only on the evidence of the defacto-complainant alone. Hence, the judgment of conviction and sentence may be ordered to be set aside and the appeal may be allowed.

4. The learned Additional Public Prosecutor would submit that the appellant has got one previous case and another case subsequent to the said occurrence against him. The appellant is a habitual offender. The defacto complainant has clearly deposed about the incident that the appellant waylaid him and wrongfully confined him and also demanded the chain and when he refused to give the same, the appellant robbed the gold chain at the knife point. Though the other witnesses were turned hostile, evidence of the victim is cogent and consistent and there is no reason to discard the evidence of P.W.1/defacto complainant. Due to passage of time, all other witnesses were turned hostile. The accused was clearly identified by the defacto-complainant. Recovered material was also identified by the defacto-complainant. In this case, the prosecution has proved its case beyond all reasonable doubt. The trial court rightly appreciated the evidence and convicted the appellant by considering the



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nature of offence and imposed the sentence as stated above. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

5. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused all the materials available on record.

6. Specific case of the prosecution is that on 09.10.2022 at about 1.00 pm, when the defacto-complainant was proceeding in the sub-way opposite to EVR Road, Central Railway Station, to meet his brother who was admitted in the Government Hospital, Chennai, the accused/appellant who was standing in the subway, wrongfully restrained the defacto-complainant and threatened him to give money by uttering unparliamentary words. When the defacto-complainant refused to give money, the accused took the knife which was hidden by him and placed on the neck of the defacto-complainant and robbed 1 1/4 sovereign gold chain, cell phone and cash amounting to Rs.1340/-. When the witnesses P.W.2 and 3 tried to catch the appellant, the appellant criminally intimidated them with knife by stating filthy language and took the cool drinks



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bottle from the shop of P.W.4 and threw it on the road and the same shattered and caused loss for a sum of Rs.50/-. On the basis of the complaint-Ex.P1, the respondent police registered the case and subsequently after investigation laid the charge sheet. Hence the case.

7. In order to substantiate the abovesaid case, on the side of the prosecution, totally eight witnesses were examined as P.Ws.1 to 8 and nine documents were marked as Exs.P1 to P9. Besides, three material objects were exhibited as M.O.No.1 to 3. After trial, the trial court found the accused guilty and framed the charges as stated above. Challenging the same, the appellant is present before this Court.

8. P.W.1, who is none other than the defacto complainant has clearly deposed about the entire incident. Evidence of P.W.1 has clearly shows that the appellant wrongfully restrained him and robbed his gold chain at the knife point. By passage of time, the public would not support the case of the prosecution. The appellant has got two previous cases as against him and the cases of this nature, normally the public will afraid about the attitude of the



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appellant. Hence, other eye witnesses were turned hostile and they have not supported the case of prosecution. Cases of this nature, if the evidence of the defacto-complainant natural, cogent and consistent and if the evidence of the sole witness inspires the confidence of the Court, conviction can be recorded. On a reading of the entire materials, this Court finds that the prosecution proved its case beyond all reasonable doubt. While re-appreciating the evidence of prosecution, especially from the evidence of P.W.1, this Court finds that the appellant has committed offence under Sections 341, 392 read with 397 IPC. Though other witnesses were turned hostile and they have not supported the case of the prosecution, evidence of sole witness/defacto complainant is sufficient to convict the appellant. There is no reason to discard or disbelieve the evidence of the sole witnesses namely P.W.1. This Court finds that the trial court rightly appreciated the evidence and imposed the sentence on the accused as stated above. Considering the facts and circumstances of this case, this Court does not find any mitigating circumstances to reduce the sentence further.

9. In this case, there is no perversity in the appreciation of evidence and



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there is no merit in the appeal and the same is liable to be dismissed.

Accordingly the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed. The trial court is directed to secure the accused to undergo the remaining period of sentence, if any.

23.01.2023

mfa

Index:yes/No

Internet:yes/No

To

1. The XVIII Additional Sessions Judge,
Chennai.
2. The Inspector of Police,
C1 Flower Bazaar Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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