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Crl.A.No.140 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

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THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.140 of 2016

Ramesh

... Appellant

Vs.

State Represented by
The Inspector of Police,
Avinashi Police Station,
Tirupur District.
(Crime No.356/2013)

... Respondent

PRAYER: Criminal Appeal filed under Section 372 of Criminal Procedure Code, 1973 against the judgment dated 07.10.2015 passed in S.C.No.174 of 2014 by the learned I Additional District and Sessions Judge, Tirupur.

For Appellant : Mr.K.V.Muthu Visakan
Legal Aid Counsel

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor (Crl.side)

**JUDGMENT**

WEB COPY Challenging the judgment and orders dated 07.10.2015 passed in S.C.No.174 of 2014 by the learned I Additional District and Sessions Judge, Tirupur, the present appeal is filed by the appellant / first accused.

2. The trial court framed the following charges against the accused 1 to 3 in S.C.No.174 of 2014.

<i>Serial Number of charge</i>	<i>Charge(s) framed against</i>	<i>Charge(s) framed under Section</i>
1	A1	397, 307 r/w 34 IPC
2.	A2	397, 307 r/w 34 IPC
3.	A3	397 r/w 34 IPC

3. Accused No.1 and 2 were convicted and sentenced as under :

<i>Accused</i>	<i>conviction</i>	<i>Sentence</i>
A1	Section 397	Rigorous imprisonment for seven years
A2	Section 397	Rigorous imprisonment for seven years

A3 was acquitted from all the charges. A1 and A2 were acquitted for the offence punishable under Section 307 r/w.34 IPC.



4. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

4.1. Tmt.Palaniammal (P.W.1) is residing at Kaikaatipudur, Sokathottam, Avinashi. On 08.07.2013, the present appellant Ramesh (A1) and another Ramesh (A2) came inside her house and enquired her whether there is a house available for rent. She answered them that there is no house for rent and both of them left at about 10.30 A.M. Subsequently, when she was in her kitchen both the accused once again entered her house at about 11.30 A.M. and locked the door from inside. Thereafter, both of them pushed P.W.1 down on the floor and tied her hands and mouth with a piece of cloth. The appellant (A1) sat on her and A2 took a knife and attempted to stab her. But the victim dodged the attack by moving. The knife used by A2 missed the target and hit the floor. A1 pulled the knife from A2 and attempted to attack P.W.1 on her face which again was dodged by her. Infuriated by her act of dodging both the accused hit her with a pressure cooker lid on her head and snatched her gold chain (M.O.1) from her neck weighing three sovereigns. P.W.1 raised an alarm and on hearing this her neighbours Sivagami (P.W.2), Palanisamy (P.W.4), Moorthy (P.W.5) and



Thangavel (P.W.6) rushed to the house of P.W.1. Palanisamy (P.W.4) saw both the accused coming out of the house of the victim. He chased both the accused, however, he could not apprehend them. P.W.5 also saw A1 and A2 coming out of the house and according to him, the third accused Govindaraj (A3) picked up both the accused in his two wheeler bearing Registration No.TN 38 X 1783 (M.O.2) and fled away from the scene of offence. Sivagami (P.W.2) and Sumathi (P.W.3) rushed P.W.1 to the Government Hospital, Avinashi.

4.2. Dr.Senthilkumar (P.W.9) examined P.W.1 on 08.07.2013 at about 12.30 hours and found the following injuries on her :

- i. Contusion of right forehead
- ii. Scalp on her right eyewitness
- iii. Hematoma in right side of the eye
- iv. Injury on her tooth

A copy of the Accident Register was marked as Ex.P9. In the opinion of the doctor the injuries sustained by P.W.1 are simple in nature.



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4.3. On receipt of information from the hospital, Thiru.Kalimuthu (P.W.10), the then Special Sub Inspector of Police, Avinashi Police Station, went to the hospital and recorded the complaint statement (Ex.P1) of Palaniammal (P.W.1). Thereafter, he came down to Avinashi Police Station and registered an FIR (Ex.P8) in Crime No.356/2013 against the two unknown persons for the offence punishable under section 394 IPC. He then placed the records before Thiru.Vetrivendhan (P.W.12), the then Inspector of Police, Avinashi Police Station, for further investigation.

4.4. Thiru.Vetrivendhan (P.W.12), Inspector of Police, took up investigation in Crime No.356/2013 of Avinashi Police Station, went to the scene of occurrence and prepared a rough sketch (Ex.P10) and an observation mahazar (Ex.P11) in the presence of the witnesses Thangavel (P.W.6) and Ashok Kumar (not examined). He examined the witnesses and recorded their statements under Section 161 (3) Cr.P.C. Thereafter, he altered the section of law from 394 IPC to 394 and 307 IPC and sent the Alteration Report (Ex.P12) to the Judicial Magistrate, Avinashi. Thereafter, he arrested the first accused (appellant) and A2 near Ganga Nagar bus stop,



CrI.A.No.140 of 2016

Perumanallur Service Road, Avinashi at about 05.00 P.M. and recorded their confessional statements in the presence of the witnesses Senthilkumar (P.W.7) and Annadurai (not examined).

4.5. Based on the confessional statement (admissible portion of which was marked as Ex.P13) a gold chain (M.O.1) weighing three sovereigns was recovered from the present appellant under the cover of a mahazar (Ex.P14) in the presence of the same witnesses. He then produced both the accused before the Judicial Magistrate, Avinashi, who in turn remanded them to judicial custody.

4.6. On 09.07.2013, Thiru. Vetrivendhan (P.W.12), the then Inspector of Police, Avinashi Police Station, seized the TVS Max 100 two wheeler bearing Registration No. TN 38X 1783 (M.O.2) which was parked near Perumanallur Service Road under the cover of a seizure mahazar (Ex.P14) in the presence of the witnesses Nithyanandham (P.W.8) and Prakash (not examined). Thereafter, he placed the records before his successor S.Elangovan (P.W.13) as he was transferred to some other place.



CrI.A.No.140 of 2016

Thiru.S.Elangovan (P.W.13) took up further investigation in Crime No.356/2013 and recorded the statements of all the witnesses including the doctor who gave treatment to P.W.1.

4.7. P.W.13 after completing investigation laid a final report before the Judicial Magistrate, Avinashi against the present appellant as well as two other accused in P.R.C.No.12/2014 for the offences punishable under Sections 397, 307 r/w. 34 IPC who in turn committed the case to the Court of Sessions, Tiruppur, after furnishing copies of records to the accused under section 207 Cr.P.C.

4.8. The learned Principal District and Sessions Judge, Tirupur, took up the case on file in S.C. No.174/2014 and made over the same to the I Additional District and Sessions Court, Tiruppur.

4.9. The learned I Additional District and Sessions Judge, Tirupur, framed the charges as stated in Para 2



Crl.A.No.140 of 2016

4.10. In order to bring home the guilt of the accused, the prosecution examined 13 witnesses and marked 16 documents and 2 Material Objects.

4.11. When the three accused including the present appellant were questioned with regard to the incriminating circumstances appearing in evidence against them under Section 313 Cr.PC, they denied of having committed any offence. However, they did not examine any witness on their side.

4.12. The learned trial court judge after analysing the oral and documentary evidence on record, acquitted A3 of the offence of which he was charged and convicted A1 and A2 as detailed in Paragraph number 3.

4.13. Aggrieved over the conviction and sentence passed by the trial court judge, the present criminal appeal is filed by the appellant / first accused.

5. The second accused filed an appeal in Crl.A.No.146 of 2018. A



CrI.A.No.140 of 2016

learned Single Judge (Hon'ble Mr.Justice G.K.Ilanthiraiyan) dismissed the appeal and confirmed the conviction and sentence passed by the trial court judge, vide his judgment dated 19.10.2022.

6. Since there was no representation for the appellant / A1 Mr.K.V.Muthu Visakan, learned counsel was appointed as Legal Aid Counsel for the appellant / A1.

7. Mr.K.V.Muthu Visakan, raised the following grounds :

- i. The prosecution had failed to conduct an identification parade and the appellant was identified only in court.
- ii. The version of the prosecution is that both the accused used a deadly weapon namely a knife and the same has not been recovered either from the appellant or from the other accused.
- iii. Thiru.Senthilkumar (P.W.7) who was one of the witnesses to the



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seizure mahazar (Ex.P5) through which the gold chain (M.O.1) was recovered, is a close friend of one Annadurai. He is the son-in-law of Palaniammal (P.W.1) and hence, he is an interested witness. Therefore no credence can be attached to this witness.

iv. According to P.W.1, the occurrence took place on 08.07.2013 at about 11.30 A.M. However, P.W.5 in his evidence had stated that he heard a loud noise from the house of P.W.1 at 09.30 A.M. on 08.07.2013. Thus the evidence of P.W.1 does not fit in with the evidence of P.W.5.

v. The prosecution also did not take steps to recover the lid of the cooker allegedly used by the accused to hit P.W.1 on her head.

vi. P.W.1 though had not described the model of the chain which was snatched by the accused 1 and 2, FIR (Ex.P8) describes the model of the chain.

Thus, according to the counsel for the appellant, there are serious infirmities



Crl.A.No.140 of 2016

in the case of the prosecution and therefore, the conviction and sentence passed by the trial court judge cannot be sustained.

8. Per contra, Mr.S. Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

9. It is true that the Investigation Officer has not conducted an identification parade, especially, when both the accused were unknown to P.W.1. But it is to be seen that on the date of the occurrence the appellant and A2 had entered her house first at 09.30 A.M. and thereafter, at 11.30 A.M. Thus, P.W.1 had seen both the accused twice in close proximity. Moreover, the accused were also seen by Palanisamy (P.W.4) and he infact tried to apprehend the accused. P.W.5 also in his evidence stated that he saw all the accused fleeing from the scene of offence in a two wheeler bearing Registration No. TN 38X 1783 (M.O.2) driven by the third accused. Thus



all the witnesses namely, Palaniammal (P.W.1), Palanisamy (P.W.4) and Moorthy (P.W.5) have seen the accused and they have all identified the accused in the court. Moreover, the first accused had not explained the recovery of three sovereigns of gold chain (M.O.1) from him by the Investigation Officer. He did not explain as to how the chain belonging to P.W.1 came into his hand. The appellant when questioned under Section 313 Cr.P.C. simply denied the commission of the offence by him.

10. As regards the non recovery of weapons, it is true that the investigation officer has not recovered the weapons namely a knife and lid of the cooker allegedly used by the accused for causing injuries to P.W.1. However, in the confessional statement the present appellant had stated that he threw the weapon in market area immediately after the occurrence. Moreover, in the light of overwhelming evidence adduced on the side of the prosecution against the appellant the aspect of non recovery of weapon does not weaken the strength of the case of the prosecution. P.W.1 to P.W.8 have corroborated the versions of the prosecution in all material particulars and nothing useful was suggested to them during the course of cross examination



Crl.A.No.140 of 2016

to discredit or disbelieve their versions.

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11. It is stated that Senthilkumar (P.W.7) is a close friend of the son-in-law of P.W.1 and therefore, his evidence should not be taken into consideration as he is an interested witness. An interested witness is someone who has a direct stake, in the outcome of the action P.W.7 is a natural witness and nothing was suggested to him that he would gain by convicting the appellant.

12. Though P.W.5 in the chief examination had stated that he heard a loud noise from the house of the victim at 09.30 hours, in the cross examination he had deposed that he heard the noise only at 11.30 A.M. and not at 09.30 A.M. Thus, he had clarified himself. It is also to be pointed out that all the witnesses were examined after two years of the incident and therefore, minor contradictions in their evidence are understandable. The learned Single Judge of this Court vide his judgment dated 19.10.2022 in Crl.A.No.146 of 2018 has also observed thus :



8. On 08.07.2013, at about 10.30 a.m., A1 and A2 came to the house of P.W.1 by way of searching house for rent. P.W.1 told them that no house is available for rent. She also identified A1 and A2 before the Court below. Again, within half an hour, while the victim was attending her household work, they entered into the house of the victim and pushed her down. Immediately, both A1 and A2 tied her hands and legs by cloth. When the victim was shouting, they tied her mouth by cloth and snatched 3 sovereigns of gold chain from her. A2 also stabbed her. The victim made an alarm and immediately the neighbours came there to rescue her. Thereafter, about 12 noon, she was taken to the hospital. The victim's daughter was examined as P.W.3. She heard the news through phone and immediately she had taken the victim to the hospital. After hearing the alarm, P.W.4, who is the neighbour to the victim, also rushed to the house of the victim and he had also seen A1 and A2 were escaping from the house of the victim. Since he was not able to chase them, other general public chased them. After hearing the alarm sound of the victim, P.W.5 had gone to the house of the victim and found that A3 was standing in his bike. After opening the door, he found that the victim was lying on the ground and A1 and A2 escaped from the house



of the victim. P.W.6 also deposed that after hearing the alarm sound of the victim, he went to the house of the victim and he had also seen when A1 and A2 were escaping from the house of the victim. The victim was immediately taken to Shri Kumaran Hospital, Tiruppur and she was treated by P.W.9. He deposed that the victim came the hospital at about 11.30 a.m., and she stated that she was attacked by 2 unknown persons. He found 3 injuries and opined that those injuries are simple in nature. He issued wound certificate and the same was marked as Ex.P7. However, she was referred to Government Hospital.

9. Immediately, she was taken to Avinashi Government Hospital and P.W.11 recorded her statement in the Accident Register, which was marked as Ex.P9. It is also seen from the Accident Register that she was attacked by 2 unknown persons. Therefore, the prosecution proved its case beyond any doubt by examination of P.W.1 to P.W.13. The minor contradictions as pointed out by the learned counsel for the appellant are not fatal to the case of the prosecution since, the victim-s evidence is the best evidence and she categorically deposed that her hands and legs were tied by A1 and A2 and they snatched the gold chain weighing 3 sovereigns. However, the snatched chain was recovered from



A1 and it was produced before the Trial Court as material object 1 and it was also identified by P.W.1. Subsequently, it was returned to P.W.1.

10. Hence, the Court below rightly convicted the appellant for the offence punishable under Section 397 of IPC and this Court finds no infirmity or illegality in the order passed by the Court below and this appeal is liable to be dismissed.”

13. The trial court had rightly acquitted the present appellant for the offence punishable under Section 307 IPC. However, the appellant was convicted for the offence punishable under Section 397 IPC. The trial court judge had infact analysed each and every aspect of the case and had come to a definite conclusion that the appellant is guilty of the offence punishable under Section 397 IPC. All the observations made by the trial court judge are perfectly in order. Therefore, I do not see any reason to interfere with the same.

14. In the result,

- i. The Criminal Appeal is dismissed.



CrI.A.No.140 of 2016

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- ii. The judgment dated 07.10.2015 passed in S.C.No.174 of 2014 by the learned I Additional District and Sessions Judge, Tirupur, is confirmed.
- i. The accused is directed to surrender before the trial Court viz., the I Additional District and Sessions Court, Tirupur, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.
- iii. This Court places on record its appreciation to Mr.K.V.Muthu Visakan, learned Legal Aid Counsel, for his valuable assistance in deciding this case. The Legal Services Committee is directed to pay a sum of Rs.10,000/- to the said counsel towards his fee.

14.06.2024

Index : yes/no
Speaking /Non speaking Order
mtl



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CrI.A.No.140 of 2016

Copy to :

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai - 104.

To

1. The State Represented by the Inspector of Police, Avinashi Police Station, Tirupur District. (Crime No.356/2013)
2. The I Additional District and Sessions Court, Tirupur.
3. The Public Prosecutor, Madras High Court, Chennai.
4. The Section Officer, Criminal Section, High Court, Madras.



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Crl.A.No.140 of 2016

R.HEMALATHA, J.

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Crl.A.No.140 of 2016

14.06.2024