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Cr1.A(MD)No.82 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	30/10/2024
Date of Pronounced	29/11/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Cr1.A(MD)No.82 of 2020

Rajesh Kumar : Appellant/Sole Accused

Vs.

State Rep. By
The Inspector of Police,
Woraiyur Police Station,
Tiruchirappalli District.
(Crime No.614 of 2014) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of Criminal Procedure Code, to call for the records in SC No.12 of 2018, dated 29/01/2020 on the file of the Chief Judicial Magistrate, Tiruchirappalli and set aside the same.

For Appellant : Mr.N.Anandakumar

For Respondent : Mr.R.Meenakshi Sundaram
Additional Pubic Prosecutor

J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence passed in SC No.12 of 2018, dated 29/01/2020 by the Chief Judicial Magistrate, Tiruchirappalli.



2.The case of the prosecution in brief:-

On 06/11/2014 at about 06.30 pm, when the de-facto complainant was in the house along with her daughter, the accused came to the house, parked his two wheeler and requested for drinking water. When she supplied the same, the accused pushed her down and snatched 10 sovereigns of gold chain at the knife point. When she tried to avoid the same, she sustained injury on her left little finger. Upon the above said occurrence, a case in Crime No.614 of 2014 was registered by the respondent for the offence under section 392 r/w 397 IPC. After completing the investigation, final report was filed for the offence under section 392 r/w 397 IPC and it was taken cognizance in SC No.12 of 2018 by the Chief Judicial Magistrate, Tiruchirappalli District. After completing 207 Cr.P.C proceedings framed the charge for the offence punishable under section 392 r/w 397 IPC.

3.The following charge was framed against the accused:-

On 06/11/2014 at evening 06.30 pm, when the de-facto complainant was in her house at Canara Bank Colony, the accused came in a two



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wheeler and asked water to drink; when she was giving water, the accused suddenly snatched the Thali chain at the knife point and assaulted with knife on the left hand index finger and ran away with chain and thereby, the accused committed the offence under section 392 r/w 397 IPC.

4.To that charge, the accused pleaded not guilty and claimed to be tried.

5.During trial, on the side of the prosecution, 9 witnesses were examined and 11 documents marked. Apart from that, 3 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.

6.PW1 is the resident of Canara Bank Colony, Trichy. On 06/11/2014 at about 06.30 pm, when she was in the house along with her daughter, the accused came to the house, parked his two wheeler and requested for drinking water. When she supplied the same, the accused pushed her down, snatched 10 sovereigns of gold chain at the knife point. When she tried to void the same, she sustained injury on her index finger. She raised alarm. When the neighbours gathered, the accused fled away from that place in his two wheeler. She went to Rathna Nursing Home, Trichy



and informed the occurrence to her husband. After that, went to the Woraiyur Police station and lodged a complaint under Ex.P1.

7.The complaint was received by PW9 who is working as Inspector of Police, Thirukattupalli, Thanjavur District. On 06/11/2014 at about 08.00 pm in the evening, he received the complaint from PW1, registered a case in Crime No.614 of 2014 for the offence under sections 392 r/w 397 IPC, submitted the original FIR to the Court and copies to the concerned higher officials. He visited the place of occurrence and in the presence of the witnesses, he prepared the observation mahazar and rough sketch under Exs.P2 and P8, recorded the statement of witnesses. On 07/11/2014 at about 04.00 pm, when he was engaged in vehicle check up, on suspicion, he intercepted the accused and made an enquiry. He gave voluntary confession, admitting the guilt and recorded the statement in the presence of the witnesses. In pursuance of the disclosure statement, the accused handed over the knife, two wheeler and the chain robbed from PW1. He seized the chain, two wheeler and knife under recovery mahazar Ex.P10. The accused remanded to custody and submitted the material objects to the Court under Form 95 and later, recorded the statement of the other witnesses, completed the investigation and filed a final report on 30/09/2015 charge



sheeting the accused for the offence punishable under section 392 r/w 397 IPC.

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8.PW2 is the husband of PW1. He received the information from his daughter about the occurrence and immediately went to the house and took up PW1 to the hospital for treatment and later to the police station.

9.PW3 and PW6 were present in the place of occurrence when the Investigating Officer visited the place of occurrence, prepared the parvai mahazar and rough sketch.

10.PW5 is the neighbour of PW1. She corroborated PW1 regarding the occurrence to some extent.

11.PW7 was present when the police enquired the accused and when the accused gave confession statement and recovery of the two wheeler, chain and etc. facts.

12.PW8 is the daughter of PW1 and PW2. She corroborated PW1 about the occurrence.

13.After closure of the prosecution evidence, When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.



14. On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the accused guilty of offences under section 392 r/w 397 IPC and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.500/- in default to undergo one month simple imprisonment.

15. Against the judgment of conviction and sentence passed by the trial court, this criminal appeal is preferred by the accused as appellant.

16. Heard both sides.

17. The learned counsel appearing for the appellant would submit that no identification parade was conducted by the Investigating Officer after the occurrence; PW4 has not supported the case of the prosecution; PW7 was working under PW2; so, his evidence need not be considered; PW5 has stated during the course of investigation that PW1 was having jewels at that time; To show the injury sustained by PW1, no Medical Officer was examined. So, these things were not established by the prosecution; The colour of the knife as spoken by PW3 differs from MO1 marked before the trial court. In short, according to him, only the offence under section 392 IPC if at all can be made attracted and not the offence under section 397 IPC.



18.Per contra, the learned Additional Public Prosecutor would submit that even though, there was no identification parade by the Investigating Officer, identification of the accused was established by the prosecution during the course of the trial. Identification of the accused during the course of trial is permissible under law. So, the contention on the part of the appellant is not correct.

19.As mentioned in the preamble portion, PW1 is the injured and the victim. She has stated that on the particular date of the occurrence, the accused under the pretext of requesting drinking water at the knife point snatched 10 sovereigns of gold chain. She tried to protect herself from snatching the chain, she sustained injury on the left hand little finger. She identified the accused during the course of the trial process. She identified MO1 which was returned to her by the court, the vehicle which was used by the accused during that time is also identified by her which was marked as MO3. During the course of cross examination, nothing was brought on record to discredit her evidence. Her evidence is supported and corroborated by her daughter PW8. She has stated that the accused was the person who snatched the chain from PW1 and causing injury. Nothing has been brought on record, even to discard her evidence. The evidence of PW1 and PW8 are cogent and



natural to the point. Absolutely, there is no motive between PW1 and PW8 to implicate the accused falsely. Dock identification made by PW1 and PW8 regarding the occurrence and involvement of the accused is sufficient. So, the mistake committed by the Investigating Officer in not arranging the test identification parade may not be taken as a point in favour of the accused.

20.Regarding the injury, no doubt that the Medical Officer who treated PW1 was not examined. No document was produced by the prosecution to show the nature of the injuries suffered by PW1. But that does not affect the case of the prosecution and for rejecting the evidence of PW1 and PW8.

21.The occurrence was spoken by the neighbour namely PW5. She has stated that on 6/11/2014 at about 06.00 pm, she was sitting in front of the house and talking. After sometime, she went to her house and later, at about 06.30 to 07.00 pm, PW1 and PW8 raised noise, she immediately went to PW1 house, at that time, she found PW1 with bleeding injury on her left hand little finger. When she enquired PW1, she has stated about the robbery. During the cross examination, she has stated that she did not witness the occurrence, on hearing the noise only, she went to that place. When the police came to that place of



occurrence, the two wheeler was available there and PW1 was having a broken chain. This was projected by the appellant stating that the occurrence itself is not believable. PW1 was in possession of the chain. It can be taken only as a minor contradiction. Whether this is correct or not, can be verified by perusing the evidence of the Investigating Officer and the independent witnesses, who were present when the accused was arrested by the Investigation Officer, recovery, etc, facts.

22.PW7, as mentioned in the preamble portion, stated that on 07/11/2014, she was travelling near the check post at about 04.45 pm, the police in the course of their vehicle check up, intercepted the accused and according to his confession statement, the two wheeler, knife and 10 sovereigns of gold chain were recovered and he signed in the confession statement and recovery mahazar. He identified the chain and as mentioned above, identified the accused also. So, his evidence is corroborated by the Investigating Officer namely PW9. I find no reason to discard the evidence of PW7.

23.As mentioned above, it is the contention of the appellant that PW7 is working under PW2. PW7 admitted the above fact that he is working under PW2. Simply because, he is working under PW2, his evidence cannot be disbelieved.



24.From the evidence of PW7 and the Investigating Officer, it stands established that based upon the confession statement of the accused, MO1 to MO3 were recovered. So, the contradiction elicited in this regard from PW5 may not assume any importance.

25.PW2 is the husband of PW1. As mentioned above he arrived at, after getting information from his daughter. He has stated that when he arrived the house, he found bleeding injury on the left hand little finger of PW1. Even though, he was not the eye witness to the occurrence, the injury suffered by PW1 in the occurrence stands established. So, the contention on the part of the appellant that the injury was not be established by the medical witness and so the offence under section 397 IPC is not made out is not at all acceptable.

26.The offence of this nature requires no sympathetic consideration, since the knife was used by the accused in the course of the commission of robbery and caused injury to PW1. The conviction and sentence passed for the offences under section 392 r/w 397 IPC by the trial court is perfectly legal which requires no interference.



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27.For all these reasons stated above, this criminal appeal is **dismissed**, confirming the judgment of conviction and sentence passed by the trial court.

29/11/2024

Index : Yes/No
Internet : Yes/No
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To,

- 1.The Chief Judicial Magistrate,
Tiruchirappalli.
- 2.The Inspector of Police,
Woraiyur Police Station,
Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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