



Crl.A.(MD)No.312 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.03.2024	22.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.A.(MD)No.312 of 2016

N.Sikkandar Babu

... Appellant / Sole Accused

vs.

State rep. by the
Inspector of Police,
Rajapalayam North Police Station,
Rajapalayam,
Virudhunagar District.
(Crime No.529 of 2011)

... Respondent / Complainant

PRAYER:- Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to set aside the judgment and conviction passed by the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, in S.C.No.52 of 2012, dated 27.05.2016, and acquit the appellant herein and allow this Criminal Appeal.

For Appellant

: Mr.S.Sivaprakash

For Respondent

: Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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JUDGMENT

This appeal is preferred against the judgment of conviction and sentence, dated 27.05.2016, in S.C.No.52 of 2012, on the file of the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur.

2. The appellant, who is the sole accused tried for the offences under Section 394 read with Section 397 and Section 506(ii) I.P.C., was found guilty by the trial Court and sentenced to undergo five years rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment for the offence under Section 394 I.P.C. and one year rigorous imprisonment and fine of Rs.5,000/-, in default, to undergo three months simple imprisonment for offence under Section 506(ii) I.P.C. Both the sentences were ordered to run concurrently. The period of sentence already undergone by the appellant was ordered to be set off under Section 428 Cr.P.C.

3. The case of the prosecution is that, on 29.07.2011 at about 06.30 a.m., while the de-facto complainant / P.W.1 [Pushpa] was walking along with A.K.D.R. Ladies College, Rajapalayam, towards south to north, the appellant /



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accused came behind her, wrongfully restrained her by showing a Knife and tried to snatch her gold chain. He threatened her to stab, if she fails to give the chain. When the de-facto complainant raised alarm, he forcibly snatched chain, which went into pieces in the struggle between the de-facto complainant and the appellant / accused. While a portion of the chain retained by the de-facto complainant, remaining portion weighing 13.5 grams went in the hands of the appellant / accused. Wielding Knife and threatening the passerby that he will stab them they will come near him, the appellant / accused ran away taking the Auto parked few distance away from the scene of crime. Based on the complaint given by P.W.1, who lost her chain in the incident, the respondent Police registered a case in Crime No.529 of 2011 for the offence under Section 392 I.P.C. on 29.07.2011 at 08.00 a.m. against an unknown person. On further investigation, the respondent Police was able to zero down at the appellant / accused, who was apprehended on 30.07.2011 at 04.00 a.m. during the vehicular check. Based on his confession statement, the broken part of the gold chain, weighing 13.5 grams was recovered. On completion of investigation, Vijayakumar, Inspector of Police [P.W.11], altered the Section of law to Section 394 read with Section 397 and Section 506(ii) I.P.C. and filed the final report.



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3.1. The Auto, which stood in the name of one Mohaideen Basha, the father-in-law of the appellant / accused, was used by the appellant / accused to flee from the scene of crime after committing the crime. The injury sustained by the de-facto complainant was treated by Dr.Geetha [P.W.8] attached to the Rajapalayam Government Hospital and she gave Ex.P.6 Wound Certificate, certifying that the abrasion found on the neck of P.W.1 was simple in nature.

3.2. The occurrence of chain snatching is spoken by the de-facto complainant / P.W.1 [Pushpa]. The chain snatched and recovered from the appellant / accused was later identified by the de-facto complainant in the Court. P.W.2, who is the husband of the de-facto complainant / P.W.1, accompanied his wife to the Hospital for taking treatment of the injury she sustained when her chain was snatched.

3.3. The trial Court appreciating the evidence of P.W.1 to P.W.11 and the documents Exs.P1 to P8 along with Material Objects [M.O.1 to M.O.4], had held the appellant / accused guilty of the offences under Sections 394 and 506(ii) I.P.C. and sentenced him as stated supra.



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4. Being aggrieved, the appellant / accused had preferred the appeal before this Court.

5. The learned counsel for the appellant submitted that the trial Court failed to appreciate the contradictions in the statement made by the de-facto complainant [P.W.1] while narrating the occurrence. The said contradiction renders the prosecution case unbelievable. The alleged incident had occurred on 29.07.2011 at 06.30 a.m. The F.I.R. [Ex.P7] registered by the respondent Police indicates that the complaint received on 29.07.2011 at 08.00 a.m. In Ex.P6 wound certificate issued by Dr.Geetha [P.W.8] to the de-facto complainant, it has been stated that the de-facto complainant was sent to the Hospital along with Memo from the Police Station and P.W.8 has examined the de-facto complainant on 29.07.2011 at 05.15 p.m. Whereas, the de-facto complainant [P.W.1] in her cross examination admits that she went to the Hospital on 29.07.2011 at 09.00 a.m. itself after lodging the complaint, which is contrary to the wound certificate and the evidence of P.W.8, which discloses that she went to the Hospital only in the evening. The falsehood regarding the time of her treatment renders her evidence



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totally unreliable. Apart from this self-contradiction, P.W.2, the husband of P.W.1, in the cross examination, has deposed that he took his wife [P.W.1] to the Hospital at about 03.00 p.m. The said contradiction in the evidence of the husband and wife regarding the visiting time to the Hospital belies the case of the prosecution in toto.

5.1. Regarding the independent witness [P.W.5], who is the witness to the Recovery Mahazars [Exs.P4 and P5], the learned counsel for the appellant submitted that the recovery of the Knife, Chain and Auto under the Mahazars based on the confession of the appellant / accused totally unreliable, since P.W.5 had stated in the cross examination that the confession was obtained only after the recovery. The trial Court erred in fixing the appellant / accused for the alleged incident of chain snatching based on the sole evidence given by P.W.1, who had never identified the appellant / accused and the Auto in the manner known to law. No proper identification parade was conducted. The appellant / accused was shown to P.W.1 in the Police Station after his arrest. The Auto Registration No.TN-67-K-1263 [M.O.1] finds place in the F.I.R. itself. P.W.1 in the cross examination had fumbled to the question that she could not have seen the Auto



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parked about 200 meters away, to note the registration number of it. She admits that she did not note the registration number of the Auto on her own eyes, but she came to know about it from some third party. However, she did not disclose the name of the third party.

5.2. Further, P.W.7 Arunachalam, Manager of Acthaya Finance, Rajapalayam, deposed that the said Auto was purchased by Mohaideen Basha under hire purchase scheme from their Finance Company. After Mohaideen Basha left to foreign, on his behalf, one Shobana [P.W.6], a relative of Mohaideen Basha undertook to pay the installments and had cleared the dues upto 18.07.2012 and she had informed that the Auto is plied by her son-in-law Sikkandar Babu [appellant]. Whereas, the said Shobana in her cross-examination, had deposed that she is plying the Auto engaging drivers and it is not let out for rent either to his son or son-in-law. Pointing out these contradictions, the learned counsel for the appellant submitted that on all force, the case of the prosecution found to be false. However, the trial Court has convicted the appellant overlooking the *lacunae* in the prosecution case.



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6. Per contra, the learned Additional Public Prosecutor submitted that the prosecution was able to prove the guilt of the appellant / accused through P.W.1, who is the victim of the crime. She was able to describe the chain snatcher, who had snatched a part of her gold chain. She was able to identify the vehicle, in which, he fled. These information find part in the earliest document, which is the complaint marked as Ex.P1. The appellant / accused was arrested during the vehicular check. P.W.5, who is an independent witness, had spoken about the arrest and recovery. There is no contradiction or conflict in the evidence of P.W.5, who is the witness for the recovery mahazars and the Investigating Officer. After four years, this witness was examined and he was able to substantially prove the case of the prosecution in respect of arrest, confession and recovery. The ownership of the Auto through P.W.7 and P.W.6 been proved that the finance for the Auto been extended by P.W.7 Finance Company. P.W.6 has taken the responsibility to pay the dues. She is none other than the mother-in-law of the appellant / accused. Thus, the prosecution has proved the link between the appellant / accused and the chain pieces snatched from P.W.1. Therefore, the learned Additional Public Prosecutor submitted that the conviction and sentence imposed by the trial Court may be confirmed.



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7. Heard the learned counsels and perused the records.

8. It is a case of chain snatching during the early hours of the day while the de-facto complainant [P.W.1] was going for her regular walk. The complaint was lodged within two hours of the incident. The chain snatching incident has left two important tell tale evidence. One, a piece of gold chain been retained by the de-facto complainant [P.W.1], who tried to save the chain and the rest of the chain part has gone in the hands of the snatcher, who after snatching the chain, had fled in the Auto parked about 200 meters away from the scene of crime.

9. P.W.1, the victim had specifically deposed that while she was walking from south to north direction, the chain snatcher came behind her, snatched the chain and fled in the Auto parked few distance away from the scene of crime. In the complaint and in the cross examination, there is no contradiction about the direction from which the person, who snatched the chain came. Minor contradiction whatsoever as pointed out by the learned Public Prosecutor, P.W.1, who is not expected such a sudden attack on her, could have failed to recollect her

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memory after four years when she was cross examined. However, the fact remains that her gold chain was snatched and the chain snatcher had fled in the Auto parked few meters away from the scene of crime. She was able to collect the registration number of the Auto from the public nearby. This has been found in her complaint given within two hours of the incident. The Auto is admittedly in the name of the husband of P.W.6, who had purchased it from the Finance Company of P.W.7. P.W.6 is none other than the mother-in-law of the appellant / accused. Though she denies that the Auto was not given to the appellant / accused for rent, the Investigating Officer and P.W.5 had categorically deposed that the Auto was intercepted on 30.07.2011 at 04.00 a.m. during the vehicular check and the Auto was driven by the appellant / accused.

10. A serious doubt raised regarding the identification of the appellant / accused, since the Investigating Officer has not conducted any identification parade and the complaint was against an unknown person. The conduct of identification parade is only to ensure that the investigation goes on the right direction. The identification parade is necessary only if there is any doubt in the minds of the Investigating Officer regarding the perpetrator of the crime. If the



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evidence collected is sufficient to identify the perpetrator of the crime, identification parade need not be conducted. It is to be noted that the identification parade, which is conducted as per Section 9 of the Evidence Act, is not a conclusive proof, but only an enabling process to confirm the identity of the accused. In this case, after recovery of pieces of gold chain from the appellant / accused on his confession, the same has been identified by P.W.1, the owner of the property. The appellant / accused was in the Police custody at that time and she has also identified him as the assailant. While so, this Court finds that in the instant case, omission to conduct the identification parade has no significance.

11. Regarding the contradiction between P.W.1 and P.W.2 about the time of getting treatment, the discrepancy does not shake the fact that P.W.1 sustained injury when her chain was snatched. When that fact is well proved, which is the effect of chain snatching, this Court holds that the finding of the trial Court is sustainable and the same does not suffer from any infirmity or improper appreciation of evidence.



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12. In fine, this Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant / accused by the learned Sessions Judge, Fast Track Mahila Court, Virudhunagar District at Srivilliputhur, in S.C.No.52 of 2012, dated 27.05.2016, stands confirmed.

13. In view of dismissal of this appeal, the bail bond executed by the appellant shall stand cancelled. The appellant shall surrender before the trial Court within 15 days from today, to undergo the remaining period of sentence. Failing which, the respondent Police shall secure him and commit him to prison to undergo the remaining period of sentence.

Index : Yes / No

NCC : Yes / No

smn2

22.03.2024

To

1.The Sessions Judge,
Fast Track Mahila Court,
Virudhunagar District @ Srivilliputhur.

2.The Inspector of Police,
Rajapalayam North Police Station,
Rajapalayam,
Virudhunagar District.

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3. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.312 of 2016

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