



Crl.A.No.183 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.08.2024

PRONOUNCED ON : 9.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.A.No.183 of 2022

P.Rajam

... Appellant / Complainant

Vs.

1.Amose @ Subramani

2.Jeeva

... Respondents / A1 & A2

PRAYER : Criminal Appeal filed under Section 378 (4) of Cr.P.C., to set aside the Judgment dated 23.11.2021 in C.C.No.1021 of 2020, on the file of the learned Judicial Magistrate – II, Alandur.

For Appellant : Mr.K.Shakespeare

For Respondents : Ms.Alamelu Mangai

JUDGMENT

The Appellant, as Complainant, filed a private complaint against the Respondents / Accused under Section 200 Cr.P.C., for offence under Sections 294, 341, 354, 379, 420 and 506(i) IPC., before the learned Magistrate, Metropolitan Magistrate Courts,



Crl.A.No.183 of 2022

WEB COPY

Alandur. The learned Magistrate, after taking sworn statement and recording of witness statement taken the complaint on file, for offence under Section 323 IPC., and thereafter, under Section 254 Cr.P.C., proceeded with the trial. During the trial, P.W.1 and P.W.2 examined and Ex.P1 to Ex.P4 marked. On Completion of the trial, the trial Court, by Judgment dated 23.11.2021, dismissed the complaint, acquitting the Respondents from all charges. Against which, the present Appeal by the Appellant / Complainant.

2. The case of the Appellant / Complainant is that the Appellant and the Respondents are residing in the same area and they are known to each other from the year 2008. In the year 2015, the Respondents approached the Appellant representing that their daughter marriage is to be held within a period of two months and hence, they sought for a hand loan of Rs.1,00,000/-. Considering the relationship as neighbours, the Appellant extended the loan. Despite several months passed by, the loan was not repaid. During March 2017, when the same was questioned, the Respondents abused the Appellant and proclaimed that they will not repay the amount and nothing could be done to them. On 20.03.2020, at about 9.30 p.m., the Respondents pushed the waste



Crl.A.No.183 of 2022

WEB COPY

water in front of the Appellant's house entrance, which was objected by the Appellant and there was wordy quarrel. The Respondents taking advantage that the Appellant's three sons not at home, the 1st Respondent held the Appellant by hair and pushed her to the house of the Respondents and the 2nd Respondent slapped the Appellant. Both the Respondents physically harmed the Appellant causing injuries to the Appellant on the neck and cheek. During the fight, the Appellant's 4 sovereigns of gold chain was cut in two parts, one part, the Appellant held in her hand and other part was found missing. Thereafter, the Appellant gone to Thoraipakkam Police Station, lodged a complaint on 20.03.2017, though CSR 282/2017 assigned, no action taken, thereafter, she sent a representation to the Assistant Commissioner of Police on 25.03.2017 and thereafter too, no action taken. Hence, a complaint was filed before the Judicial Magistrate, Alanndur in C.C.No.2088/2023, thereafter, the same was transferred to the file of Judicial Magistrate-II, Alandur and renumbered as C.C.No.1021 of 2020.

3. During trial, the Appellant examined herself as P.W.1 and marked Exs.P1 to P4 and her son was examined as P.W.2.



Crl.A.No.183 of 2022

WEB COPY

4. On conclusion of the trial, the trial Court acquitted the Respondents. Against which the present Appeal.

5. Mr.K.Shakespeare, the learned counsel appearing for the Appellant / Complainant would submit that the trial Court not considered and analysed the evidence of P.W.1 and P.W.2 in proper perspective, not adverted to Ex.P1 to Ex.P4 in the manner required, on the other hand, drawn an adverse inference on Ex.P3, the Medical Report. The trial Court erroneously framed charges against the Respondents only for the offence under Section 323 IPC., despite in the complaint and evidence, the Appellant clearly stated about missing of part of the gold chain, which was taken by the Respondents. Hence, the offence under Section 379 IPC, ought to have been charged. Further finding that Ex.P3, dated 22.03.2017 is only a medical prescription and not a wound certificate disclosing the injuries, and by misconception discarded the evidence with regard to injuries sustained by the Appellant is not proper.

6. The learned counsel further submitted that the other finding of the trial Court that Ex.P1 and Ex.P4 are contradictory to



Crl.A.No.183 of 2022

WEB COPY

each other and doubtful, is not proper. The Appellant in the complaint as well as in her evidence clearly narrates the happenings on 20.03.2017 and her 4 sovereigns of gold chain had been cut into two, 1-3/4 sovereign of gold chain held by the Appellant and balance 2-1/4 sovereigns was taken away by the Respondents. The Appellant admitted in her evidence that though she took treatment on 20.03.2017 itself, the Medical Report was collected two days latter. P.W.2 is her son, who corroborate the evidence of the Appellant. This being so and when there are ample evidence against the Respondents, the trial Court acquitting the Respondents is not proper. He further submitted that the Appellant filed a petition under Section 259 Cr.P.C., in C.M.P.No.662/2019 to include the charge of theft under Section 379 IPC., but the trial Court without considering the same, dismissed the said application on 15.11.2021, thereafter the Judgment in this case was delivered on 21.11.2021 even without giving sufficient time for the aggrieved Appellant to approach the higher Court. Hence, the learned counsel prayed to set aside the Judgment of the trial Court.

7. Ms.Alamelu Mangai, the learned counsel for the Respondents / Accused would submit that the Appellant and

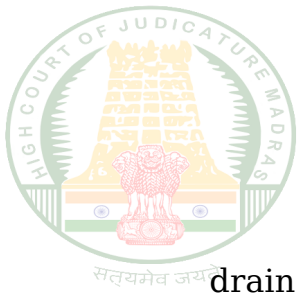


Crl.A.No.183 of 2022

WEB COPY

Respondents are neighbours. There was some dispute between the neighbours. On 20.03.2017, the Respondents cleaned their water tank and drained out the waste water in the street, which was objected by the Appellant, there was a wordy quarrel and abuse and nothing more. The Appellant at one stage state that, when she was alone at home, the Respondents taking advantage of the absence of her 3 sons, the Appellant was attacked by the Respondents. P.W.2 is her son projects as though he has seen the assault. The Appellant initially in her complaint, Ex.P1 states that her four sovereigns gold chain was cut into two during the fight and nothing more. But in Ex.P4, in her complaint to the Assistant Commissioner of Police, she gives an exaggerated version, as though one portion of the gold chain she was holding and the other portion was taken away by the Respondents. The Appellant not produced any broken gold chain, which was in her possession either to the Inspector or Police of before the trial Court.

8. It is also seen that the Appellant, belatedly, at the time of arguments, filed a Petition for including the offence under Section 379 IPC. The trial Court considering the fact that it is a motivated one, rightly dismissed the said application. In CSR, Ex.P2, it is recorded that it was the dispute between the neighbours due to

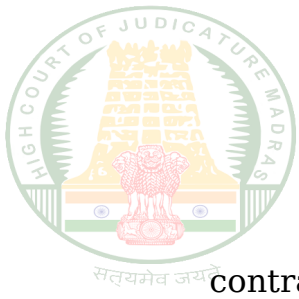


Crl.A.No.183 of 2022

drain of waste water and nothing more. The evidence of P.W.1 and P.W.2 were contrary to each other. Further, Ex.P3 which is projected as Medical Records is nothing but prescription for ordinary medicines and nothing more. The trial Court considering the evidence, analyzed in detail both oral and documents rendered the Judgment of acquittal, which is proper, needs no interference. Hence, the learned counsel prayed for dismissal of the Appeal.

9. I have heard the learned counsels appearing on either side and perused the materials available on record.

10. It is is not in dispute that the Appellant and the Respondents are neighbours and there was some dispute between them. On 20.03.2017 there was dispute with regard to draining of waste water and thereafter, the Appellant lodged a complaint with the Inspector of Police, Thoraipakkam. In the complaint it is only mentioned that her gold chain was cut into two and nothing more. But, in the complaint to the Assistant Commissioner of Police, five days latter, an improved version has been given that her four sovereigns of gold chain was cut into two she could hold only 1-3/4 sovereigns of gold chain and the Respondents took away balance 2-1/4 sovereigns of chain. The evidence of P.W.1 and P.W.2 are



CrI.A.No.183 of 2022

WEB COPY

contrary with each other. The theft of gold chain is an improved and exaggerated version. The trial Court, on proper analysis of both oral and documentary evidence, rightly acquitted the Respondents from the case. The Judgment is a well reasoned one, needs no interference.

11. In the result, the Criminal Appeal stands dismissed, by confirming the Judgment, dated 23.11.2021, passed in C.C.No.1021 of 2020, by the learned Judicial Magistrate-II, Alandur.

09.01.2025

Index: Yes/No
Internet: Yes/No
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CrI.A.No.183 of 2022

To

1. The Judicial Magistrate – II,
Alandur
2. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.183 of 2022

M.NIRMAL KUMAR, J.

vv2

Pre-delivery common judgment made in

CRL.A.No.183 of 2022

09.01.2025