



CrI.A.No.1146 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.09.2025

PRONOUNCED ON : 08.10.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.1146 of 2022

R.Suresh

... Appellant/Accused

Versus

State Rep. by,

The Inspector of Police,

G-5 Secretariat Colony Police Station,

Kilpauk, Chennai – 600 021.

(Crime No.1025 of 2009)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of the learned XXIII Additional District and Sessions Judge, Chennai in S.C.No.19/2018 dated 19.07.2022, convicting the appellant/accused herein for the offences under Sections 392 r/w 397 of I.P.C. and sentenced him to undergo 10 years of rigorous imprisonment and fine of Rs.5,000/- in default to undergo 6 months simple imprisonment for the offences under Section 506(2) r/w 34 of I.P.C. and sentenced him to undergo 2 years of rigorous imprisonment and fine of Rs.2,000/- in default to undergo 3 months simple imprisonment and directed the sentences to run concurrently.



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CrI.A.No.1146 of 2022

For Appellant : Mr.P.Pugalenth

For Respondent : Mr.L.Baskaran
Government Advocate (CrI. Side)

J U D G M E N T

The appellant/accused in S.C.No.19/2018 was convicted by the trial Court by the judgment dated 19.07.2022 for the offences under Sections 392 r/w 397, 506(ii) r/w 34 of I.P.C. and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment for the offences under Section 392 r/w 397 of I.P.C. and sentenced him to undergo 2 years of rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 3 months simple imprisonment for the offence under Sections 506(2) r/w 34 of I.P.C. Aggrieved against the said conviction, the appellant/accused filed this appeal.

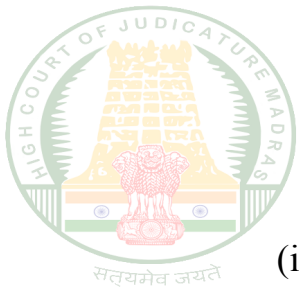
2.(i) The case of the prosecution is that on 15.12.2009 at about 7.30 a.m., the de-facto complainant's husband went out to buy vegetables and the de-facto complainant was alone at home doing some kitchen work. At that



Ctrl.A.No.1146 of 2022

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time, a person, aged about 25 years, had come before the kitchen window and the de-facto complainant enquired him. He informed that he has to go to the first floor to meet the house owner and left. Few minutes later the door was banged. When she questioned why the door is banged, at that time the person in the other side enquired about the de-facto complainant's husband Subramanian and she presumed that some known person had come and opened the door. At that time, two persons pushed her inside, shut her mouth and tied her mouth with towel and also tied her hands with towel. Thereafter she was pushed to the cot and one of them enquired about the jewels in the house. She stated that jewels are in the locker and they asked for a key. Thereafter she stated that the jewels are in the bank locker. Thereafter they pushed her to the room and found Rs.500/- in one bureau and Rs.6000/- in another bureau. Thereafter, confirming that there is no gold in both the bureau, forcibly snatched her Thali chain and removed two bangles from her and attempted to push her down in the floor. Since, she pleaded that she was fat, they made her sit in the chair and tied her to the chair and left the place.



CrI.A.No.1146 of 2022

(ii) Thereafter she managed to release the knot tied to the chair, slowly

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walked out and rang the calling bell of the first floor, where the house owner was there. The house owner and her son/PW3 came down and released the knot tied in the hands and the de-facto complainant informed the happenings to them. Immediately, PW3 called 100-Police and also informed higher police officials about the incident. Thereafter the police came there, de-facto complainant went to the police station, lodged a complaint. PW9 received complaint, registered F.I.R., visited the scene of occurrence, prepared observation mahazar and rough sketch in presence of PW4 and PW5, enquired the persons present in the scene of occurrence. Thereafter kept watch for the accused. On 24.01.2010, PW9 received information about the presence of the accused near the Medavakkam Tank Road. The respondent police went there, caught both A1 and A2, questioned them and thereafter on their confession went to T.Nagar, seized gold jewels, which was pledged in the jewellery shop. PW1 identified the accused in test identification parade. On conclusion of investigation, charge sheet filed. A1 in this case absconded,



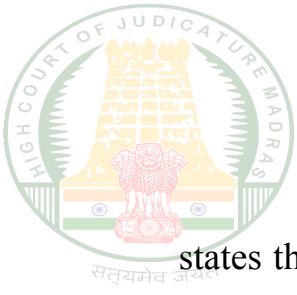
CrI.A.No.1146 of 2022

thereafter the case was split up and the case against A2 was committed to the Court of Sessions.

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3. During trial, on the side of the prosecution PW1 to PW9 examined, Exs.P1 to P17 marked and M.O.1 to M.O.9 produced. On conclusion of trial, the trial Court convicted the appellant as stated above.

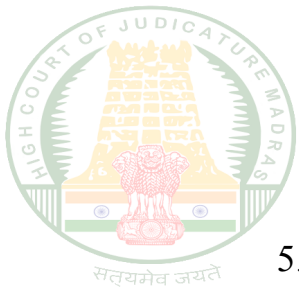
4. The contention of the learned counsel for appellant is that the appellant falsely implicated in this case. There is no acceptable evidence to confirm and prove that the appellant participated in the alleged occurrence. PW1 admits that she identified the accused in the police station on 24.01.2010 and thereafter only in the test identification parade held on 10.02.2010. Hence, the significance of test identification parade goes and the identification has no relevance. PW1 gives contradictory version with regard to the actual occurrence. She states that her both hands tied and mouth was strapped with Towel and she was tied to a chair. But in her evidence, she



CrI.A.No.1146 of 2022

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states that she released the knot and walked out of the house and shouted for help and after ringing the calling bell the landlady and her son came there and the de-facto complainant informed the happenings to them. In this case, the landlady not examined as witness. PW3, son of the landlady an Advocate deposed that he enquired about the happenings, informed the police and sent message to the Home Secretary and thereafter left to his office not even waited for the police to come. PW1 on the other hand submit that she along with her relative/PW5 went to the police station and PW5 had written the complaint and PW1 signed the same. It is to be seen that the house is located just behind the bus stop. PW4, a Tea Shop owner opposite to the house of PW1 confirms that it is the busy place and right from 4.00 a.m. in the morning tea shop is open. The other witnesses is PW6/Auto Driver, who states two persons came and enquired for an Auto. Except for PW1, no other witnesses identified that the appellant alleged to have entered the house of the de-facto complainant and committed robbery using force.



CrI.A.No.1146 of 2022

WEB COPY

5. In this case, PW2 is the husband of PW1. He admits that he came later and he was informed about the incident by PW1. But PW1 does not speak about informing PW2. Hence, the evidence of PW2 becomes hearsay. PW7 is the witness for arrest and confession. His evidence is halfway. His chief is not completed and hence his evidence cannot be considered. PW8 is the Magistrate, who conducted test identification parade. In this case, test identification parade was conducted on 10.02.2020 but PW1 admits that on 24.01.2020, the accused were identified to her in the police station along with her jewels. Further, PW8 admits that he conducted test identification parade for two times, but not asked the accused and others, standing in the row to change their dresses. Hence, the test identification parade is of no consequence. PW9/Investigating Officer admits that on 15.12.2009 PW1 came to the police station at about 9.30 a.m. and lodged a complaint and F.I.R./Ex.P12 registered and on 24.01.2010, he arrested the accused, PW1 came to the police station and identified the accused. He states that after the arrest of the accused, on their confession he went along with PW7 and yet

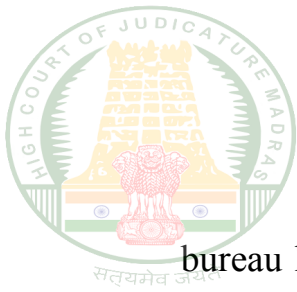


Crl.A.No.1146 of 2022

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another accused to T.Nagar. On the confession of A1, he went to Shree Jewellers and seized M.O.1 and M.O.2 in the presence of one Srinivasan and Arun/PW7. On the confession of A2, he went to Shree Velu Thangamaligai and seized M.O.3 and M.O.4 in the presence of the same witnesses. But neither PW7's evidence is complete nor the James or Lakshmanan, Proprietors of the jewellery examined as witness in this case. Hence, in this case, the identification, recovery not proved.

6.The learned Government Advocate (Crl. Side) submitted that in this case PW1 is the de-facto complainant. On 15.12.2009, she was in her home doing some kitchen work. At that time the appellant knocked the door, PW1 opened the door, she was pushed inside the house and the door was locked. The appellant and another accused tied her mouth and hands with towel, she was forced to open the bureau. There were two bureaus inside the room. From one bureau Rs.500/- taken and from another bureau Rs.6,000/- taken by the appellant and another accused. Thereafter, finding no jewels inside the



CrI.A.No.1146 of 2022

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bureau lockers, she was pushed to the cot and her Thali chain snatched, both bangles forcibly removed and she was also injured, thereafter tied her to a chair and left the house. After some time, she released herself and walked out and rang the calling bell of the first floor. PW3 came down, enquired her and immediately called the police. PW5, the relative was informed, who came and took PW1 to police station and lodged a complaint. PW9 registered F.I.R., visited scene of occurrence, enquired PW4, having a tea shop opposite to the house of the de-facto complainant is the witness to the observation mahazar and rough sketch, thereafter PW8 kept watch over A1 and A2, information received about the presence of accused near Medavakkam Tank Road. PW8 gone there on 24.01.2010, enquired the appellant and another accused. Thereafter, both arrested and admitted committing the offence. On their disclosure, PW8 went to T.Nagar, seized M.O.1 to M.O.4 from Shree Jewellers and Shree Velu Thangamaligai. PW1 came to the police station to identify the jewels. Thereafter test identification parade conducted on 10.02.2020. On conclusion of investigation charge sheet filed in this case.



CrI.A.No.1146 of 2022

WEB COPY

7.He further submitted that A1 in this case absconded and the case against A1 got split up. During trial, all witnesses confirmed to the prosecution case the trial Court analysed evidence of PW1/victim, a lady senior citizen aged about 65 years, clearly deposed about snatching of gold jewellery and tying her to a chair. Since the accused persons were seen in close context, she could identify in the test identification parade as well as in the Court. After the arrest of the accused immediately on the same day, M.O.1 to M.O.4 recovered and seized. PW7 is the witness for confession and recovery. The gold jewels, properties recovered in this case sent through Form-92 and all the documents produced before the Court. The Court, finding identification of the accused, arrest and recovery proved, rightly convicted the appellant.

8.Considering the submissions made on either side and on perusal of the material, it is seen that there is some contradictions with regard to the manner in lodging the complaint. PW1/victim states that PW5/cousin came



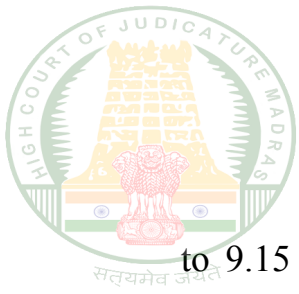
Ctrl.A.No.1146 of 2022

and took her to police station and complaint given. PW3/house owner

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confirms he immediately dialled 100 (police) and also higher police official and left the place. PW1 went to the police station along with PW5. There is some minor variance in the time at reaching the police station. PW1 is clear and categorical that two persons entered the house at about 7.30 a.m., tied her, thereafter snatched her Thali chain and removed bangles and left the place. Thereafter she managed to come out, rang the calling bell of the house owner. PW3 came out immediately, informed the police. These facts clearly proved. The, occurrence and information to the police are within one hour and there is no laxity of time. Further, there is no suggestion to PW1 why she has to falsely enact a drama and for what reason she has to give a false complaint, PW1 clearly given details of age and appearance of the accused.

9. Further it is to be seen that PW1/victim is an elderly person, who would have been in a state of shock, such incident does not happens to everybody. It is a rare incident, which gets embedded in the mind and which cannot be forgotten. Further the accused arrested on 24.01.2010 by 9.00 a.m.



CrI.A.No.1146 of 2022

to 9.15 a.m. They gave a confession. Immediately, within few hours, they

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were taken to T.Nagar, where they identified two jewellery shops. A1

identified Shree Jewellers and A2 identified Shree Velu Thanga Maligai.

James is the owner of Shree Jewellers and one Lakshmanan is the owner of

Shree Velu Thanga Maligai. The arrest, confession recorded in the presence

of PW7. No doubt, the said James and Lakshmanan neither shown as receiver

of stolen property nor as witnesses in this case. But that does not completely

throw away the case of the prosecution. In this case, nothing has been

suggested for what reason the appellant falsely implicated the accused in this

case. The offence under Section 392 of I.P.C. for robbery is proved on the

facts of the case. As regards the conviction of the trial Court for offence

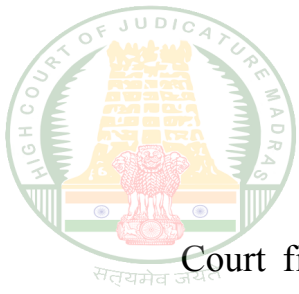
under Sections 392 r/w 397 of I.P.C., this Court finds that there is no attempt

to cause death or grievous injury. PW1 not informed sustaining grievous hurt

or threat to her life and in fact, she was not even referred to any Doctor for

any treatment. Admittedly in this case neither the appellant nor the

absconding accused found to have used any arms or weapon. Hence, this



CrI.A.No.1146 of 2022

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Court finds the conviction of the appellant under Section 392 r/w 397 of I.P.C. is not sustainable. Hence, the appellant's conviction under Sections 392 r/w 397 of I.P.C. is set aside. The petitioner is convicted under Sections 392 r/w 394 of I.P.C.

10. Further the learned Government Advocate fairly submitted that the appellant has got no previous antecedents. There was no case against the appellant except for the above case. The appellant during remand was in prison for 104 days and after conviction by trial Court till his suspension, he was in prison for 1045 days. In total, the appellant was in prison for 1149 days. Hence, the sentence is modified to the period already undergone.

11. In the result, the Criminal Appeal is partly allowed.

08.10.2025

Index : Yes / No

Neutral citation : Yes / No

Internet : Yes/No

Speaking / Non-speaking order

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Crl.A.No.1146 of 2022

M.NIRMAL KUMAR, J.

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To

- 1.The XXIII Additional District and Sessions Judge,
Allikulam, Chennai.
2. The Inspector of Police,
G-5 Secretariat Colony Police Station,
Kilpauk, Chennai – 600 021.
- 3.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

**Pre-delivery Judgment in
Crl.A.No.1146 of 2022**

08.10.2025