



Crl.A.No.1457 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1457 of 2023
and
CrI.M.P.No.19092 of 2023

Srini @ Srinivasan

...Appellant/Accused

vs.

The State Rep by:
Inspector of Police, (L&O)
Kannankuruchi Police Station,
Salem District.
Crime No.48 of 2017

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to set aside the order made in S.C.No.188 of 2017 dated 16.05.2023 on the file of the Hon'ble CJM, Salem and by allowing this Criminal Appeal.

For Appellant : Ms.S.Sujatha

For Respondent : Dr.C.E.Pratap,



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Government Advocate (Crl.Side)

JUDGMENT

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This Criminal Appeal has been filed by the accused/appellant challenging the conviction and sentence imposed upon him vide judgment dated 16.05.2023 in S.C.No.188 of 2017, on the file of the learned Chief Judicial Magistrate, Salem.

2(a). It is the case of the prosecution that on 14.02.2017, at about 11.00 a.m., when the *de-facto* complainant was standing in the street outside her house, the appellant/accused came on a two-wheeler and snatched a gold chain weighing eight sovereigns from her and threatened her with dire consequences and thus committed the offences under Sections 392 r/w 397 and 506 (ii) of the IPC.

(b) On the complaint given by the *de-facto* complainant, a case was registered on 14.02.2017 in Crime No.48 of 2017, for the offence under Section 392 of the IPC. The case was registered by P.W.9/Special Sub Inspector of Police, who prepared the Observation Mahazar/Ex.P2 and Rough Sketch/Ex.P8, and after examination of a few witnesses, handed over



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the investigation to P.W.8/Inspector of Police. P.W.8 took up the investigation on 16.02.2017. During a routine vehicle check-up, police intercepted a two-wheeler ridden by the appellant. The appellant tried to escape and thereafter, the appellant was apprehended and when questioned, he made inconsistent statements. On suspicion, he was further questioned, and he had confessed to the commission of robbery in the presence of P.W.6 and P.W.10. The admissible portion of the confession given by the appellant/accused was marked as Ex.P4. Thereafter, the jewel was seized from the house of the appellant, which was kept in a cupboard. After further examination of all other witnesses, P.W.8 filed the final report for the offences under Sections 392 r/w 397 and 506(ii) of the IPC.

(ii) On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with, and the case was made over to the learned Additional Sessions Judge cum Chief Judicial Magistrate Salem for trial. The trial Court framed charges for the offences under Sections 392 r/w 397 and 506(ii) of the IPC against the accused, and when questioned, the accused pleaded 'not guilty.'



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(iii) To prove the case, the prosecution examined 10 witnesses as P.W.1 to P.W.10, marked 8 documents as Exs.P1 to P8 and marked one material object as M.O.1. When the accused was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. On the side of the defence, no oral or documentary evidence was let in.

(iv) The trial Court after taking into consideration the oral and documentary evidence, acquitted the appellant for the offences under Sections 392 r/w 397 and 506(ii) of the IPC and convicted the appellant for the offence under Section 392 of the IPC and sentenced him to 10 years of rigorous imprisonment and to pay a fine of Rs.2,000/- in default to under one month of simple imprisonment. Challenging the above conviction and sentence, the appellant has filed the instant appeal.

3. Heard, Ms.S.Sujatha, the learned counsel appearing for the appellant, and Dr.C.E.Pratap, learned Government Advocate (Crl.Side),



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appearing for the respondent.

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4. The learned counsel for the appellant would submit that the victim/P.W.1 was examined in Court on 05.09.2022; that no identification parade was conducted and therefore, her identification for the first time in Court, after five years, cannot be believed; that three false cases were foisted against the appellant on the very same day; and that one of the witnesses to the confession and seizure turned hostile and the other witness, P.W.10, has given an exaggerated version, which cannot be believed; and hence, he prayed for acquittal.

5. The learned Government Advocate (Crl.Side) for the respondent, *per contra*, submitted that there is no reason to foist a false case against the appellant or accuse him of possession of eight sovereigns of gold; and that the evidence of P.W.1 and the other witnesses examined on the side of the prosecution would conclusively establish that the appellant is guilty of the offence under Section 392 of the IPC and therefore, the Judgment of the



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trial Court does not call for any interference.

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6. I have carefully considered the rival submissions and perused all the relevant materials available on record.

7. As stated earlier, the prosecution had examined ten witnesses. P.W.1 is the *de-facto* complainant, whose jewel was allegedly snatched by the appellant. P.W.2 is the husband of P.W.1, who corroborates the evidence of P.W.1. P.W.3 speaks about the fact that she came to know that someone had robbed the jewel of the victim/P.W.1. P.W.4 is another hearsay witness. P.W.5 is a witness to the Observation Mahazar/Ex.P.2. P.W.6, a witness to the arrest and the confession, turned hostile. P.W.7 is an eye witness to the occurrence. P.W.8 is the Investigating Officer. P.W.9 is the Special Sub Inspector of Police, who registered the FIR. P.W.10 is the witness to the arrest of the appellant and seizure of the gold jewel from the appellant.



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8. It is seen from the above description of the witnesses that the prosecution case rests on the evidence of P.W.1/victim, P.W.7, who witnessed the occurrence, P.W.10, the witness to the arrest, confession and seizure and the evidence of the investigation officer/P.W.8.

9. P.W.1 had identified the appellant during her examination. Nothing has been elicited in the cross-examination to disbelieve her testimony. Further, P.W.1 had also identified the jewel that was marked as M.O.1. P.W.7 who had witnessed the occurrence, identified the accused in Court. Nothing has been elicited in the cross-examination to disbelieve his version. Hence, the evidence of the victim and that of the eyewitness prove the commission of robbery by the appellant. P.W.6 and P.W.10 were examined to prove the arrest and confession of the accused and the subsequent seizure. Though P.W.6 turned hostile, P.W.10 had supported the prosecution case. The appellant had not cross-examined P.W.10. In such circumstances, this Court is of the view that the prosecution had also established the arrest and confession of the appellant and the seizure made



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pursuant to his confession.

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10. The learned Government Advocate (Crl.Side), on instructions, would submit that the appellant was in custody from 16.02.2017 to 08.11.2017; 27.04.2019 to 30.05.2019 and 01.09.2022 to till date; and that he has suffered more than four years and six months of imprisonment so far.

11. The prosecution had not established that the appellant had not caused any grievous hurt. Hence, the trial Court was right in convicting the appellant for the offence under Section 392 of the IPC. However, considering the nature of the evidence let in and the fact that, apart from three cases, including the instant case, which was registered on the same day, there are no previous cases against the petitioner and the fact that in the other two cases in C.C.Nos.96 and 107 of 2017 on the file of the learned Judicial Magistrate No.IV, Salem, the appellant has already served the sentence of imprisonment of three years, this Court is of the view that the sentence of imprisonment imposed on the appellant can be reduced to the



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period already undergone.

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12. Accordingly, the Criminal Appeal is ordered as follows:

(i) The conviction of the appellant in S.C.No.188 of 2017 by the learned Chief Judicial Magistrate, Salem, vide judgment dated 16.05.2023 for the offence under Section 392 of the IPC is reduced to the period already undergone;

(ii) The fine imposed by the trial Court for the offence under Section 392 of the IPC is confirmed; and

(iii) If the appellant pays the fine amount of Rs.2,000/- for the aforesaid offence, he shall be set at liberty forthwith, unless his presence is required in connection with any other case. But, if he fails to pay the fine amount, the default sentence shall commence from today.

13. With the above modification, the Criminal Appeal is partly allowed. Consequently the connected miscellaneous petition is closed.



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Neutral citation : yes/no

Speaking/Non-speaking order

dk

Copy to:

- 1.The Chief Judicial Magistrate,
Salem.
- 2.The Inspector of Police, (L&O)
Kannankuruchih Police Station,
Salem District.
3. The Superintendent of Prisons,
Central Prison – I, Puzhal.
- 4.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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