



CrI.A.(MD)No.569 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 21.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CrI.A(MD)No.569 of 2023

Pitchaiya

: Appellant

Vs.

State rep. by
The Inspector of Police,
Tenkasi Police Station,
Tenkasi District.
Cr.No.373 of 2013

: Respondent

PRAYER: Appeal filed under Section 374(2) CrPC to call for the records relating to the judgment dated 17.07.2019 in SC.No.121 of 2016 on the file of the learned Sessions Judge, Mahila Needhimandram, Tirunelveli and set aside the conviction and sentence.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.P.Kottaichamy
Government Advocate (CrI. Side)



Crl.A.(MD)No.569 of 2023

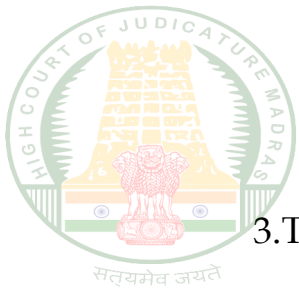
JUDGMENT

WEB COPY

This appeal is filed by the appellant / accused as against the judgment of conviction and sentence imposed by the learned Sessions Judge, Mahila Needhimandram, Tirunelveli, in SC.No.121 of 2016 dated 17.07.2019.

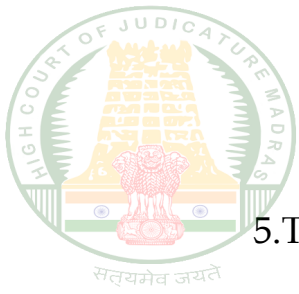
2.The appellant was tried before the Mahila Court for the offence u/s. 452, 342, 326 and 392 r/w 397 IPC. The trial Court, in conclusion of the trial, found the appellant guilty, convicted and sentenced him as follows:-

Section	Punishment	Fine amount	Default
452 IPC	3 years rigorous imprisonment	Rs.10,000/-	6 months simple imprisonment
342 IPC	1 year rigorous imprisonment	Rs.500/-	1 month simple imprisonment
326 IPC	7 years rigorous imprisonment	Rs.10,000/-	6 months simple imprisonment
392 r/w 397 IPC	10 years rigorous imprisonment	Rs.10,000/-	6 months simple imprisonment



3.The prosecution case is that on 26.06.2013 at about 12.30 pm, the accused went to the house of PW1 and asked for drinking water. When PW1 went inside to get water, the accused criminally trespassed into the house of PW1, snatched away her chain and when she protested, he brutally attacked her. PW1 sustained grievous injury and she informed her neighbour / PW2. On information from PW2, PW3 / victim's husband took his wife [PW1] to the Government Hospital, Tenkasi, along with his friend PW4. The Doctor, who examined PW1, referred her for further treatment to the Medical College Hospital, Tirunelveli. However, PW1 was taken to a private hospital of PW8, where she was provided treatment as an inpatient.

4.On the complaint of PW1, the respondent Police registered the case in Crime No.373 of 2013 on 26.06.2013 at about 03.30 pm, conducted the investigation and also filed the final report as against the accused. During the trial, the prosecution has examined 12 witnesses, marked 14 documents and also produced 8 material objects. In conclusion of the trial, the trial Court has found the appellant guilty, convicted and sentenced him as stated supra.

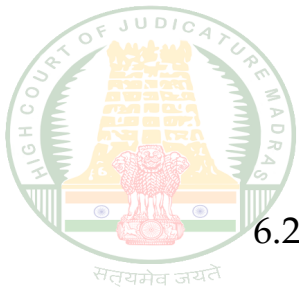


Crl.A.(MD)No.569 of 2023

5. Though the appellant was convicted by the trial Court on 17.07.2019, this appeal was filed only on 18.07.2023. When the application filed by the appellant for suspension of sentence in Crl.MP(MD)No.10327 of 2023 came up for hearing on 28.03.2025, learned Counsel for the appellant submitted that the appellant / accused has already undergone six years imprisonment and therefore, insisted this Court to take up the main appeal for final disposal. Considering this submission made by the appellant's Counsel that the appellant has already undergone a period of six years in prison, the Registry was directed to list the appeal for final hearing.

6. Sum and substance of the arguments advanced by the appellant's Counsel are as follows:-

6.1. PW1 and the accused were known to each other. PW1 and the wife of the accused belong to the same village and they were also known to each other. PW1 has borrowed money from the accused and in order to evade the repayment, she has foisted this complaint with the injury suffered by her while climbing the steps.



6.2.The Doctor [PW7] submitted that all the injuries were only abrasions and that can be seen from the documents Ex.P6 & P7. However, the case has been projected that the injury suffered by the victim is a grievous one, by getting a certificate from a private Doctor [PW8].

6.3.Excepting PW2, there is no other witness to the occurrence. PW2 is also an interested witness.

6.4.Moreover, there are several contradictions between the evidence of PW1 & PW2. PW1, in her evidence, has stated that it is PW2, who informed her that somebody was waiting in the gate. She further stated that PW2 on hearing the sound has come down from the upstairs, witnessed PW1 and informed PW3. However, PW2's evidence is contra to the evidence of PW1. PW2 has not witnessed the accused in the place of occurrence. According to PW2, the victim [PW1], with injury, went to her house and informed that somebody has caused the injuries. Only then, PW2 called PW1's husband and informed about the incident. In the event, if any such occurrence had actually taken place, as projected by PW1, then



PW2 would have witnessed the occurrence, on hearing the alarm. The

evidence of PW1 is not trustworthy, based on the evidence of PW2.

6.5.The victim was said to be in a pool of blood. She was admitted by her husband PW3 in the hospital. The respondent Police has not recovered any blood stained cloth either from PW1 or from her husband, PW3, who admitted her in the hospital.

6.6.There is a delay in FIR reaching the Court. The occurrence was on 26.06.2013 at about 12.30 pm. The complaint was registered on the same day at about 03.30 pm. However, the FIR reached the Judicial Magistrate Court, Tenkasi, only at about 09.30 pm.

6.7.The appellant is not a habitual offender and he is not having any bad antecedents. On hearing the news of foisting the complaint as against him, the appellant has consumed poison and attempted to commit suicide. The evidence of PW12 / Inspector of Police would show that there was an attempt by this appellant by consuming poison, for which, he was admitted



Crl.A.(MD)No.569 of 2023

in the Government Hospital, Tenkasi, for treatment as inpatient for one week.

WEB COPY

6.8.The prosecution case has been exaggerated with some abrasion injuries suffered by PW1, when she fell down from the steps.

Therefore, he prayed for appropriate orders.

7.Learned Government Advocate (Crl. Side) submitted that the victim has suffered grievous injuries. From the evidence of PW8 / Doctor, it can be seen that the injury suffered by the victim are grievous in nature. The discharge summary has been marked as Ex.P9. The victim has suffered grievous injury. The weapon / Aruval [MO6] was also recovered by the investigation agency. The accused has also cut the hair of the victim. It was also recovered from the place of occurrence in MO7. There is no delay in reporting the incident. The victim has suffered grievous injury and it was informed by PW2. On information, PW3 / victim's husband went to the place of occurrence, took the victim in a taxi and admitted her in the hospital. The complaint was lodged on the same day at about 03.30 pm.



Crl.A.(MD)No.569 of 2023

This delay between 12.30 pm and 03.30 pm is reasonable. The FIR has also reached the Court on the same day at about 09.30 pm.

8.He further submitted that the accused has snatched away the victim's chain. A portion of the chain was retained by the victim and that was recovered from PW3. It was marked as MO1, through Ex.P10. The accused was arrested on 07.07.2013 and the remaining portion of the jewel was recovered from the accused in Ex.P4 & P5 in the presence of witness PW6. The accused came to the place of occurrence in a TVS Motorcycle, bearing reg.no.TN-76-K-5099. After the occurrence, the appellant has left the vehicle and ran away. This vehicle was also recovered from the place of occurrence. Therefore, according to him, the prosecution has proved the case sufficiently through the witnesses and also through exhibits and material objects. There is no reason to interfere with the findings of the trial Court and he prayed for dismissal.

9.This Court considered the rival submissions made on either side and perused the materials placed on record.



WEB COPY

10. According to the prosecution, the accused, on the premise of asking water, criminally trespassed into the house of PW1, snatched away her chain and when she protested, he brutally attacked her. In the protest, a portion of the chain was retained by the victim, while the remaining portion was snatched by the accused. The portion of jewel from the victim was recovered from PW3 and marked as MO1. The remaining portion of the jewel was recovered from the accused in Ex.P4 & P5 in the presence of witness PW6.

11. In the incident, the victim [PW1] has suffered several injuries and the Doctor [PW7] who initially attended the victim and issued the Accident Register has noticed as many as 12 abrasion injuries, of which 8 injuries are in and around the head and neck region. The factum of recovery of a portion of jewel from the accused and the parts where the injuries were inflicted, this Court comes to a conclusion that the prosecution has proved its case, *de hors* the minor contradictions in the evidence of PW1 and PW2.



WEB COPY

12. That apart, the prosecution has recovered the accused's motorcycle, bearing reg.no.TN-76-K-5099, from the place of occurrence. The incident took place at about 12.30 pm. The complaint was lodged at about 03.30 pm. The FIR has also reached the Court on the same day at about 09.30 pm. This Court does not find any unreasonable delay either in reporting the incident or the FIR in reaching the Court. Therefore, this Court is not inclined to interfere with the trial Court's judgment in holding the appellant / accused guilty of the offence charged.

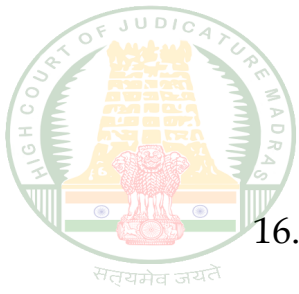
13. Insofar as the punishment is concerned, the trial Court has sentenced the appellant / accused to undergo three years rigorous imprisonment for the offence u/s.452 IPC, one year rigorous imprisonment for the offence u/s.342 IPC, seven years rigorous imprisonment for the offence u/s.326 IPC and ten years rigorous imprisonment for the offence u/s.392 r/w 397 IPC. Apart from that, fine amount and default sentence were also ordered.



WEB COPY

14. Of these offences, Section 392 r/w 397 IPC deals with robbery and attempt to cause death / grievous hurt and its punishment. The maximum punishment period for the offence u/s.392 IPC is ten years [if the offence is committed in a Highway between sunset and sunrise, it is fourteen years]. For the offence u/s.397 IPC, the minimum punishment is seven years. The trial Court has ordered ten years imprisonment for this offence u/s.392 r/w 397 IPC.

15. As per the Accident Register [Ex.P6] and the evidence of the Doctor [PW7], who initially attended the victim, the victim has sustained 12 abrasion injuries, of which the injuries sustained in left hand wrist and left hand fingers are grievous injuries. Considering this nature of injuries, this Court is inclined to modify the sentence imposed for the offence u/s.392 r/w 397 IPC as that of seven years rigorous imprisonment, instead of ten years rigorous imprisonment. All other punishments, including the fine amount and default sentence, ordered by the trial Court remains unaltered.



Crl.A.(MD)No.569 of 2023

16. Accordingly, the following punishment is imposed on the

appellant / accused:-

Section	Punishment	Fine amount	Default
452 IPC	3 years rigorous imprisonment	Rs.10,000/-	6 months simple imprisonment
342 IPC	1 year rigorous imprisonment	Rs.500/-	1 month simple imprisonment
326 IPC	7 years rigorous imprisonment	Rs.10,000/-	6 months simple imprisonment
392 r/w 397 IPC	7 years rigorous imprisonment	Rs.10,000/-	6 months simple imprisonment

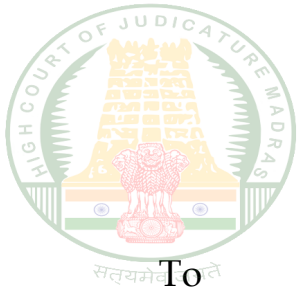
17. As ordered by the trial Court, the sentences shall run concurrently.

The submission made by the appellant's Counsel that the appellant has already undergone six years of imprisonment is recorded. The period of imprisonment already undergone shall be set off under Section 428 CrPC.

With the above modification, this criminal appeal stands partly allowed.

Internet : Yes
gk

21.04.2025



Crl.A.(MD)No.569 of 2023

To

WEB COPY

- 1.The Sessions Judge,
Mahila Needhimandram,
Tirunelveli.
- 2.The Superintendent,
Central Prison,
Palayamkottai, Tirunelveli.
- 3.The Section Officer,
ER / VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD)No.569 of 2023

B.PUGALENDHI, J.

gk

Crl.A(MD)No.569 of 2023

21.04.2025