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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19-11-2026

CORAM

THE HON'BLE MR.JUSTICE D.LINGESWARAN

Crl.A(MD) No.356 of 2019

CNR:{HCMD010716452019}

Malapar alias Shajahan

..Appellant/Sole Accused

Vs

The Inspector of Police
Kulithalai Police Station,
Karur District,
Cr No.646 of 2015

..Respondent

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the learned Additional Sessions Judge, Karur made in S.C.No.75 of 2017 dated 31.05.2019.

For Appellant :Mr.M.Suresh

For Respondent :Mr.A.Robinson
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is directed against the judgment of conviction and sentence passed by the learned Additional Sessions Judge, Karur, in S.C.No.75 of 2017, dated 31.05.2019.

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The case:

2. The prosecution case, in brief, is that on 17.09.2015, at about 22.00 hours, the appellant trespassed into the house of the defacto complainant with the intention of committing robbery. Finding her alone in the house, he allegedly snatched her gold chain. When she resisted and held on to the chain, the appellant struck her with a small grinding stone (குழவிக்கல் - P.M.O.4) on her forehead and cut her hand with a knife (P.M.O.5), bit her on the shoulder and back. He thereafter escaped with the piece of chain (P.M.O.1), which contained gold coins (kasu-P.M.O.2) and gold tubes (P.M.O.3).

3. The defacto complainant was admitted to hospital on the following day. The Police recorded her statement while she was undergoing treatment and registered a case in Crime No.646 of 2015. According to the Police version, the appellant was arrested on 20.09.2015. Pursuant to his alleged disclosure statement, portions of the gold chain and the articles attached to it were recovered from his possession.

4. On completion of the investigation, the final report was filed

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before the learned Judicial Magistrate No.II, Kulithalai. The case was thereafter committed to the Sessions Court, Karur, and numbered as S.C.No.75 of 2017. It was made over to the learned Additional Sessions Judge, Karur, for trial.

The trial:

5. The trial Court framed charges against the appellant under Sections 449 and 394 of the Indian Penal Code. The appellant pleaded not guilty. The prosecution examined 11 witnesses, marked 13 documents and produced M.O.1 to M.O.5. The defence did not examine any witness or mark any document or material object. On an appreciation of the evidence, the trial Court found the appellant guilty of both charges and imposed the following sentences:

Section	Sentence imposed by the trial Court
Section 449 IPC	Rigorous imprisonment for 10 years and a fine of Rs.500/-, with the default sentence.
Section 394 IPC	Rigorous imprisonment for 10 years and a fine of Rs.500/-, with the default sentence.

The Appeal:

6. Aggrieved by the conviction and sentence, the appellant has

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preferred this appeal.

Arguments:

7. The learned counsel for the appellant assailed the reliability of the identification, the genesis of the prosecution case and the alleged arrest and recovery. It was contended that PW1 had identified the appellant for the first time in Court and that her identification was therefore doubtful. The learned counsel also relied upon certain inconsistencies in the evidence of PWs.1 to 3 and the Investigating Officer. In particular, it was argued that Ex.P1, the complaint, was recorded only on 18.09.2015, while PW1 admitted in cross-examination that the Police had visited the scene at about 23.00 hours on the night of occurrence, questioned her and taken away a portion of the chain along with two coins (kasu) attached to it.

8. The learned counsel further submitted that, according to PW3, the appellant was apprehended while emerging from the house with the stolen chain and was immediately handed over to the police on the night of occurrence. If that version were true, the subsequent claim that the appellant was arrested on 20.09.2015 and that the chain was recovered pursuant to a disclosure statement would be false. The

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defence therefore questioned the genuineness of the arrest, disclosure statement and recovery.

9. Attention was also drawn to Ex.P6, the seizure memorandum, which records the recovery of two pieces of chain weighing 20.4 grams, two coins and two gold tubes (Gnana kulaai) weighing approximately four grams each, the total weight being 27.8 grams. It was argued that the articles allegedly recovered did not tally with account of PW1 that she had handed over a portion of the chain along with two coins to the police. This, according to the defence, further rendered the recovery doubtful.

10. It was lastly contended that the appellant had been falsely implicated at the instance of PW2, the husband of the defacto complainant. The defence relied on the fact that PW1 had allegedly informed the doctor and PW2 that an unknown person had committed the robbery. On the cumulative effect of these circumstances, the learned counsel sought acquittal.

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11. Per contra, the learned Additional Public Prosecutor submitted that the appellant was already known to PW1. In support of that submission, reliance was placed on Ex.P1, in which PW1 had furnished the name of the appellant and place of residence. It was argued that her statement in cross-examination that she was seeing the appellant for the first time in Court could not be read in isolation or detached from the contents of her earliest complaint.

12. The learned Additional Public Prosecutor also relied on the evidence of PW3, who stated that the appellant was known to him and that he had apprehended him while he was attempting to conceal himself in a bush near the house. It was further submitted that PW1 was an injured eyewitness; her injuries were corroborated by the medical evidence; and the defects in the investigation would not, by themselves, discredit otherwise reliable ocular evidence. The prosecution therefore sought confirmation of the conviction and sentence.

13. This Court has carefully considered the rival submissions and examined the evidence and materials on record.

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14. Point for consideration:

Whether the conviction and sentence imposed on the appellant by the trial Court are sustainable in law and on the evidence available on record?

Answer:

Identity of the appellant:

15. The first challenge relates to the identity of the appellant. The record discloses that, in the statement recorded on 18.09.2015 while she was undergoing treatment, PW1 had furnished the name of the appellant and his place of residence. Ex.P1 was proved through PW1 during trial. The defence did not confront her with the specific assertion in Ex.P1 that she had named the appellant and identified his place of residence, nor did it elicit any explanation suggesting that the name had been inserted later or at the instance of another person. The statement that she was seeing the appellant for the first time in Court must therefore be assessed in the context of the entire evidence and not in isolation.

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16. More importantly, the prosecution case does not rest on a fleeting or obstructed observation of a stranger. The occurrence took place inside house of PW1, and she had an opportunity to see the assailant at close quarters during the attack. She sustained injuries in the very occurrence and consistently attributed the assault and robbery to the appellant. Her evidence as an injured witness carries considerable evidentiary weight. Though the status of an injured witness does not make her testimony immune from scrutiny, the defence has not brought out any convincing reason for her to falsely implicate the appellant.

17. The suggestion that PW1 was acting under pressure from PW2 was denied. No material was elicited to establish either the alleged pressure or the reason why PW1 would substitute the real offender with the appellant. A mere suggestion, unsupported by evidence or by circumstances emerging from the record, cannot displace otherwise credible testimony. The fact that PW1 identified the stolen jewel by referring to the shop initials printed on the chain provides an additional circumstance supporting her account of the robbery.

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Police story Vs. version of PW3:

18. The evidence of PW3 requires separate consideration because it differs materially from the police version regarding the apprehension of the appellant and the recovery of the stolen property. PW3 stated that he caught the appellant when the latter came out of the house and attempted to hide in a bush nearby. He further stated that he secured the chain and handed the appellant over to the police on the night of occurrence. When questioned, PW3 affirmed that he had given this version to the police as well.

19. Once PW3 affirmed that he had made the said statement to the police, the proper course for the defence, if it intended to contradict him by relying on an omission or inconsistency in his former statement, was to draw his attention to the relevant portion and thereafter prove the contradiction in the manner required by Section 145 of the Indian Evidence Act, 1872. In the present case, although PW3 affirmed that he had made the statement, the relevant matter was not put to the Investigating Officer for the purpose of proving the alleged contradiction. Consequently, the alleged inconsistency between

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testimony of PW3 and his former statement before Police was not duly proved. The Court must, therefore, assess testimony of PW3 as it stands in evidence, while keeping in view the other circumstances on record.

20. The difference between account of PW3 and the police version undoubtedly exposes a serious defect in the investigation and creates doubt about the official account of the arrest of the appellant on 20.09.2015 and the subsequent recovery said to have been made pursuant to a disclosure statement. The discrepancy in the description and quantity of the articles recorded in Ex.P6 also calls for caution. This Court is not prepared to treat the police version regarding the arrest and recovery as an independently reliable circumstance without resolving those discrepancies. However, the weakness of the alleged recovery does not automatically render the entire prosecution case false. The central question remains whether the trustworthy oral evidence establishes the participation of the appellant in the occurrence beyond reasonable doubt.

Evidence of PW1:

21. On that question, evidence of PW1 is direct and arises from

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her personal experience of the occurrence. She sustained injuries during the robbery, and her account receives support from the evidence of PW3, who spoke to the apprehension of the appellant in the immediate aftermath of the occurrence. The medical evidence of PW6 and Ex.P7 corroborates the fact that PW1 had sustained injuries of the nature spoken to by her. The medical evidence is not, by itself, proof of the identity of the assailant; its significance lies in its consistency with the occurrence described by PW1.

Defective Investigation:

22. The defence has rightly highlighted the defects in the investigation. The police ought to have recorded the earliest version accurately, documented the steps taken at the scene, and explained the apparent difference between account of PW3 and the subsequent arrest and recovery records. Such lapses cannot be condoned. Nevertheless, a defective investigation is not, by itself, a ground to acquit an accused where the substantive evidence of reliable witnesses establishes the charge. In ***Karnel Singh v. State of Madhya Pradesh*** (1995) 5 SCC 518, the Hon'ble Supreme Court recognized that an omission or lapse in investigation does not necessarily result in the failure of the prosecution case when the evidence of the witnesses is otherwise trustworthy. In

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Arvind Kumar @ Nemichand and Others Vs. State of Rajasthan (2021 SCC Online SC 1099) and ***C.Muniappan Vs. State of Tamil Nadu*** (2010 (9) SCC 567), it was held that the Courts must examine the reliability of the prosecution evidence and whether any investigation lapse affected the process of finding the truth.

23. The Court must, however, distinguish between declining to rely on a doubtful investigative procedure and affirmatively finding that the Police fabricated the entire case. The evidence on record justifies the former conclusion; it does not require the latter. The discrepancies surrounding the formal arrest and seizure weaken those particular circumstances, but they do not displace the credible and mutually supportive evidence of PW1 and PW3 concerning the occurrence and the involvement of the appellant.

Conclusion:

24. Having regard to the injured eyewitness account of PW1, the corroborative evidence of PW3, and the medical evidence supporting the factum of the assault, this Court finds no sufficient reason to reject the core prosecution case. The defence has not demonstrated that the

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discrepancies identified in the investigation create a reasonable doubt about the identity or participation of the appellant. The prosecution has therefore proved the charges beyond reasonable doubt. The conviction is liable to be affirmed.

Sentence:

25. Turning to the question of sentence, the learned Additional Public Prosecutor submitted that the appellant was involved in three other criminal cases. Crime No.72 of 2013 was registered before the occurrence in the present case, while Crime Nos.67 of 2022 and 1596 of 2022 were registered thereafter. It was stated that robbery was the principal allegation in those cases; one had ended in acquittal and the other two were pending.

26. The pendency of a criminal case, without a finding of guilt, cannot be treated as proof of criminal antecedents or used to aggravate the sentence in the present case. Equally, a case which has ended in acquittal cannot be relied upon as an adverse antecedent. The mere registration of Crime No.72 of 2013, without material establishing a conviction or other legally relevant finding, is also insufficient to treat

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the appellant as a habitual offender. The sentence must therefore be determined primarily on the basis of the gravity and circumstances of the offence proved in this case and the relevant mitigating circumstances.

27. The offences are undoubtedly serious. The appellant entered the house of a woman at night, attacked her when she resisted the robbery, and caused injuries with a knife and other objects. The victim was entitled to security in her own home, and the violence used to overcome her resistance aggravates the seriousness of the occurrence. At the same time, the sentencing exercise must remain individualized and proportionate. The trial Court imposed ten years of Rigorous Imprisonment for each offence, though the statutory provisions permit a lesser term. Having regard to the circumstances of the occurrence, the age of the appellant as placed before this Court, and the overall facts of the case, this Court is of the view that a term of three years of Rigorous Imprisonment for each offence would meet the ends of justice. The reduction is not founded on the subsequent cases, nor does it dilute the seriousness of the crime; it reflects an assessment of the appropriate proportionate sentence on the material legally available.

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Result:

28. In the result, this Criminal Appeal is partly allowed. The conviction of the appellant under Sections 449 and 394 of the Indian Penal Code is confirmed. The sentence of ten years of Rigorous Imprisonment imposed for each offence is reduced to three years of Rigorous Imprisonment for each offence. The fine imposed for each offence, together with the respective default sentences, is maintained. The substantive sentences shall run concurrently. The appellant is entitled to the benefit of set-off under Section 428 of the Code of Criminal Procedure, 1973. The bail bond of the appellant is cancelled. The appellant is directed to surrender before the Trial Court to undergo the remaining period of sentence within a week from today, failing which, the Trial Court shall issue a non bailable warrant to secure him and execute the sentence.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The learned Additional Sessions Judge, Karur.

2. The Inspector of Police
   Kulithalai Police Station,
   Karur District.

3. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai

Copy To :
Section Officer (VR Section)
Madurai Bench of Madras High Court

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D.LINGESWARAN, J.

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