

CRL.A(MD) No.280 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 28.08.2026

Pronounced on : 01.10.2026

CORAM

THE HONOURABLE MR.JUSTICE S.KARTHIKEYAN

CrL.A(MD) No.280 of 2018

Velmurugan

... Appellant / Sole Accused

Vs.

State through
The Inspector of Police,
Town Police Station,
Tirunelveli District.
In Crime No.97 of 2015.

... Respondent / Complainant

Prayer: This Criminal Appeal has been filed under Section 374 of Cr.P.C, to call for the entire records connected to the judgment in S.C.No. 40 of 2016 on the file of the Mahila Court, Tirunelveli, dated 07.03.2018 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Manickaraj

For Respondent : Mr.A.Robinson
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal is directed against the judgment of conviction and sentence passed by learned Sessions Judge, Mahila Court,



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Tirunelveli, in S.C.No.40 of 2016 dated 07.03.2018.

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2. On careful perusal of the records, it is found that, on getting information from Tirunelveli Medical College Hospital, Head Constable 987 visited the hospital on 17.02.2015 and recorded Ex.P1 complaint statement of PW1. Based on the said complaint statement, PW6 Muthukrishnan, the then Special Sub-Inspector of Police, Tirunelveli Town Police Station, registered Ex.P7, First Information Report in Crime No.97 of 2015 for the offences punishable under Sections 448, 294(b), 323, 307, 380(NH) and 506(ii) of IPC r/w. Section 4 of TNPWH Act. He forwarded the said information to the learned Judicial Magistrate No.4, Tirunelveli, along with the complaint statement and other copies to his higher authorities and he forwarded a copy of the case diary for investigation to the higher officers.

3. PW9 Isakki, the then Inspector of Police, Nellai Town Police Station, had taken up the investigation of the said case on 17.02.2015 and at around 10.30 p.m, he visited the place of occurrence and prepared Ex.P3 Observation Mahazar and Ex.P10 Rough Sketch in the presence of witnesses PW4 Murugan and Vignesh Natarajan. He recovered M.O.1 blood-stained cement stone under the cover of Ex.P4 athatchi in the



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presence of the same witnesses. Thereafter, he examined the Mahazar witnesses and the witnesses to the occurrence and recorded their statements. On 22.02.2015 at around 6.15 p.m., he arrested the Accused at the entrance of Nellaiappar Temple in the presence of witnesses Sangarasubbu and Poovaraghavan. The Accused volunteered to give a confession, which he recorded in the presence of the same witnesses. Based on the confession given by him, he recovered the gold chain, which was concealed in the shop of the Accused situate at Kulakkadai Bazaar. He recovered the same under the cover of Ex.P12 athatchi. He brought the Accused to the police station and caused him to be remanded to judicial custody. He examined the confession witnesses and recorded their statements. On 14.05.2015, he examined the Special Sub Inspector of Police Muthukrishnan, who registered the First Information Report and the doctor who had treated the victim and recorded their statements. On completion of the investigation, he laid the final report before the Judicial Magistrate.

4. The learned Judicial Magistrate-IV, Tirunelveli, took cognizance of the said final report and issued summons to the Accused. On his appearance, copies of the documents relied on by the prosecution were furnished to the Accused under Section 207 of Cr.P.C. Since the offences



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are exclusively triable by the Court of Sessions, the learned Magistrate

committed the said case to the Principal Sessions Court, Tirunelveli.

Since the offences alleged were committed against a woman, the said case was made over to the Mahila Court, Tirunelveli. The Trial Court framed the charges against the Accused under Sections 448, 354, 307, 326, 392 and 506(i) of IPC. The charges were read over and explained to the Accused, which the Accused denied. Therefore, he was ordered to be tried by the Trial Court. Further, subsequently, the Trial Court altered the charges for the offences punishable under Sections 451, 354, 392 read with 397 and 506(i) of IPC. The Accused was again questioned on the above charges, which he denied.

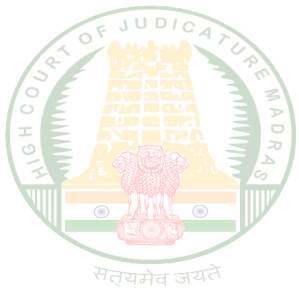
5. On the side of the prosecution, PW1 to PW9 were examined and Exhibits P1 to P12 were marked and M.O.1 to M.O.3 were also marked. Upon closure of the prosecution witnesses, the incriminating circumstances appearing in the evidence were put to the Accused under Section 313(1)(b) of Cr.P.C. The Accused denied them as false and reported that he had witnesses on his side. However, no witnesses were examined on the side of the defence. Therefore, the defence evidence was also closed.



6. After hearing both sides, the Trial Court found the Accused guilty of the offences punishable under Sections 451, 354, 392 read with 397 of IPC and the Accused was found not guilty of the offence punishable under Section 506(i) of IPC. The Accused was sentenced to undergo the sentence as stated below:

Section of Law	Sentence of imprisonment	Fine amount
Section 451 of IPC	To undergo two years Rigorous imprisonment	Rs.1,000/- i/d to undergo six months Simple Imprisonment
Section 354 of IPC	To undergo three year Rigorous imprisonment	Rs.1,000/- i/d to undergo six months Simple Imprisonment
Section 392 r/w. 397 of IPC	To undergo ten year Rigorous imprisonment	Rs.1,000/- i/d to undergo one year Simple Imprisonment

The above sentences were ordered to run concurrently. Aggrieved by the said conviction and sentence, the appellant has preferred the present appeal before this Court. Though the appellant was acquitted from the charge under Section 506(i) of IPC, neither the State nor the victim has filed any appeal.



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7. In this appeal, the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the State/respondent were heard. The Trial Court records were called for and perused.

8. Point for determination:

Whether the judgment of conviction passed by the Mahila Court, Tirunelveli, against the appellant is sustainable?

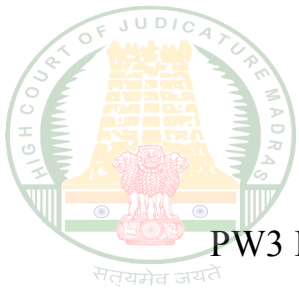
Answer:

9. On careful perusal of the records, it is found that it is the case of the prosecution that on 17.02.2015 at around 14.00 hours, when PW1 was in her house situated at No.10, Lalugaburam, Arasannagar, Tirunelveli Town, the Accused herein trespassed into her house, abused her in filthy language, assaulted her on her mouth and thereby caused simple injury and further intimidated her by saying that he would not leave her alive and by saying, “Die with this”, he attacked her on the back of her head with a cement stone which was used for keeping a grinder. The Accused picked up one of them and attacked her on her head repeatedly, saying, “Die with this.” The entire room became a pool of blood. When she was lying unconscious, he had taken away four sovereigns of gold thali chain, which she wore around her neck. At



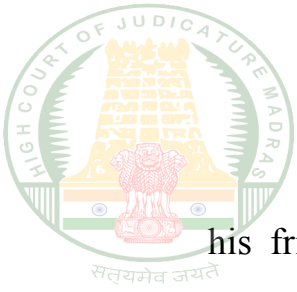
around 3.00 p.m., her husband came back to her house to have lunch. On seeing her unconscious, he had taken her to the hospital in an auto. While proceeding in the auto, an ambulance came. She was taken in the ambulance to the High Ground Hospital and she was admitted to the hospital. When she was in the hospital, the Police had recorded her complaint statement. Since she was not in a position to sign, she affixed her fingerprint. She identified the complaint statement as Ex.P1. The said complaint was attested by PW2, her husband and she identified the bloodstained stone, which was used for attacking her, as M.O.1. She identified four sovereigns of thali chain, which was robbed from her neck, as M.O.2. She further deposed that the dollar depicted with Lakshmi picture, which was received by her along with M.O.2, was melted and a chain was manufactured. She identified the photographs of the scene of crime, which were taken on her husband's cell phone, as M.O.3 series.

10. PW2, the husband of PW1, in his evidence, deposed that the Accused is the husband of his sister Jayalakshmi and is doing goldsmith work. He is also working in the same building where he worked. On 17.02.2015, at around 11.00 a.m., he had gone to his shop as usual and at around 2.00 p.m., when he returned to his house along with his friend



PW3 Rajasekar to have lunch, he found the Accused in front of his house threatening his wife that he would murder her if she revealed the happenings to others. On seeing PW2, he had fled away. PW2 was thinking why the Accused was running from his house and when PW2 and PW3 went into his house, he found his wife lying on the ground in a pool of blood. When he awoke her, she informed him that the Accused came there, asked for a marriage CD and when she had gone to the bedroom, he hugged her. When she pushed him aside, he kissed her on her mouth and attacked her with the stone, saying that she would reveal the happenings to others and therefore, she should not live. Further, he had taken the chain from her neck and fled away. He and PW3 picked up an auto and took her to High Ground Hospital. At the main road, an ambulance came and therefore, she was taken to the hospital in the ambulance. In the complaint statement, he had attested.

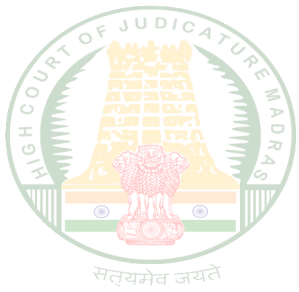
11. PW3 Rajasekar, friend of PW2, in his evidence, deposed that on 17.02.2015, at around 2.00 p.m., he and his friend PW2 came to PW2's house. At that time, the Accused threatened his friend's wife that he would murder her if she revealed the happenings to others. On seeing them, he fled away. Thereafter, he entered the house along with his friend. He found that his friend's wife was lying in a pool of blood. When



his friend questioned his injured wife, she reported that the Accused asked for a marriage CD and when she had gone to pick it up, he hugged her and attacked her on the mouth, attacked her on the back of her head with the stone and snatched four sovereigns of thali chain. He and his friend had taken the injured victim in an auto, and a 108 ambulance came there. They shifted her to the ambulance and took her to the Government Hospital, Tirunelveli. When PW1 gave her complaint statement, he was also present.

12. PW4 Murugan is the witness to Ex.P3 Observation Mahazar and he has deposed about the preparation of observation mahazar and recovery of the cement stone from the scene of crime by the Inspector of Police. PW5 is the witness to the arrest, confession and recovery and he has deposed about the recovery of gold chain under the cover of Ex.P6 athatchi and he identified his signature in Ex.P6.

13. PW6, the Special Sub-Inspector of Police, who registered the First Information Report, has spoken about the receipt of information from the hospital and recording of complaint statement by Head Constable 987 and registration of the First Information Report.



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14. PW7 is the Doctor, who admitted PW1 in the Government Hospital, Tirunelveli. He, in his evidence, deposed that the injured was brought by her husband PW2 Marimuthu and he found the lacerated injury on her back head and a inflammation on her upper lip. The injured had taken treatment between 17.02.2015 to 18.03.2015 for about 20 days. He certified that the injury sustained by PW1 are grievous in nature. In this connection, he has recorded Ex.P8 Accident Register.

15. PW8 Doctor Nagalakshmi, who has given treatment to PW1, in her evidence, deposed that the victim was two months pregnant and she has given treatment to the injury sustained by her on her head and the wound was sutured and it was not healed and the Doctor has suggested plastic surgery, since the victim was pregnant, it was decided to conduct the plastic surgery after three months of pregnancy and sign was obtained from the injured in this regard and on 08.03.2015 the injured was discharged. Ex.P9 is the medical record relating to the treatment given to PW1.

16. PW9 is the Investigation Officer, he has spoken about the investigation done by him, arrest of the Accused, recovery of gold chain based on the disclosure and filing of final report before the jurisdictional



Magistrate.

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17. On careful perusal of the evidence of PW1 to PW3, it is found that the Accused herein is none other than the own sister's husband of PW2, the husband of PW1. PW1 is the injured witness.

18. It is a settled principal of law that the evidence of injured witnesses to be treated in a higher pedestal. The injured witness may have no reason to falsely implicate someone other than the one who has caused injury on her. From the evidence of PW1, it is clear that the appellant herein had entered into her house, asked her to give her marriage CD and when the injured was searching the marriage CD in the bureau, he had hugged her and attempted to misbehave with her and when she pushed him aside, enraged by that the Accused attacked PW1 with stone and caused injury on her back head.

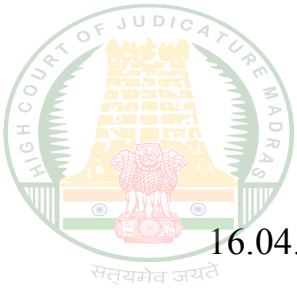
19. On careful perusal of cross examination of PW1, defence has not brought in any circumstances to discredit her testimony. Though the defence had established certain discrepancies in her evidence and her previous statement Ex.P1 they are minor in nature. They are not touching upon the material particulars of the case. Therefore, this Court is of the



considered view that the said minor discrepancies in no way affected the case of the prosecution.

20. However, the defence has brought in one important contraction in the evidence of PW1 from her Ex.P1 complaint statement. In Ex.P1 complaint statement, the victim has stated that when the Accused attacked her, four sovereigns of gold chain was found missing, whereas she in her evidence deposed that when she was unconscious, the Accused herein had snatched four sovereigns of thali chain from her neck. Therefore, the learned counsel for the appellant contended that it is only an improvement from her earlier statement. Therefore, according to the learned counsel for the appellant, the charge of robbery made against the appellant is not proved beyond all reasonable doubts.

21. Further, he contended that PW1 either in complaint statement or in her evidence did not say that the thali chain contains a lakshmi dollar, whereas Form 91(which was not marked before the Trial Court, but available in the record) clearly shows that originally the gold chain was produced in which the Magistrate has signed on 22.02.2015. On 22.02.2015 Form 91 was returned to be produced at working hours along with properties. Thereafter, the properties were re-submitted on

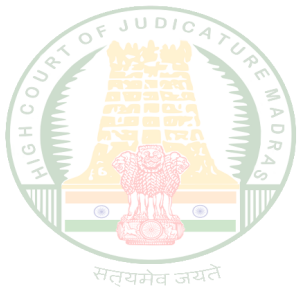


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16.04.2015 and the Police had produced a broken chain, gold string, dollar chain, lakshmi dollar. Ex.P12 athatchi does not contain the said details except it is a gold chain. Therefore, according to the learned counsel for the appellant, the recovery is doubtful. Though the said Form 91 was not marked before the Trial Court, this Court is of the considered view that in order to satisfy the judicial conscience, this court can look into the Form 91 dated 22.02.2015 produced before the Trial Court as it is a matter of record and the Accused himself is relying upon the same.

22. On careful perusal of Form 91, it is found that originally Form 91 dated 22.02.2015 was produced before the Trial Court on 22.02.2015 at about 8.55 p.m., the date on which, the Accused was arrested and the recovery was made vide Ex.P6 Athatchi. In Ex.P6 in Serial No.5, it is mentioned that the property recovered is four sovereigns of gold thali chain and in Form 91 also, it was mentioned that a gold chain of four sovereigns. At the back of the said Form 91, there was a written endorsement made by the learned Magistrate that to produce at working hours along with property. The said form was re-submitted only on 16.04.2015, at that time, it was found that after signature of the learned Magistrate in Column No.1, four items were mentioned as below:



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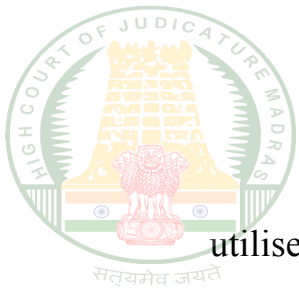
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1. One gold murukku chain -28.280 grams
2. Broken chain-2.250 grams.
3. Gold string – 2.200 grams
4. Dollar contains lakshmi picture – 0.980 grams

The said properties were remanded in P.R.No.66 of 2015. Therefore, there are discrepancies between the properties said to have recovered and the properties said to have produced. Further, it is curious to note that PW1 in her chief examination did not identify the other three items except the thali chain, which was marked as M.O.2.

23. Though PW1, in her chief examination, has claimed that she had melted the dollar containing the Lakshmi picture and made the gold chain, there is no corroborative piece of evidence in this regard. Therefore, on a cumulative reading of the above evidence, it is found that the case of the prosecution that the thali chain of PW1 was snatched away by the appellant becomes doubtful as it is an improved version of the prosecution.

24. The learned counsel for the appellant contended that the chain which was found missing in the said occurrence was later identified and



utilised for the purpose of strengthening the case, as it was recovered from the disclosures made by the appellant herein. In this connection, the evidence of the witnesses to the recovery needs to be seen.

25. One Sankarasubbu, PW5, was examined on the side of the prosecution as a witness to the recovery. The other witness to the recovery was not examined before the Trial Court. The PW5 has deposed, in his evidence, that the Accused herein had produced the chain from the shop and he has not stated anything that it was taken from the concealed place and produced to the Investigation Officer.

26. It is relevant to note here that the appellant is also a goldsmith. Had the appellant robbed the chain, he could have easily melted it and could have manufactured other jewels. Therefore, he had no reason to keep it in his shop. Unless the recovery is made from a concealed place, it cannot be stated that it is a fact discovered. Therefore, this Court is of the considered view that there is sufficient force in the argument of the learned counsel for the appellant.

27. In view of the said position, this Court is inclined to extend the benefit of doubt to the appellant herein. Therefore, the finding of the

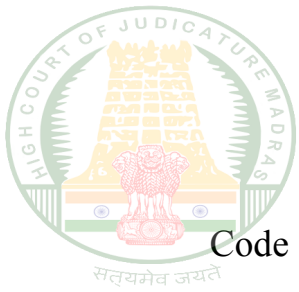


Trial Court in this regard needs to be set aside.

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28. Further, the learned counsel for the appellant contended that though originally a charge was framed for the offences punishable under Sections 307 and 326 of IPC, subsequently, the said sections were altered and a charge under Section 392 read with Section 397 of IPC was framed. Therefore, the learned counsel for the appellant contended that robbery being a major offence, the appellant can be convicted for the minor offence, without there being a charge.

29. In this connection, it is useful to refer to the decision of this Court In ***Re:Raman Ambalam and others, reported in MANU/TN/0038/1951***. This Court has considered the legal position that Section 397 covers two different offences, namely, the offence of robbery and the offence of voluntarily causing grievous hurt with a dangerous weapon. Likewise, Section 394 of the IPC is made up of robbery and voluntarily causing hurt. Therefore, there is no defect whatsoever if the Court has convicted the Accused of the graver offence for one existing part of that offence. Further, this Court, in the said case, has gone into Sections 237 and 238 of the Code of Criminal Procedure, 1893 which is analogous to Sections 221 and 222 of the code of Criminal Procedure



Code 1973. Therefore, though the offence of robbery was not proved, since the appellant was not charged for the offences punishable under Section 392 r/w. 394 of the IPC, wherein grievous hurt is also one of the constituents of the said offence, this Court is of the considered view that the appellant can be punished for the offence of hurt or grievous hurt. The learned counsel for the appellant further contended that the grievous hurt is defined under Section 320 of IPC as below:

320. Grievous hurt.—

The following kinds of hurt only are designated as “grievous”:—

(First)— Emasculation.

(Secondly)— Permanent privation of the sight of either eye.

(Thirdly)— Permanent privation of the hearing of either ear,

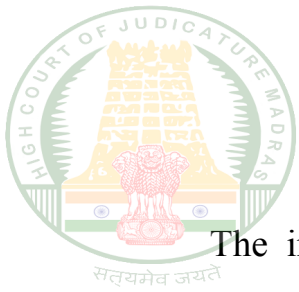
(Fourthly)— Privation of any member or joint.

(Fifthly)— Destruction or permanent impairing of the powers of any member or joint.

(Sixthly)— Permanent disfiguration of the head or face.

(Seventhly)— Fracture or dislocation of a bone or tooth.

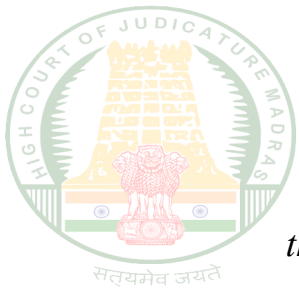
(Eighthly)— Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.



The injured did not suffer any fracture in view of the action of the appellant. The injured suffered infection and, therefore, she was treated in the hospital beyond the period of 20 days, which was beyond the control of the appellant. Therefore, according to him, the injury sustained by PW1 is not grievous hurt but only a simple hurt. In this connection, it is useful to refer to Section 320 of the IPC, as cited supra.

30. On careful perusal of the said provision, it is found that the injury sustained by PW1 does not fall under any of the clauses from the first to the seventh and it may fall under the eighth clause, that “any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.” In this connection, it is useful to refer to decision of the Apex Court in **Mathai vs State Of Kerala reported in 2005 (3) SCC 260** wherein the Hon'ble Apex Court observed as below:

“Some hurts which are not like those hurts which are mentioned in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for



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the sentence of grievous hurt can be passed, one of the injuries defined in [Section 320](#) must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.”

Clause eight contains two parts. The first one is any hurt which endangers life. The Doctor who admitted the victim and the Doctor who treated the victim were examined as PW7 and PW8. Ex.P8 Accident Register was recorded by PW7 at the time of admission of PW1. Ex.P8 discloses that there was a 3 X 3 cm laceration (NC) at the back of the head and swelling on the upper lip. The Accident Register further discloses that MRI-Brain was done and there was no significant abnormality in the brain. There was no separate wound certificate given by the Doctor disclosing the reason for his opinion. The Doctor has simply stated in his opinion that the injury is grievous in nature. Whether the injury is grievous or simple should be decided by the Court in the light of Section 320 of IPC and the opinion of the Doctor is not decisive as it was rendered only in a clinical point of view. Reliance is placed upon the decision of this Court in ***Re:Joseph @ Duraian reported in Manu/TN/0440/1984***. Neither PW7 nor PW8 had deposed that the injury

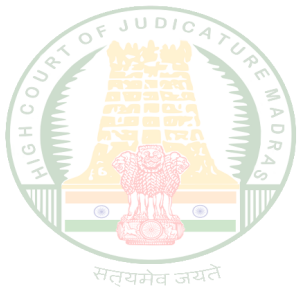


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sustained by PW1 is capable of endangering her life. Therefore, it does not fall under the first part of the eighth clause.

31. The second part is “which causes the sufferer to be during the space of twenty days in severe bodily pain or unable to follow his ordinary pursuits.” The evidence of PW7 and PW8 is not to the effect that PW1 had suffered severe bodily pain or she was not able to follow her ordinary pursuits during the 20 days. The prosecution has not proved that during the 20 days, the victim had suffered bodily pain or was not able to pursue her ordinary pursuits. Therefore, this Court is of the considered view that the injury sustained by the victim does not answer any of the clauses of Section 320 of IPC. Therefore, the injury is simple in nature and the opinion of the Doctor that it is grievous is not supported by any records and therefore, it need not to be given much credence.

32. Therefore, this Court is of the considered view that the appellant herein is not punishable under Section 392 r/w.397 of IPC, instead, he is punishable for the offences under Section 324 of IPC.

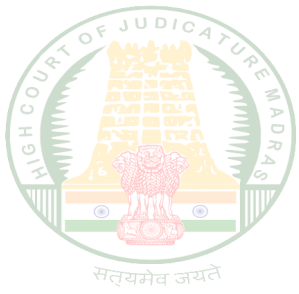


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33. Though the learned counsel for the appellant contended that originally in the case, it was mentioned that the appellant herein attacked PW1 with grinder stone, subsequently, it was changed as if a stone which used for keeping grinder. Therefore, according to the learned counsel for the appellant, the prosecution has failed to prove the weapon said to have used to attack PW1. Therefore, the case would fall only under Section 323 of IPC and not under Section 324 of IPC. Though the argument seems to be attracting, it has no substance.

34. On careful perusal of Ex.P9, it is found that using grinder stone was interpolated at a later point of time. In the complaint statement, PW1 has stated that she was attacked by the grinder stone. However, the investigation officer has recovered MO1 cement stone, which is used for the purpose of keeping the grinder. PW1 has identified the said stone and the same is marked as MO1.

35. On careful perusal of the cross-examination of PW1 by the appellant, the appellant had not disputed that the injury was caused by MO1 stone. Therefore, the said contention of the learned counsel for the appellant is rejected.



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36. Insofar as the offences under Sections 451 and 354 of IPC are concerned, the Trial Court has rightly appreciated the evidence available on record and found the appellant guilty. The appellant has not brought in any circumstances to discredit the evidence of PW1 except a bare suggestion that she and PW3 had illicit intimacy, which was seen by the appellant herein, as a result of which she got afraid, ran into the bedroom, fell down and sustained injuries. Except the said bare suggestion, nothing was brought on record to prove the suggestion. Therefore, this Court is of the considered view that the finding of the Trial Court with regard to Sections 451 and 354 needs to be upheld.

37. Accordingly, this Criminal Appeal is partly allowed. The conviction and sentence in respect of the offence under Section 392 r/w. 397 of IPC are hereby set aside. Instead, the appellant is found guilty of the offence punishable under Section 324 of IPC and hence, he is imposed with three years of Rigorous Imprisonment with a fine of Rs. 10,000/-, in default, to undergo 6 months simple imprisonment. The conviction and sentence imposed by the trial court with regard to the offence under Section 451 of IPC and Section 354 of IPC are upheld. The appellant is directed to undergo the said sentences concurrently. Out of the said fine, a sum of Rs.10,000/- is ordered to be paid as

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compensation to the victim under Section 357(3) of Cr.P.C. The bail bond executed by the appellant is hereby cancelled. The Trial Court is directed to secure the appellant for serving the remaining sentence, if any.

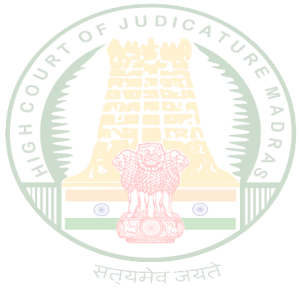
01.10.2026

Index : Yes / No
Internet : Yes/ No

Indu

To:

- 1.The Inspector of Police,
Town Police Station,
Tirunveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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S.KARTHIKEYAN,J

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