

In Re: Thavasi and anr.

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Court : Chennai

Decided On : Apr-27-1971

Reported in : 1972CriLJ445; (1971)IIMLJ231

Judge : K.N. Mudaliyar, J.

Appellant : In Re: Thavasi and anr.

Judgement :

K.N. Mudaliyar, J.

1. The two appellants (Thavasi and Mayandy) seek to question their convictions for offences under sections 457, 393, 394 and 392 read with 397.

2. Briefly the facts as spoken to by P. W. 1 and P. W. 3 and corroborated by the testimony of P. Ws. 4, 5, 6, 7 and 8 are : P W. 1 is the younger brother of P. W. 4 and the daughter of P. W 4 is Gangabai (P. W. 3) They all live in the same house. On 17-8-69 night P. W. 1 was sleeping on the outer pial. At about 1.30 A. M. Ganga Bai P. W. 3 raised an alarm saying that the thief is snatching her neck chain. They were then sleeping inside. As P. W. 3 Gangabai came out and cried P W. 1 asked her to call for help of the neighbours by raising an alarm from the street and P. W. 1 entered the house. One of the electric lights was burning. He found A. 2 and P. W. 4 grappling each other. He also found Al and P. W. 5 grappling each other and rolling on the ground. P. W. 1 attempted to rescue P. W. 5. Al. Thavasi had a knife in his hand and attempted to stab P. W 1. P. W. 5 Mohan intercepted. P, W. 1 had a slight scrach by the contact of the knife, on his left forearm. By that time, neighbours gathered and they beat the two accused with sticks. P. Ws. 6, 7. 8 and one Dharmalingam and another came into the house and beat the two accused. P. W. 4 received an injury due to stab on his chest.

P. W. 5 received a stab injury on his left eye brow, P. W. 6 received an injury a contusion on his forearm. P. W. 8 received a stab injury on his head. P. W. 7 received an injury on his head which was bleeding. One of those who came into the house put on another light. P. W. 4 and P. W. 5 were taken to the hospital at Sirudaiyur for treatment. P. W. 1 proceeded to the Sirudaiyur police station. Ex. P1 is the report given by P. W. 1 to the police. P. W. 3 Gangabai complained that she had a burning sensation on her head. She felt her head and found a lacerated wound on her head. M. O. 1 and M. O. 2 are the bitchuvas with their sheaths and M. O. 3 is the torch light and M. O. 4 is the casuarina stick which were recovered by the Sub-Inspector. The thieves had gained entry into the terrace by the back side by climbing over the wall. P. W. 1 was also treated by the Doctor on 18th morning for the injury sustained by him. The testimony of P. W. 1 is corroborated by the evidence of P. W. 3 who stated that her brother, P. W. 5 her paternal uncle, P. W. 1 and her father P, W. 4 were living

in the same house. On 17-9-69 night they were sleeping in the central hall of their house. P. W. 3. P. W. 5 and P. W. 4 were sleeping inside. She had a feeling that somebody was snatching the gold neck chain which she was wearing.

She woke up. She saw two persons standing in front. She was able to see the two strangers. She raised an alarm. Her father caught hold of one of the thieves and her brother caught hold of the other. She ran outside and raised a cry and woke up P. W. 1. Neighbours came to their rescue. She speaks to the bleeding injury on her father, brother and others. She went to Lalgudi hospital and had treatment for her head injury. She said that she was wearing the same chain which she was wearing. The learned Sessions Judge gave the finding that the accused had entered into the house through the doorway of the upstairs by removing the door which was rickety even according to the admission of P. W. 1. Having entered into the house, armed with deadly weapons, viz. bichuvas and casuarina post which they had previously brought with them, one of them should have attempted to snatch the gold chain from the neck of P. W. 3 on which she woke up and raised an alarm. The injuries on P. W. 4 and P. W. 5 are of considerable seriousness. Even P. W. 6 sustained an injury. The other victims also had injuries which were caused either with bichuvas or casuarina sticks.

3. The plea of the accused that they were invited for card playing in the house of P. W. 1 by some unknown strangers when they were standing on the road side at the tea shop sounds more like a fairy tale which has been rightly rejected by the Sessions Judge.

4. The main attack made by Mr. Kumar Rajarathnam is that in the light of the testimony of P. Ws. 1 and 3 there is no sufficient proof of the offence under Section 397 for his argument is that at the time of committing robbery or dacoity the two accused did not use any deadly weapon, or caused grievous hurt to any person or even attempted to cause death or grievous hurt to any person. They have caused these injuries only when they were at bay as it were and when they were about to be apprehended, by an overwhelming crowd of persons who gathered on hearing the alarm raised by P. W. 3. In my view this argument has considerable force for the evidence of P. W. 3 would show that at the time of committing the robbery viz., when the chain was snatched there was no user of any deadly weapon by any one of the two accused. Therefore, in my view, the offence under Section 397 is not proved by the evidence on record. In support of this argument, the learned Counsel relied on the reasoning found in *Queen Empress v. Beni* (1901) ILR 23 All 78 wherein Henderson, J. held that 'where several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to escape being arrested it was held that they could not properly be convicted under Section 397 read with Section 511 of the Indian Penal Code.'

But on the basis of evidence on record, I have no hesitation in holding that both the accused are guilty of the offence under Section 379 read with 511 of the I. P. C. and the conviction for this minor offence is legally valid in view of the terms of section 238 Cr. P. C. So far as the convictions of the two accused under the other Section 457-11 read with Section 75 I. P. C. already noticed by me, they are fully justified on the basis of the evidence on record. Automatically in view of my earlier finding that the accused are not guilty under Section 397 they are entitled to an acquittal under Sections 393 and 394 I. P. C. also. The conviction of the two appellants-accused for offences under Section 457 is con-firmed. The conviction of the two accused under Section 392 read with Section 397 is altered to one under Section 379 read with

Section 511 I. P. C. They are acquitted of the offences under Sections 393, 394 and 392 read with 397 I. P. C. I sentence the two accused to undergo rigorous imprisonment for four years under Section 379 read with 511 I. P. C. and the term of imprisonment awarded against them under this Section is directed to run concurrently with the sentence of imprisonment awarded for the offence under Section 457 I. P. C. The criminal appeals are partly allowed and partly dismissed. I am immensely thankful to Mr. Kumar Rajarathnam for his very useful assistance rendered to the court as Amicus Curiae.

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