



Crl.A.No.86 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2023

CORAM

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

Crl.A.No.86 of 2020

Nesari Poo

W/o.Rajendran

... Appellant

Vs

The State represented by
The Inspector of Police,
G-2, Pudumund Police Station,
(Cr.No.83 of 2016)

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment of convicting and sentence passed in S.C.No.21 of 2017 dated 03.09.2019 by the learned Sessions Judge, Udthagamandalam, Nilgiris and acquit her.

For Appellant : Mr.K.V.Sridharan

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)



Crl.A.No.86 of 2020

WEB COPY

JUDGMENT

The Criminal Appeal is against the judgment of conviction rendered by the learned Sessions Judge, Udagamandalam, in S.C.No.21 of 2017, dated 03.09.2019, against the sole accused, who is the appellant herein.

2. The case in Crime No.83 of 2016 was registered by the respondent police on 03.05.2016, on the complaint given by one Mohanraj, alleging that the idols kept in Arulmigu Annamalaiar Thirukovil, maintained by him and the villagers were damaged by one Nesari Poo, W/o. Rajendren who belongs to Christianity and propagating their religion in the village. This was noticed by the Secretary of the temple committee and when he questioned the said Nesari Poo for her conduct, she continued to damage the idols and also used abusive and filthy language. She threatened them to murder, if they prevent her from damaging idols and shouted at them that the Jesus Christ is present in all places. Hence the complaint.



Crl.A.No.86 of 2020

WEB COPY

3. The said complaint against the appellant was registered by Mahadevan, P.W.6, Sub Inspector of Police under Sections 3(1) of the Tamil Nadu Public Property (Prevention of Damage & Loss) Act, (herein after referred to as “the TNPPDL Act”), Sections 294(b), 295, 506(ii) of IPC., and taken up for investigation. On completion of investigation by P.W.7, the Inspector of Police, final report was laid before the learned Judicial Magistrate who committed the case to the District Sessions Court, being the case is exclusively triable by the Court of Sessions.

4. The trial Court viz., the District Sessions Court, Udagamandalam, framed charges under Section 3(1) of TNPPDL Act for causing damages to the idols of the temple worth about Rs.1,00,000/-; for the offence under Section 294(b) of IPC for adducing abusive and filthy language in public; for the offence under Section 506(ii) of IPC for intimidating the complainant and others to cause their death; for the offence under Section 295(A) of IPC for insulting the religious sentiments.



Crl.A.No.86 of 2020

WEB COPY

5. To prove the charges, the prosecution has examined seven witnesses as P.W.1 to P.W.7 and marked five documents as Ex.P.1 to Ex.P.5. Produced three material objects in M.O.1 to M.O.3. No evidence has been adduced on the side of the accused/appellant.

6. P.W.1, the defacto complainant has mounted the witness box and deposed that he is residing at HPF Indhu Nagar, for more than 30 years. P.W.2 and P.W.3 are co-residents. The residents of Indhu Nagar, constructed HPF Annamalaiair Thirukovil and formed an Association in which, P.W.1 is the President, P.W.2 is the Secretary, P.W.3 is the Joint Secretary and P.W.4, the former employee of HPF, is the Treasurer. They were carrying on day-to-day pooja to the deities in the temple and worshipping.

7. While being so, on 03.05.2016, at about 2.30 p.m., one Nesari Poo caused damages to the idols using stone. On receiving the information, P.W.1 , P.W.2, P.W.3 and P.W.4, who are the office bearers of the association and other devotees rushed to the temple and saw the



Crl.A.No.86 of 2020

accused holding a stone and damaging the idols. When they questioned her, she said, “Jesus Christ is everywhere. Entire world function only under the leadership of Jesus Christ” and she also used abusive and filthy language. She showed the stone and threatened to kill, if they came near to her. This part of P.W.1 deposition being corroborated by P.W.2 to P.W.5, who witnessed the occurrence.

8. On receiving the complaint i.e., Ex.P.1, the Investigating Officer viz., P.W.7 has visited the spot and prepared Observation Magazar Ex.P.2 and Sketch Ex.P.5. He recovered stone used by the accused to damage the idols which is marked as M.O.1. Four pieces of broken stone idols and ten pieces of cement idols were recovered and marked as M.O.2 and M.O.3 series. When the incriminating evidences were put to the accused under Section 313 of Cr.P.C., she did not deny the act of damaging the idols. Particularly, to the incriminating evidence about causing damages to the idols, she has admitted that she damaged those idols. She only denied the evidence of P.W.1 to P.W.4, that they witnessed her act of vandalism.



Crl.A.No.86 of 2020

WEB COPY

9. In the said circumstances, after apprising the evidences and admission of the accused to the guilty, the trial Court held the accused found guilty for the offence under Section 3(1) of the TNPPDL Act and sentenced to undergo one year simple imprisonment and pay a fine of Rs.5,000/- in default to undergo six months simple imprisonment. The appellant was also convicted for the offence under Section 294(b) of IPC and sentenced to undergo one month simple imprisonment and pay a fine of Rs.1,000/-, in default to undergo two weeks simple imprisonment. For the offence under Section 506(ii) of IPC, sentenced to undergo six months simple imprisonment and pay a fine of Rs.2,000/- in default to undergo two months simple imprisonment. For the offence under Section 295(A) of IPC, sentenced to undergo six months simple imprisonment and pay a fine of Rs.2,000/- in default to undergo two months simple imprisonment. The period of sentences were ordered to run concurrently and the 21 days pre-trial imprisonment undergone by the appellant ordered to be set off under Section 428 of Cr.P.C.



Crl.A.No.86 of 2020

WEB COPY

10. The accused having been convicted as stated above has preferred this appeal, after paying the total fine amount of Rs.10,000/-. While considering the application to suspend the sentence, this Court has ordered to deposit Rs.1,00,000/- and the same has also been invested in the bank.

11. The learned counsel appearing for the appellant would submit that the accused conduct of admitting the guilt of damaging the idols, but denied the fact that it was not witnessed by P.W.1 to P.W.4, to be considered in the light of the mental condition of the accused/appellant who had been suffering from Psychosis NOS. Referring medical report, it was submitted that the appellant had been in the acute psychosis with ideas of grandiosity. Her firm belief on her faith of Christianity has caused her to indulge in the crime. Her mental condition at the time of committing the offence has not been taken note by the trial Court.



Crl.A.No.86 of 2020

WEB COPY

12. The learned Government Advocate (Crl.Side) submitted that the medical reports which are now been produced by the learned counsel for the appellant before this Court are all of later period and no document was produced at the time of trial to substantiate the defence taken by the appellant. Further more, he would also submit that diagnosis of psychosis cannot be the ground to hurt the religious sentiments of other community and excuse to cause damages to the place of worship. The conduct of the accused had let to serious law and order problem in the locality at the relevant point of time and having proved through eye witnesses and on her own partial admission, the findings of the trial Court and the period of sentence has to be confirmed.

13. This Court on careful consideration of the evidence placed by the prosecution and the testimony of the prosecution witnesses finds that there is clear proof to the fact that on 03.05.2016 at about 2.30 p.m., the appellant herein who belongs to different religion entered into the temple maintained by the Hindu Association in the area and intentionally damaged four rock idols and ten cement idols. She had used stone to



Crl.A.No.86 of 2020

damage the idols which was marked as M.O.1. Not stopped with that, she had threatened P.W.1 to P.W.4 and P.W.10 and others who tried to stop her from causing damages. She had not only uttered filthy language but also used words which likely to cause insult to the members of other religion.

14. The witnesses have been clearly spoken about the overtact of the accused/appellant which satisfy the ingredients of the offences under Section 3(1) of the TNPPDL Act and Sections 294(b), 295(A) and 506(ii) of IPC. This Court finds that the appreciation of the evidence by the trial court is in accordance with the material placed before him to prove the ingredients which requires to convict the accused for the charges framed against her.

15. The only point remains as to whether the sentence imposed on her is excessive or adequate?



Crl.A.No.86 of 2020

WEB COPY

16. The learned counsel appearing for the appellant submitted that the accused/appellant though did not produce any medical evidence during the trial, the fact remains that presently she is suffering from Psychosis NOS and taking regular treatment. Though she is staying in the same locality, there is no untoward act by the appellant causing disturbance to the peace in the locality. He further submitted that the appellant has already been in prison for 170 days and some leniency may be shown in respect of the terms of sentence.

17. As far as the offence committed by the appellant, the same has been proved by the prosecution through its witnesses. This Court finds that for the offence under Section 3(1) of the TNPPDL Act, any damages caused more than Rs.100/-, the punishment prescribed is imprisonment for a term which shall not be less than one year but which may extend to five years and with fine. The proviso to Section 3(iii) states that for any adequate and special reason to be mentioned in the judgment, Court may impose a sentence of imprisonment for a term of less than one year.



Crl.A.No.86 of 2020

WEB COPY

18. The punishment prescribed for the offence under Section 295(A) of IPC., is imprisonment of either description for a term which may extend to three years, or with fine, or with both. The punishment prescribed for the offence under Section 294(b) of IPC., is imprisonment of either description for a term which may extend to three months, or with fine, or with both. As far as the offence under Section 506(ii) of IPC., the punishment prescribed is imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

19. At the time of convicting the accused, the trial Court after taking note of the fact that the act of the accused had caused serious disturbance to the public peace and in addition the religious sentiments of the locality being affected, has passed the sentence which is adequate for the crime proved. After four years of the occurrence and the mental condition of the appellant being deteriorated besides her present conduct require interference in the sentence imposed.



Crl.A.No.86 of 2020

WEB COPY

20. The reasons which have been narrated above necessitate this Court to modify the period of sentence insofar as the offence under Section 3(1) of the TNPPDL Act, with the aid of the proviso to Section 3(iii) of the TNPPDL Act, and impose the sentence less than one year for the reasons stated. In view of this Court, the subsequent conduct of the accused and the mental condition of the accused are sufficient reasons to modify and impose lesser sentence for the offence under Section 3(1) of the TNPPDL Act.

21. Accordingly, the period of sentence is modified to six months simple imprisonment and the fine of Rs.2,000/- in respect of the offence under Section 3(1) of the TNPPDL Act. As far as the sentences imposed for other IPC offences such as Section 294(b), 295(A) and 506(ii) of IPC, the term of imprisonment and fine are confirmed.

22. The period of imprisonment already undergone by the appellant shall be set off under Section 428 of Cr.P.C. The time for surrender is granted till 15.04.2023. Further the deposit of Rs.1,00,000/-



Crl.A.No.86 of 2020

made by the appellant in compliance of the condition imposed by this Court is permitted to be withdrawn by the appellant with accrued interest, after her surrender to undergo the remaining period of sentence. The period of sentence shall run concurrently.

23. In the result, the Criminal Appeal stands partly allowed.

15.03.2023

Index:Yes/No
Internet:Yes/No
Speaking/Non-speaking order

rts

To

1. The Sessions Judge,
Udhagamandalam,
Nilgiris.
2. The Inspector of Police,
G-2, Pudumund Police Station.
3. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.A.No.86 of 2020

Dr.G.JAYACHANDRAN, J.,

rts

Crl.A.No.86 of 2020

15.03.2023