

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.No.14 of 2011
and
M.P.No.1 of 2011

Raja @ Rajkumar

... Appellant

Vs.

State Rep. by
Inspector of Police,
B-4 Race Course Police Station,
Coimbatore.
Crime No.172/2009

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the order of the learned Additional District and Sessions Judge, (Fast Track Court No.3), Coimbatore in S.C.No.188 of 2010 dated 01.12.2010.

For Appellant : Mr.S.Saravana Kumar
for Mr.M.P.John Peter

For Respondent : Mrs.T.P.Savitha
Government Advocate (Criminal Side)

JUDGMENT

This criminal appeal is preferred by the appellant/accused against the judgment of conviction and sentenced passed in S.C.No.188 of 2010 dated 1.12.2010 whereby the Learned Additional District and Sessions Judge, (Fast Track Court No.3) Coimbatore convicted the appellant/accused for the offences under section 3(1) of the Tamil Nadu Public Property (damages and loss) Act and acquitted for the offences under section 294(b) of IPC.

2.Brief case of the appellant/accused:

The facts of the case is that on 4.2.2009, one organization namely "Elathamilar Pathukappu Iyakkam" announced the bundh for the protection of Tamilians living in Srilanka. One Rajkumar @ Raja, the appellant/accused

herein abused one PW1 Anandhi, the defacto complainant, for opening her shop in paradise castle and destroyed the show case materials, screen, glass partitions placed in the office, for which a complaint was registered in Cr.No.172 of 2009 on the file of the B4 Race Course Police Station, Coimbatore.

3.PW9 Soundararajan, Inspector of Police conducted the investigation and filed the final report against the appellant/accused.

4.The learned trial Court framed the charges against the appellant/accused acquitted under section 294(b), and convicted offences under Section 3(1) of Tamil Nadu Public Property (Damages and Loss) Act. The appellant /accused denied the charges.

5.During the trial, the prosecution examined PWs-1 to 9, marked Exhibits-P1 to P7 and M.Os-1 to 3 and no witnesses was examined on the side of the appellant/accused.

6.After the trial, on appreciating the material available on record the learned trial Court convicting the appellant/accused for the offences under section under Section 3(1) of Tamil Nadu Public Property (damages and loss) Act convicted and sentenced for 4 years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo 3 months rigorous imprisonment. Aggrieved over the same, the appellant/accused preferred this criminal appeal.

7.I heard Mr.S.Saravana Kumar for Mr.M.P.John Peter, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

8.The learned counsel for the appellant/accused submits that the lower Court ought to have seen that as per the evidence on 4.2.2009 at about 1.30 PM and two incidents took place one is at 11.30 PM and another one is at 1.30 PM. Even though the police station within 1½ km from the scene of occurrence no complaint was lodged before the respondent police and no reasonable explanation has been stated in the trial Court.

9.The learned counsel for the appellant/accused submits that the lower Court ought to have seen that the Medical Officer has given certificate has not committed offence under the influence of alcohol. But in contra as per evidence of eye witnesses and he was committed offence under the influence of alcohol and hence the conviction is liable to be set aside.

10.The learned counsel for the appellant/accused submits that the lower Court ought to have seen that though the occurrence took place at public place except shop owners, no other independent witnesses has been examined by the prosecution and that the prosecution has not come to the Court with clean hands and that conviction and sentence imposed on the appellant is liable to be set aside.

11.The learned counsel for the appellant/accused submits that the lower Court ought even as per prosecution case there was bundh was announced and there will possibility to the person to support the bundh may cause damage. But as for his appearance he is also one of the shop owner and his name was falsely implicated in this case.

12.In the case on hand, to substantiate the charges framed against the appellant/accused, no independent witness was examined by the prosecution, since the place of occurrence is in public place namely, Bazaar.

13.The Medical Officer has given certificate has not committed offence under the influence of alcohol. But in contra as per evidence of eye witnesses and he was committed offence under the influence of alcohol and hence the conviction is liable to be set aside.

14.The evidences of PW1 to PW5 materially contradict with each other regarding the alleged case of prosecution. It is also seen from the evidence that the appellant/accused is also one of the shop owner and therefore the alleged occurrence as spoken by PWs-1 to 5 cannot be sustained.

15.In the result:

a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellant/accused in S.C.No.188 of 2010, dated 1.12.2010, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.3) Coimbatore is set aside.

b) The appellant/accused is acquitted from all the charges and the fine amount if any paid by the appellant/accused shall be refunded by the trial Court;

c) The bail bond if any executed by the appellant/accused is stands cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs

To

The Additional District and Sessions Judge,
(Fast Track Court No.3), Coimbatore.

2.The Judicial Magistrate II, Coimbatore

3.The Superintendent, Central Prison, coimbatore

4.The Public Prosecutor, High Court ,Madras.

5.The Inspector of Police,
B-4 Race Course Police Station,
Coimbatore.

+1cc to Mr. S.Saravana Kumar, Advocate SR.No. 19981

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Cr1.A.No.14 of 2011
and

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A.SK(25/03/2019)

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