

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.04.2019

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.804 of 2011

1.Selvam
2.Sundaram @ Sundararajan
3.Kaliappan
4.Sivakumar .. Appellants/Accused 1 to 4

/versus/

State by Inspector of Police,
Valapaadi Police Station,
Salem District.
Crime No.484/2003. ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code praying to set aside the conviction imposed in judgment dated 14.11.2011 made in S.C.No.404 of 2005 on the file of the II Additional Assistant Sessions Court, Salem by allowing this criminal appeal.

For Appellants :Mr.P.Narayanamoorthy
Legal Aid Counsel

For Respondent :Mrs.Kritika Kamal, P.
G.A.(Crl.side)

J U D G M E N T

The appellants herein are the accused in S.C.No.404 of 2005 on the file of the II Additional Assistant Sessions Judge, Salem.

2. Based on the complaint given by one Sellakannu alleging that the appellants on 21.09.2003 at about 11.30 p.m., when his wife and children were sleeping inside the house and he was sleeping in the veranda of the house, the appellants came to the house of the defacto complainant with weapons and shouted. When he came out, they attacked him indiscriminately. When his wife and children came out from the house hearing the noise, at that time, the appellants tried to attack them. Since they pleaded mercy, they turned their angry towards the household articles kept in the house, broke T.V., fan, clock, and bureau

and caused damage to the property worth of Rs.25,000/-. The injured Sellakannu went to the police on the next day and gave his complaint. Based on the complaint, the police has registered First Information Report on 22.09.2003 at about 10.45 a.m. for the offence under Sections 451, 427, 324 and 506(ii) of IPC. After the investigation, final report was filed against the appellants 1 to 4 for the offence under Sections 451 and 506 (ii) of IPC and Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act 1992. (in short "TNPPDL Act").

3. To prove the charges, the prosecution has examined seven witnesses. 13 exhibits and 5 material objects were marked. Before the trial Court, PW-1[Sellakannu] has deposed that the appellants Sevlam and Sundaram are the maternal uncle of Sellakannu. Due to property dispute they came to his house on the date of occurrence and attacked him on his head. He sustained bleedings. Thereafter, the appellants entered in to his house and damaged bureau, cot, T.V., Fan and utensils worth of Rs.25,000/-. PW-2[Rani], who is the wife of the defacto complainant, has deposed that nearly 10 to 15 persons came to her house and damaged the property and her husband[PW-1] sustained head injury. She has not identified any assailants. Therefore, the prosecution has treated her as hostile witness.

4. Similarly, Raja[PW-3], S/o Sellakannu[PW-1] has not supported the case of the prosecution. Hence, he turned hostile. However, the prosecution was able to establish the fact of damages to the property through photographs taken by PW-4[Muthu] which were marked as Exs.P2 to P7. The other witnesses for the occurrence and seizure have turned hostile. The trial Court, after considering the evidence placed before it, held that in the absence of any wound certificate and evidence to corroborate the fact that the accused intimidated the witnesses, acquitted them from the charge under Section 506(ii) of IPC, whereas relying upon the evidence of PW-1, PW-2 and PW-4 coupled with the photographs held that the appellants have committed the offence under Section 451 of IPC and caused damage to the property and held the appellants guilty of offence under Section 451 of IPC and 3(1) of TNPPDL Act. The trial Court has sentenced the appellants to undergo one year Simple Imprisonment and fine of Rs.500/- in default, to under two weeks simple imprisonment for the offence under Section 451 of IPC; to undergo one year Simple Imprisonment and to pay fine of Rs.500/- in default to undergo two weeks simple imprisonment for the offence under Section 3(1) of TNPPDL Act.

5. The learned counsel appointed by the Legal Services Authority to represent the appellants would submit that the evidence let in by the prosecution has neither proved any trespass to the house of the defacto complainant by the

appellants nor the alleged damage to the property was caused by them. PW-1, who has spoken about the accused 1 and 2 and causing hurt using weapon, admittedly not taken any treatment and no medical records is available. His contention that the appellants entered in to the house of the defacto complainant and caused damage the property like, cot, fan, TV and utensils is not corroborated by any other witnesses. The photographs which are marked as Exs.P2 to P7, have not been corroborated with the properties of PW-1 or PW-1, PW-2 and PW-3 have identified the property found in the photographs as that of their property. Further, to attract the ingredient of Section 451 of IPC, the prosecution should have proved that there was house trespass by the appellants.

6. As far as the prosecution witnesses are concerned, except PW-1, no other witness has spoken about the trespass by the appellants. The deposition of PW-1 is highly unreliable due to falsehood since his evidence is not corroborated by any other witnesses. The trial Court ought to have acquitted the appellants.

7. The learned Government Advocate would submit that the person injured had clearly identified the appellants as the persons, who have trespassed into the house and caused damage. He has specifically mentioned A1 and A2 have caused hurt using weapon. Since the prosecution was not able to produce any medical records, the trial Court itself has not framed any charge for causing physical harm to PW-1. However, the attack that the properties of PW-1 got damaged and that was due to the appellants who trespass into the house of PW-1 on the night of 21.09.2003 is well proved through the evidence of PW-1 and others. Therefore, contended that the trial Court judgment has to be confirmed.

8. The perusal of evidence placed before the Court discloses that the defacto complainant and the accused are all closely related to each other. Regarding the land which was settled in favour of the defacto complainant's mother by the father of the accused 1 and 2 there was a dispute between them. Though PW-1 has deposed that on that night the appellants 1 to 4 came to his house and attacked him and caused damage to the properties, he has neither placed any evidence for his injury or identified the properties alleged to have damaged by the appellants. PW-2-his wife, in contradiction to the evidence of PW-1, had deposed that nearly 10 to 15 persons trespassed into her house and caused damage to the properties but she has not identified any of the accused persons or the material objects alleged to have been damaged by the appellants. PW-3, S/o PW-1 had deposed that he came out from the house after hearing the noise his father was found injured. When he enquired him, he

told him that four or five persons attacked him and ran away. He has not even spoken about the damage caused to the household properties or trespass. Except these family members of PW-1, there is no other independent witnesses, which can lend credence to the prosecution case. The trial Court has held the appellants 1 to 4 guilty of the offence under Section 451 of IPC based on the photographs[Exs.P2 to P7] and material objects M.Os.2 to 5 which are the damaged household articles like TV, wall clock, utensils and hot box. In the absence of identifying these material objects by the owners, who were examined as PW-1 to PW-3, it is unsafe to hold that damage caused to the properties owned by the defacto complainant by the appellants. For the said reason, this Court is inclined to interfere with the finding of the lower appellate Court. Accordingly, for want of evidence, the appellants are entitled for acquittal.

9.In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned II Additional Assistant Sessions Judge, Salem in S.C.No.404 of 2005 dated 14.11.2011 are set aside. Fine amount, if any paid by the accused shall be refunded to them. Bail bond, if any executed by the accused shall be cancelled. The appellants are set at liberty.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

ari

To

1.IIAdditional Assistant Sessions Court, Salem.

2.The Inspector of Police,Valapaadi Police Station,Salem District.

3.The Public Prosecutor, High Court, Madras.

Copy to

The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.P.Narayanamoorthy, Advocate sr 34254.

Crl.A.No.804 of 2011

MR(CO)

SP(27/05/2019)