

Bail Slip

The Appellants/Accused(1&2), namely 1.Manjamuthu Udayar S/o Ramasamy Udayar aged about 54 years old, 2.Annamalai @ ArapuliKumar S/o.Kuppan aged about 43 Years Old (SC NO.411/2010) were directed to be released on bail as per order of this Court dated 22.12.2011 in MP.NO.1/11 IN CRL A.NO.826/2011 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :07.02.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
CRIMINAL APPEAL No.826 OF 2011

1.Manjamuthu Udayar
2.Annamalai @ Arapuli .. Appellants/Accused(1&2)
/versus/
State by Inspector of Police,
Panamarathupatty Police Station,
Salem District.
Cr.No.40/2010 .. Respondent/Complainant

Criminal Appeal has been filed under Section 374 Cr.P.C. praying to call for the records pertaining to S.C.No.411/2010 on the file of the II Additional Assistant Sessions Court, Salem and set aside the judgment and order of conviction dated 10.12.2011 recorded therein.

For Appellants :Mr.K.V.Shanmuganathan
For Respondent :Ms.P.Kritika Kamal, GA(crl.side)

J U D G M E N T

Heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State.

2. The case of the prosecution is that the land owned by the Corporation of Salem fenced around Panamarathupatty lake was trespassed by the accused persons by removing the fence. Based on the complaint Ex.P1 given by the Assistant Commissioner, Salem to the to the Inspector of Police on 21.04.2010, the respondent-police has registered First Information Report on 25.04.2010 and taken up the investigation. After completion of investigation, final report has been filed against the appellants. The trial Court has framed charges against these appellants for the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and Sections 447, 353 and 506 (ii) of IPC.

3. Before the trial Court, the prosecution has examined 10 witnesses and 7 exhibits were marked as Exs.P1 to P7 and CD recording the case property is marked as M.O.1. On the side of the defence, they have not chosen to examine any of the witnesses or marked any document.

4. The trial Court after appreciating the evidence, has held that the accused are guilty of offence under Sections 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and Section 447 of IPC. Regarding the other charges namely, Sections 353 and 506 (ii) of IPC, they were found not guilty and acquitted. The accused were sentenced to undergo one year Simple Imprisonment each and fine of Rs.500/- each in default, to undergo 3 months Simple Imprisonment each for the offence under Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and to undergo three months Simple Imprisonment with fine of Rs.500/- each in default to undergo one week Simple Imprisonment each for the offence under Section 447 of IPC.

5. In this appeal, the learned counsel appearing for the appellants would submit that the complaint Ex.P1 and the version of the prosecution as found in the final report itself varies contradicting the fundamental facts. In the absence of any legal and acceptable evidence to implicate the appellants regarding the destruction of the public property or trespassed into the public property, the trial Court ought not to have convicted them. The learned counsel, referring the rough sketch relied on by the prosecution and the complaint marked as Ex.P1 would submit that there is no material available to infer that the fence, which was put up by the Corporation has been destroyed and the land was criminally trespassed by the appellants to cause damage. Pointing out the trial Court has rightly acquitted the accused for the offence under Sections 353 and 506(ii) of IPC, the ingredient of Section 447 of IPC gets vanished. Therefore, the conviction of the trial Court is bad in law. Pointing out the evidence of PW-2 and PW-3 who have denied the knowledge about the person damaged the fence, the learned counsel appearing for the appellants would submit that when there is a categorical admission by the prosecution witnesses that they are not aware regarding who has damaged the fence erected by the Corporation, the trial Court should not have convicted them for the offence under Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

6. Per contra, the learned Government Advocate representing the State would submit that Panamarathupatty lake was infested with encroachment and the Corporation tried to evict them. That was resisted by them leading to filing of several writ petitions. Ultimately pursuant to the order passed by the High Court in the batch of writ petitions W.P.No.3841 of 2005 etc. batch vide order dated 23.02.2010, the Corporation authority took measures to clear the encroachment and fence the property. After fencing the property, the appellants herein under the leadership of one Manjamuthu Udaiyar caused damage to the fence, trespass into the Corporation land and started harvesting fruits from the trees in side the fenced premises. When the staff of the Corporation noticed the trespass and theft, the appellants threatened them with dire consequences and also prevented them from protecting the Corporation property which has led to lodge the complaint by the Assistant Commissioner, Salem on 21.04.2010. This culminated in the criminal prosecution. The defacto complainant has forwarded the information which he collected from his subordinates about the criminal trespass and criminal intimidation. The persons, who have been threatened by the appellants, were examined by the prosecution as PW-2, PW-3, PW-4 and PW-5. They have identified the accused and they have cogently deposed that the appellants herein were found in the Corporation land. The destruction of the fence has been spoken by these witnesses besides threat faced from the appellants.

7. The learned Government Advocate would also submit that the Assistant Executive Officer of Corporation, who was examined as PW-7 has given his report regarding the cost of the damage. M.O.1-CD, which has recorded the physical features of the scene of crime has been placed before the Court. The photographer, who has recorded the photos and the video was examined as PW-9. The photos Ex.P6 (series) is a tell-tale evidence to fortify the case of the prosecution that the public property has been damaged and it was caused by the appellants. Therefore, she sought for confirmation of the judgment passed by the trial Court.

8. Considering the rival submissions, this Court can have no other view regarding the trespass committed by the appellants. Their very presence inside the Corporation land and their threat to the staff of the Corporation, who questioned their presence, is sufficient to attract the ingredients of Section 447 of IPC. Though there may be some doubt caused upon the version of the prosecution regarding the person, who really damaged the

fence, this doubt also gets clear by the very fact that the presence of the appellants inside the Corporation land is not possible without damaging the fence. The prosecution is able to prove the damage to fence through M.O.1, Ex.P6-photographs and the presence of the appellants/accused inside the Corporation land which was recently cleared from encroachment and protected by fence. These evidences go to show that the appellants/accused are the persons, who caused the damage.

9. In the light of the overwhelming evidence against the appellants/accused, this Court finds that the conviction and sentence imposed by the Court below needs no interference. Hence, this Criminal Appeal is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional Assistant Sessions Court, Salem.
- 2.The Inspector of Police,
Panamarathupatty Police Station,
Salem District.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Judicial Magistrate No.1, Salem.
- 5.The Chief Judicial Magistrate, salem (for information)
- 6.The Principal Sessions Judge, Salem
- 7.The Director General of Police, Mylapore, Chennai. 4.
- 8.The District Collector, Salem
- 9.The Superintendent of Police, Salem.

Copy to:

The section officer,
Criminal Section,
High court
Madras

+1cc to Mr.K.V.Shanmuganathan, Advocate SR.No. 10507

Cr1.A.No.826 of 2011

A.SK (21/03/2019)