

Bail Slip

The Appellants/Accused namely 1. Venkatesan, Male/Aged 34, S/o. Rajagopal 2. Dakshnamoorthy, Male/Aged 45 S/o. Ganapathy 3. Manikandan, Male/Aged 25 S/o. Dakshnamoorthy 4. Karthiban, Male/Aged 37 S/o. Rajagopal were directed to be released on bail as per order dated 11.01.2019 and made in Crl.M.P. No. 516/2019 in Crl.A.No.21/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.21 of 2019

1.Venkataesam

2.Dakshnamoorthy

3.Manikandan

4.Karthiban

...Appellants/Accused 1-4

-Vs-

State rep by Inspector of  
Police, Valangaiman, Police Station,  
Thiruvarur.

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, to set aside the judgment dated 21.12.2018 and sentence imposed by the learned Principal District Sessions Judge, Triruvarur in S.C.No.14 of 2014.

For Appellants : Mr.A.Navaneetha Krishnan  
Senior Counsel for  
Mr.V.Krishnamoorthy

For Respondent : Mr.R.Suryaprakash,  
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned District and Sessions Judge, Thiruvarur in S.C.No.14 of 2014, dated 21.12.2018.

2.The respondent Police have registered a case in Crime No.64 of 2013, for offence under Section 294(b) and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, (hereinafter referred to as "TNPPDL Act"), against the appellants on the complaint (Ex.P1) given by PW1. After completing investigation, the respondent police laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Valangaiman and the same was taken on file as P.R.C.No.8 of 2013. After completing the formalities, since the case was triable by the Court of Sessions, the learned District Munsif cum Judicial Magistrate, Valangaiman committed the case to the file of the Assistant Sessions Court, Mannargudi for disposal. Subsequently as per the direction of this Court in the case reported in 2016-2-MLJ (Crl.) 365, the case was withdrawn from the file of the Assistant Sessions Judge, Mannargudi and taken back by the learned District and Sessions Judge, Thiruvarur as S.C.No.14 of 2014.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charges against the appellants, the learned District and Sessions Judge, Thiruvarur framed charges under Section 294(b) and Section 3(1) TNPPDL Act, 1992.

4.After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the District and Sessions Judge, Mannargudi found guilty of the appellants and convicted and sentenced them to undergo one year Simple Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment for offence under Section 3(1) of TNPPDL Act, 1992. The appellants 1 to 3 were acquitted from under Section 294(b) IPC.

5.The learned counsel for the appellants would submit that no case was made out against the appellants and the prosecution has failed to prove the alleged occurrence. The trial Court acquitted the appellants 1 to 3 for offence under Section 294(b) IPC, since the prosecution has not established the case. The trial Court without considering the evidence and materials adduced on the side of the defence, erroneously convicted the appellants under Section 3(1) TNPPDL Act, 1992. Since the dispute is between the two individuals and one private person damaged the property of another private person, the offence under the TNPPDL, Act, 1992 would not attract. The learned counsel would further submit that the object of the Act makes it very clear that only during the political party agitations or ethnic agitations, demonstration or other activities or communal clash if any private property are damaged to fix the liability

on such groups, the amendment has been brought in. The object itself is to compensate the loss of the private properties for the damage caused by the said groups. Therefore, the ordinary mischief caused by any individual, in a fight, they cannot be brought under Section 3(1) of TNPPDL Act. The object of the Act has to be given preference. Not in every case, the Section 3(1) of TNPPDL Act, can be invoked. The trial Court failed to consider the said object of the Act and the fight is between the two individuals. Therefore, the Act would not attract in this case and the learned District and Sessions Judge failed to consider the same and wrongly invoked the provision of TNPPDL Act, 1992 and convicted the appellants for offence under Section 3(1) of TNPPDL Act, 1992.

6.The learned counsel for the appellants would further submit that there is no overtact against the appellants and the prosecution has not proved the specific overtact on the appellants individually. Therefore, the trial Court failed to appreciate the evidence and materials properly. Since none of the witnesses have spoken about the specific overtact of the appellants, the case of the prosecution would become doubtful. Therefore, the prosecution has failed to establish the case against the appellants individually.

7.The learned counsel for the appellants would further submit that there is no eye witness in this case and only the husband of the defacto complainant (PW.2) have stated that he saw the occurrence in the hidden place, which is not believable for the reason when a property of a person is damaging by another one, he would take attempt to prevent the same or take steps to seek others help. The learned counsel further submit that the defacto complainant (PW.1) and her husband (PW.2) are not ordinary persons. The defacto complainant (PW.1) is a President of the said Village and her husband is also a well educated and highly influenced person and therefore, the evidence of PW.1 and PW.2 are unbelievable and there is no cogent reason to connect the appellants in this case. The defacto complainant (PW.1) on spite vengeance, foisted a false case against the appellants with the influence of the Police. Without conducting the investigation in proper manner, the respondent Police laid the charge sheet before the trial Court and the trial Court failed to appreciate the entire evidence and materials and erroneously convicted the appellants.

8.The learned counsel for the appellants would further submit that the presence of PW.2 in the scene of occurrence is doubtful, since his name is not found in the private complaint (Ex.D1) lodged by the defacto complainant (PW.1) before the learned District Munsif cum Judicial Magistrate, Valangaiman. In order to disprove the case of the prosecution and

substantiate the defence, the appellants have examined the defence witnesses and also marked documents, but the trial Court without any reason, ignored the same. The learned counsel would further submit that the evidence of the Village Administrative Officer (PW.7) is not trustworthy of credence. Further, the value of the property has not been properly assessed and Village Administrative Officer (PW.7) is not a competent person to assess the value of the damaged properties. No recovery was proved in this case and the prosecution has not proved the occurrence by examining independent witnesses. The defacto complainant (PW.1) and her husband (PW.2) are interested witnesses. Hence, the conviction and sentenced rendered by the trial Court is without any merits and non application of mind and the judgment of the trial Court is liable to be set aside and the appellant are to be acquitted.

9.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that during the relevant point of time, the defacto complainant (PW.1) was the Deputy President of Alangudi Panchayat Union. On 25.04.2013, the women public toilet was damaged by the 4<sup>th</sup> appellant and therefore, she informed the same to her husband (PW.2), in turn her husband reported the same to the Block Development Officer. On the same day at about 04.00 clock, the Block Development Officer inspected the spot. On 26.04.2013, at about 03.00 p.m., the appellants came to the house of the defacto complainant (PW.1), damaged the car parked in front of her house and also damaged the mirrors, then the 1<sup>st</sup> appellant damaged the compound wall by kicking his leg, the 2<sup>nd</sup> and 3<sup>rd</sup> appellants damaged the windows. At the time of occurrence, the mother-in-law of the defacto complainant (PW.1) was in the house and the husband of PW.1 (PW.2) was went to Bazaar. Thereafter, the defacto complainant lodged a complaint (Ex.P1) on 27.04.2013 to the respondent Police. The Village Administrative Officer (PW.7) came to the spot and visited the damages caused by the appellants. After investigation, the respondent Police laid a charge sheet before the trial Court. In order to prove the case of the prosecution, 9 witnesses were examined and 11 documents were marked. The prosecution has established the case with cogent evidence and materials and the trial Judge also came to the conclusion that the appellants have committed the offence under Section 3(1) of TNPPDL Act and convicted them. Hence, there is no merit in the appeal and the appeal is liable to be dismissed.

10.Heard the learned counsel appearing for the appellants and the learned Government Advocate [Crl. Side] appearing for the respondent and also perused the materials available on record.

11.The case of the prosecution is that on 25.04.2013, a women public toilet was damaged by Karthiban/A4 and therefore, the defacto complainant, who was the Deputy President of Alangudi Panchayat Union, informed the same to her husband (PW.2), in turn the husband of PW.1 (PW.2) informed the same to the Block Development Officer. On the same day, at about 04.00 clock, the Block Development Officer inspected the spot. On 26.04.2013, at about 03.00 p.m., the appellants came to the house of the defacto complainant (PW.1), damaged the car parked in front of her house and also damaged the mirrors, then the 1<sup>st</sup> appellant damaged the compound wall by kicking his leg, the 2<sup>nd</sup> and 3<sup>rd</sup> appellants damaged the windows. At the time of occurrence, the husband of PW.1 (PW.2) was not in the home and he had gone to Bazaar. Thereafter, the defacto complainant lodged a complaint (Ex.P1) on 27.04.2013 to the respondent Police. The Village Administrative Officer (PW.7) came to the spot and saw the damages caused by the appellants. After investigation, the respondent Police laid a charge sheet before the trial Court.

12.Based on the complaint (Ex.P1) given by PW1, an FIR in Crime No.64 of 2013 was registered for offence under Section 294 (b) and Section 3(1) of TNPPDL Act. After completing investigation, the respondent police laid a charge sheet before the learned District and Sessions Judge, Thiruvarur and the same was taken on file as S.C.No.14 of 2014.

13.During the trial, on the side of the prosecution, as many as 9 witnesses were examined, 11 documents were marked and 2 material objects were exhibited. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused, they had denied as false. On the side of the defence, the second accused was examined as D.W.1 and 7 documents were marked.

14.After considering the evidence on record and hearing either side, the learned Sessions Judge, vide judgment dated 21.12.2018 in S.C.No.14 of 2014, convicted and sentenced the appellants as stated above.

15.Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellants.

16.This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

17.In this case, PW.1 is the defacto complainant and PW.2 is the husband of PW.1. PW1 has clearly stated that during the

relevant point of time, she was working as Deputy President of Alangudi Panchayat Union. The 4<sup>th</sup> appellant caused damage to the women public toilet situated in Alangudi Village. The defacto complainant (PW.1) informed the same to her husband (PW.2), in turn PW2 informed the same to the Block Development Officer. Thereafter, the 4<sup>th</sup> appellant went to the house of the defacto complainant (PW.1) along with the other appellants, damaged the house and car parked in front of her house and also caused damage to the compound wall and windows. The defacto complainant (PW.1) clearly deposed the specific act done by the accused/appellants. PW2, the husband of the defacto complainant corroborated the same. PW1 has stated that her husband went to Bazaar at the time of occurrence. PW2 has stated that when he returning to home, he noticed all the appellants were causing damage to the house. Due to fear, PW2 did not take any steps to prevent them and seek help of others and saw the occurrence from the hidden place. Since the occurrence had happened in the house of the defacto complainant, there is no eye witness in this case. The Village Administrative Officer after receiving the complaint proceeded to the scene of occurrence and visited the damaged articles and valued the same to the tune of Rs.20,000/-. Since there was no evidence to show that the appellants were uttered any obscene language, the trial Court acquitted them for the offence under Section 294(b) IPC.

18.The learned counsel for the appellants vehemently contended that the very object of the amendment makes it very clear that the TNPPDL Act, 1992 as stood before the amendment was enacted to prevent damage or loss caused to any private property during political parties or communal, language or ethnic agitation, demonstration or other activities. Originally, there was no provision to make a loss for the private property and also punishment for causing damage to the private property. Therefore, it was decided to include the private property in the amendment. The object of the Act makes it very clear that only during such political party agitations or ethnic agitations, demonstration or other activities or communal clash if any private properties are damaged to fix the liability on such groups, the amendment has been brought it. The object itself is to compensate the loss of the private properties for the damage caused by the said groups and therefore, the conviction of the trial Court under Section 3(1) of TNPPDL Act, 1992 is erroneous. But in this regard, Section 2 (4) of TNPPDL Act, 1992 is reads as follows:-

"(4) "Property" means any property movable or immovable or machinery owned by in possessions of, or under the control of any person including (a) the Central Government or (b) the State Government; or (c) any local authority; or (d) the Tamil Nadu Electricity Board; or (e) any University in this State; or (f) any

co-operative society including a land development bank registered or deemed to be registered under the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983); or (g) any corporate body constituted under any Act passed by Parliament or the Legislative Assembly of this State; or (h) any other corporation owned or controlled by the Central Government or the State Government; or (i) any institution, concern or undertaking or; (i) any company.....”

19.The amendment Act 46 of 1994 would enlarge the scope of the Act that even if any individual inflicts injury to the property of a private party having any motive, the provision of Section 3 of the Tamil Nadu Property (Prevention of Damage & Loss) Act would be attracted. A plain reading of Section 3(1) of the Act clearly contemplates the term 'whoever', which means that if any individual perpetrates any mischief to the property worth more than Rs.100/- of any person and not necessarily the Government property, it would be within the mischief of Section 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act.

20.As such, in this case, the appellants and the defacto complainant are two individuals. The appellants who perpetrated the crime and the defacto complainant (PW.1) who sustained damage can be private parties and nowhere, it is stated that such infliction of crime should be during the time of any rioting or political upheaval or demonstration, dharna etc. As such, in the facts and circumstances of the case, the prosecution has established the case under Section 3(1) of TNPPDL Act, 1992. The amendment is so wide enough to include even damages caused to the private individual by another private individual. Therefore, the contention of the learned counsel for the appellant is not acceptable.

21.In view of the above, the prosecution has proved its case beyond all reasonable doubt through oral and documentary evidence that the appellant have caused damages to the property of the defacto complainant (PW.1), which falls under Section 3 (1) of TNPPDL Act, 1992. The trial Court has rightly appreciated the oral evidence and materials and also interpreted the legal provisions and therefore, this Court does not find any perversity in the judgment of the trial Court and the same is, hereby, confirmed.

22.In the light of the above discussion, this Court does not find any merit in this appeal and the appeal is liable to be dismissed and it is, accordingly, dismissed.

23.The learned District and Sessions Judge, Thiruvarur is directed to secure the appellants for sufferance of the remaining period of sentence. The bail bonds executed by the appellants, if any, shall stand canceled.

s/d-  
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

- 1.The District and Sessions Judge,  
Thiruvarur.
- 2.The Inspector of Police,  
Valangaiman, Police Station,  
Thiruvarur.
- 3.The Judicial Magistrate  
Valangaiman, Tiruvarur District
- 4.The Chief Judicial Magistrate  
Tiruvarur
- 5.The Public Prosecutor,  
High Court, Madras.

+2 Ccs to Mr.V.Krishnamoorthy, Advocate sr 12324.

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Cr1.A.No.21 of 2019

SR(CO)  
SP(23/04/2021)

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