



BAIL SLIP

The Petitioner/Accused Viz. 1.Raja, S/o.Karthirkan,
2.Murgan, S/o.Chinnavan was released on bail as per the Order of
this Court Dated 27.09.2019 in CRL.MP.No.13966 of 2019 in
CRL.A.No.657 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.657 OF 2019

1. Raja
2. Murugan

... Appellants

.Vs.

The State by
Inspector of Police,
Indoor Police Station,
Dharmapuri District,
Crime No.222/2015

... Respondent

PRAYER:-

Criminal Appeal filed under Section 374 of the Code of
Criminal Procedure to set aside the conviction and sentence
imposed on the appellants by Judgment dated 28.08.2019 passed in
S.C.No.7/2018 on the file of the Principal Sessions Judge,
Dharmapuri.

For Appellant : Mr.M.Karthik
For Mr.I.C.Vasudevan

For Respondent : Mr.R.Suryaprakash
Government Advocate

J U D G M E N T

This Criminal Appeal has been filed, challenging the
conviction and sentence imposed on the appellants by Judgment
dated 28.08.2019 passed in S.C.No.7/2018 by the learned
Principal Sessions Judge, Dharmapuri.



2. The respondent police registered a case in Crime No.222 of 2015 against the first appellant for the offences punishable under Sections 294(b), 323, 353 I.P.C. and Section 3(1) Tamilnadu Property (Prevention of Damage and Loss) Act, 1992 and as against the second appellant for the offences punishable under Sections 294 (b), 353 IPC and Section 3(1) Tamilnadu Property (Prevention of Damage and Loss) Act, 1992 (TNPPDL Act). After investigation, charge sheet was laid and the same was taken on file by the learned Principal Sessions Judge, Dharmapuri in S.C.No.7 of 2018 against the appellants for the aforesaid offences.

3. After completing the formalities, the learned Sessions Judge framed charges against the accused and after trial, found the first appellant guilty of the offence punishable under Section 323 IPC and convicted and sentenced him to undergo three months imprisonment with fine of Rs.500/-, in default, to undergo one week simple imprisonment and also found the first and the second appellants guilty of the offences punishable under Section 3(1) TNPPDL Act, 1992 convicted and sentenced them to undergo one year rigorous imprisonment with fine of Rs.1,000/- each, in default, to undergo one week simple imprisonment, and acquitted the appellants for other charges. Aggrieved over the same, the appellants 1 and 2/accused 1 and 2 are before this Court by filing this Appeal.

4. The learned counsel for the appellants would submit that the appellants have not committed any offence as alleged by the prosecution. He would further submit that no such occurrence is alleged to have taken place and further the prosecution failed to prove the involvement of the appellants in the alleged crime and whether the meeting was convened or not was not established by the prosecution. He would also submit that no independent witness was examined on the side of prosecution and the Court below has erred in convicting the appellants especially when the trial Court held that the non-examination of the Manager, namely, Narayanan was fatal to the case of the prosecution. He would further submit that the alleged occurrence is said to have taken place at about 6.00 p.m., and the complaint was given only after 10 'O' clock on the same day, especially, when the distance between the police station and the alleged place of occurrence is only 3 kms., therefore, there was a delay in preferring the complaint and the reason for delay was also not explained.

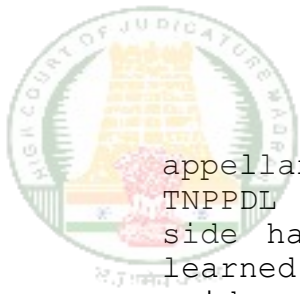
5. The learned counsel would also submit that there are material contradictions in the case of the prosecution, while in the complaint it is alleged that the first accused attacked the victim and caused injury on the backside, whereas the P.W.-8 Doctor has stated that the victim has not sustained fracture in



the left shoulder and it was only simple injury. Though the trial court has acquitted the appellants for the offence punishable under Sections 294 (b) and 353 of I.P.C., it has failed to consider that the prosecution witnesses have not supported the case of the prosecution that the first appellant has committed offence under Section 323 I.P.C and the appellants have committed offence under Section 3 (1) of the TNPPDL Act, 1984. He would further submit that there is no eye witness to the prosecution case and no independent witness was examined and there is contradiction between the injured witnesses and R.T.O, while the injured witnesses deposed that the mirror of the car was broken by the accused, whereas the R.T.O has stated that only right side of the vehicle was damaged and even no Material Object was recovered to prove the damages.

6. The learned counsel would further submit that though the Doctor has clearly deposed that there is no external or internal injury and even from X-ray report, there was no fracture, the learned Principal Sessions Judge, without considering the medical evidence wrongly convicted the appellant based on the false complaint. He would also submit that the prosecution witnesses influenced the police and foisted a false case against the appellants, due to which without conducting any investigation as to whether actually meeting was conducted or not, has filed the charge sheet as against the appellants for the aforesaid offences. He would further submit that the learned Judge based on the conjectures and surmises, convicted and sentenced the accused which warrants interference.

7. The learned Government Advocate (Crl.side) would submit that P.W.1 and P.W.2 are injured witnesses and they have clearly spoken about the occurrence and also the involvement of the appellants in the alleged crime. He would further submit that they have clearly stated that in order to conduct the meeting, on 12.11.2015 at about 5 p.m., they went to Somanahalli Colony and parked their car bearing Registration No.TN-36-5151 and at about 6.00 p.m., after the meeting was over, the appellants damaged the car and also attacked one Narayanan, the District Project Manager and when they tried to rescue him, the accused persons assaulted them. Though the Sessions Judge acquitted the appellants for the offences punishable under Sections 294 (b) and 353 I.P.C. the Court below, on considering the deposition of injured eye witness coupled with medical evidence had convicted the first appellant for the offence punishable under Section 323 I.P.C.. He would further submit that since P.W.1 and P.W.2 have clearly spoken about the damages which corroborate with the evidence of Motor Vehicle Inspector who had clearly spoken about the damage of the vehicle and issued Ex.P3-Damage certificate, the trial Court has rightly convicted the



appellants for the offence punishable under Section 3 (1) of TNPPDL Act, 1992. He would also submit that the prosecution side has established its case beyond reasonable doubt and the learned Sessions Judge, has rightly appreciated the entire evidence and convicted the accused as stated above and there is no merit in this Criminal Appeal and the same is liable to be dismissed.

8. Heard both sides. Perused the records.

9. The case of the prosecution is that on 12.11.2015, on behalf of Tamil Nadu Government's Special Scheme "Pudhu Vaazhvu Thittam" in order to eradicate the poverty and improve the livelihood of village people, the Witnesses Selvam, Narayanan, Pathiban and Perumal have conducted a meeting at Indoor Somanahalli Colony for Women Federation on Ready made Garment Industry. At the time of completion of the meeting, the accused assaulted the witnesses and abused them in filthy language. A1 caused simple injury and both A1 and A2 damaged Mahendra Xylo car by breaking the right side glass and damaged the right side door which belongs to the Government and thus caused damage to the tune of Rs.14,000/- and thereby the accused have committed the alleged offences.

10. After completing the investigation, the police laid the charge sheet against the appellants and the trial Court framed charges against them as stated supra. When questioned, the appellants pleaded "not guilty".

11. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 10 witnesses were examined as P.W.1 to P.W.10 and 7 documents were marked as Exs.P1 to P7 and no material objects were recovered.

12. After completing the prosecution evidence, the incriminating circumstances culled out from the prosecution witnesses were put before the appellants and the appellants denied it as false, however on the side of the appellants, no one witness was examined and no documentary evidence was produced.

13. After hearing the submissions made on either side and considering the evidence on record and after hearing either side, the learned Principal Sessions Judge, Dharmapuri vide judgment dated 28.08.2019 in S.C.No.7 of 2018, convicted and sentenced the appellants as stated supra.

14. Challenging the judgment of conviction and sentence, the present appeal has been preferred by the appellant.



15. 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.

16. A careful perusal of the entire materials on record would show that P.W.1 has categorically stated that he was working as organizer in "Pudhu Vaazhvu Thittam" and on 12.11.2015 P.W.1 along with one Narayanan, Parthiban, Perumal went to Somanahalli Colony to conduct meeting on behalf of Government for ready-made garments to women and at 5.00 p.m., they parked the said car bearing Registration No.TN-36-5151 and at 6.00 p.m., after the meeting got over, when the witnesses came near the car, the appellants abused them in filthy language and assaulted Narayanan who is District Project Manager. When PW.1 tried to prevent him, they assaulted P.W.1 and also P.W.2, they broke open the window glass of the said car and they damaged the door with hand and the witnesses given a complaint in Indoor police station, which was marked as Ex.P1 and they got admitted in Dharmapuri Government Hospital. Another injured witness was examined as P.W.2. and he has also spoken about the alleged occurrence. Therefore, evidence of P.W.1 and P.W.2 would corroborate each other. Further, the Motor Vehicle Inspector was examined as P.W.6, who has clearly spoken about the damage of the vehicle and issuance of Damage certificate Ex.P3. The mechanic working in the Government Automobile Workshop was examined as P.W.7 and he inspected the damaged vehicle and mentioned that three parts got damaged and issued damage estimate, which was marked as Ex.P4. Further Doctor-P.W.8 was examined and he also deposed that the witness sustained injury. Even though there are minor discrepancies and contradictions in the evidence of the prosecution, that will not go to the root of the prosecution case. However, though the learned counsel for the appellant would submit that there was delay in filing the complaint, it has to be seen that the alleged occurrence said to have taken place at 6.00 P.M. and further it is only a fight between two groups and in such case, there may be a delay in giving the complaint, but there is no inordinate delay. The said occurrence is said to have taken place at 6.00 P.M. and the complaint was lodged on the same night at 10.00 P.M. and therefore, the delay in lodging the complaint is not the sole ground to disbelieve the case of the prosecution and acquit the accused.

17. A reading of the evidence P.Ws.1 and 2-injured witnesses shows that they have clearly spoken about the attack made by the appellants and on a perusal of Ex.P1 and P8, it is seen that there is no mention about the obscene words and further the witnesses are not public servants. Therefore, the trial Court has rightly acquitted the appellants for the offences under Section 294(b) I.P.C. and 353 I.P.C. However, considering the



evidence of eye witnesses, official witnesses, injured witness and also Doctor, Motor Vehicle Inspector and Mechanic who have spoken about the alleged occurrence and injury caused by the appellants and also the damages alleged to have caused by the accused, the trial Court has convicted the first accused under Section 323 I.P.C. and both the accused under Section 3 (1) of the TNPPDL Act.

18. Considering the overall evidence available on record and also the facts and circumstances of the case, this Court does not find any merit in the Appeal and therefore the same is liable to be dismissed. As far as the quantum of sentence is concerned, the period of sentence imposed on the appellants for the offence under Section 3(1) Tamilnadu Property (Prevention of Damage and Loss) Act, 1992 alone is reduced from one year rigorous imprisonment to six months rigorous imprisonment with fine imposed by the trial court. In all other sense, the Judgment of the Principal Sessions Judge, Dharmapuri remains unaltered.

19. With the above modification, this Criminal Appeal is dismissed.

20. The suspension of sentence has already been cancelled vide order dated 11.02.2021 and the accused are produced before this Court. Since the conviction is confirmed, the Jail Superintendent, Vellore, is directed to confine the appellants/accused to undergo remaining period of sentence.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

arr

To

1. The Principal Sessions Judge,
Dharmapuri.
2. The Judicial Magistrate,
Dharmapuri.
3. The Chief Judicial Magistrate,
Dharmapuri.



4. The Inspector of Police,
Indoor Police Station,
Dharmapuri District.

5. The Jail Superintendant,
Vellore.

6. The Public Prosecutor,
Madras High Court.

7. The Deputy Registrar, (Crl.side)
High Court, Madras.

+1cc to Mr.V.R.Anna Gandhi, Advocate, S.R.No.12883

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PP(CO)
PBS/24/08/2021