



BAIL SILP

The Petitioner/Accused viz, A.Arivumani Age/35, Son of Anbalagan, was released on bail as per order of this Court dated 19/11/2019 in CRL.MP.16782 of 2019 in CRL.A.No.785 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2021

Pronounced on : 25.08.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Appeal No.785 of 2019

A.Arivumani

.. Appellant

Versus

The State represented by
The Inspector of Police,
Kadathur Police Station,
Dharmapuri District.
(Crime No.55 of 2016)

... Respondent

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction, sentence and compensation passed against the appellant in S.C.No.123 of 2018, dated 01.10.2019 on the file of the learned Principal Sessions Judge, Dharmapuri.

For Appellant : Mr.J.Bharathi Raja

For Respondent : Mr.T.P.Savitha,

Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been filed against the conviction, sentence and compensation passed against the appellant in S.C.No.123 of 2018, dated 01.10.2019 on the file of the learned Principal Sessions Judge, Dharmapuri.

2.The respondent/police registered the case against the appellant in Crime No.55 of 2016 for the offences under Sections 294(b), 323, 324 of IPC., and Section 5 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, (in short "TNPPDL Act"), 1992. After investigation, the respondent/police laid a charge sheet before the learned Judicial Magistrate,



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Pappireddipatti and the charge sheet was taken on file in PRC.No.2 of 2017. After completing the formalities, since the offence under Section 5 of the TNPPDL Act, is exclusively triable by Court of Session, the learned Judicial Magistrate committed the case to the Principal District & Sessions Court, Dharampuri.

3.The learned Principal District & Sessions Judge, Dharampuri, had taken the case on file in S.C.No.123 of 2008 and after completing formalities, framed charges against the appellant for the offences under Sections 294(b), 323, 324 of IPC, and also under Section 5 of the TNPPDL Act, 1992.

4.In order to prove the case of the prosecution, on the side of the prosecution, during trial, as many as nine witnesses were examined as PW.1 to PW.9 and seven documents were marked as Ex.P1 to P7. No material object was exhibited.

5.After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidences of the prosecution witnesses were put before the appellant by questioning under Section 313 of Cr.P.C., wherein, he denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

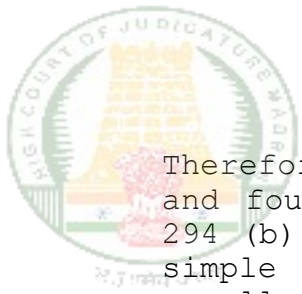
6.On completion of trial, after hearing of the arguments advanced on either side and considering the materials, the learned Sessions Judge found the appellant guilty for the offence under Section 323 of IPC, and sentenced him to undergo three months simple imprisonment and to pay fine of Rs.1,000/- in default to undergo 15 days simple imprisonment. Further, he was also found guilty for the offence under Section 5 of TNPPDL Act, 1992, for which, he was convicted and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.1,000/- in default to undergo three months simple imprisonment. Further, the learned Sessions Judge found the appellant not guilty for offences under Sections 294(b) and 324 of IPC, and acquitted him for the said offences under Section 235 (1) of Cr.P.C. Challenging the said Judgment, the accused/appellant has filed the present appeal before this Court.

7.The learned counsel for the appellant would submit that the prosecution has not proved its case with cogent evidence. Though the trial court acquitted the appellant for the offences under Sections 294(b) and 324 of IPC., it erroneously convicted the appellant for the offence under Section 323 of IPC., and Section 5 of TNPPDL Act, 1992. There is no eye witness in this case. PW.2 and PW.3 are interested witnesses and there are material contradictions in the evidence of the prosecution witnesses. The place of occurrence and the time of occurrence



were not proved. Even PW.1 stated in his evidence that he was not aware of the fact that who has brought him to the hospital. Even according to the prosecution, nobody was present near the place of occurrence, except the defacto complainant and one Kaviyarasu, who is friend of the defacto complainant. The said Kaviyarasu was not examined by the prosecution. Hence, non-examination of the said Kaviyarasu is fatal to the case of the prosecution. There is no material to show that the appellant scolded the defacto complainant with filthy language. The trial court acquitted the appellant for the offences under Section 294 (b) and 324 of IPC, but with the very same evidence, convicted the appellant for the offences under Section 323 of IPC and Section 5 of TNPPDL Act, 1992. No material object was produced and the damage was not proved in the manner known to law. The learned Trial Judge appreciated the evidence of prosecution witnesses, but failed to consider the fact that during the cross-examination, they have not supported the case of the prosecution. There are material contradictions between the evidence of the prosecution witnesses. Therefore, the Judgment of conviction and sentence passed by the trial court is liable to be set aside.

8.The learned Government Advocate (Crl.side) appearing for the respondent would submit that the defacto complainant was examined as PW.1, who has clearly deposed that on 23.02.2016 at about 5.00 p.m, he was carrying haystack in his TATA Ace vehicle bearing Registration No. TN-29-AP-0914 from Thanipadi to Kadathur, accompanied with one Kaviyarasu and when the said vehicle was proceeding near Linganayakanahalli bus stop, the appellant, who was coming from the opposite direction stopped the defacto complainant's TATA Ace vehicle and scolded him with filthy language, pulled the shirt of the victim and pushed him down from the vehicle, assaulted him on his left shoulder and caused simple injury. The appellant has also assaulted the said Kaviyarasu on his head with stone and caused simple injury. Further, the appellant also pelted stone over the front side of the windshield glass of the TATA ACE vehicle and caused damage worth about Rs.7,700/-. Thereafter, PW1 was taken to the hospital and admitted at Kadathur Government Hospital, thereafter, PW.1 gave a complaint, which was written by the head constable/PW.6. The Doctor/PW5, examined PW1 and also found simple injury on his head. Even in the Accident Register/Ex.P3 he made the entry that one unknown person assaulted him with stone. PW2 & PW3 are the eyewitnesses, who have spoken about the incident. The damage valuation certificates were produced and the same was marked as Ex.P4 . Therefore, the prosecution has proved its case that the appellant waylaid the vehicle of PW1, attacked him and caused damaged to the vehicle. The doctor's evidence also corroborated with the deposition of PW1 and other eyewitnesses corroborated the same, who have seen the occurrence.



Therefore, the trial court rightly appreciated all the evidence and found the appellant not guilty for offences under Sections 294 (b) & 324 of IPC., since the injuries sustained by PW1 are simple in nature. However, the trial court, convicted the appellant for committing the offence under Section 323 of IPC., based on the Accident Register/Ex.P3, which shows that PW.1 sustained injury. The prosecution proved that appellant caused the damages to the said vehicle, therefore he was convicted for the offence under Section 5 of TNPPDL Act. Hence, the prosecution has proved its case beyond reasonable doubt and the trial court has rightly appreciated the entire evidence and rightly convicted him for the said offence. Hence, there is no merit in the appeal and it is liable to be dismissed.

9.Heard the learned counsel for the appellant and the learned Government Advocate (Crl.side) appearing for the respondent/State and perused the materials available on records.

10.The case of the prosecution is that on 23.02.2016 at about 5.00 p.m, the defacto complainant was carrying haystack in his TATA Ace vehicle bearing Registration No.TN-29-AP-0914 from Thanipadi to Kadathur. The defacto complainant was accompanied by one Kaviyarasu and the said vehicle was proceeding near Linganayakanahalli Bus Stop. The appellant, who was coming from the opposite direction in his Two wheeler bearing Registration No.TN-29-AT-7860, stopped the defacto complainant's TATA Ace vehicle, scolded him with filthy language, pulled his shirt and pushed him down from the vehicle. The appellant assaulted the defacto complainant on his left shoulder and caused simple injury. Further, the appellant assaulted the said Kaviyarasu and caused simple injury. Further, the appellant also pelted stone over the front side of the windshiled glass of the TATA ACE vehicle. Therefore, a complaint has been lodged against the appellant.

11.After due formalities, the case has been taken on the file in PRC.No.2 of 2017 and subsequently, after committal, it was taken on file in SC.No.123 of 2018 by the learned Principal District and Sessions Judge, Dharmapuri, and charges were framed against the appellant for the offences under Sections 294(b), 323, 324 of IPC., and under Section 5 of TNPPDL Act.

12.This Court being an Appellate Court, is the final court of fact finding, which has to necessarily re-appreciate the entire evidence and give an independent finding.

13.In order to prove the charges framed against the appellant, during trail, on the side of the prosecution, totally nine witnesses were examined and seven documents were marked, out of which the injured witness was examined as PW1. He has



clearly narrated that on 23.02.2016, when he was carrying a haystack in his own TATA ACE vehicle bearing Reg. No.TN-29-AP-0914 from Thannipadi to Pommidi via Kadathur, the appellant came by two wheeler from the opposite direction, stopped the vehicle, scolded the defacto complainant in filthy language, assaulted and caused damages to the vehicle by pelting stone. The people nearby taken P.W.1 to Kadathur Government Hospital through 108 ambulance from where he was sent to Dharmapuri Government Hospital for further treatment. On 25.02.2016, Kadathur police recorded the statement of injured witness and subsequently, the First Information Report was registered and later on investigated the case.

14.P.W.2 is said to be an eyewitness, who has deposed that he is a resident of Regadahalli and doing agriculture. On the date of occurrence, P.W.2 accompanied Jagadeesan, Mohan, Chinna thambi, near Linganayahalli Bus Stop, saw P.W.1 and the accused quarrelled with each other and pelted stone on the head of the injured witness and the stone hit the front windshield glass of the said vehicle. Due to the said injury caused by the appellant, P.W.1 was admitted in the Kadathur Government Hospital. One Mohan, who accompanied PW.2, was examined as PW3, who stated in his evidence about the date and time of occurrence. P.W.4/ Ramesh has spoken about the date of the occurrence and he has also signed in the mahazar as a witness, which was marked as Ex.P2. The Doctor, who gave treatment to the injured witness, was examined as P.W.5, who has spoken about the treatment given to the injured witness. P.W.5 also made entry in the Accident Register, which was marked as Ex.P3. The person, who has issued the damaged value estimation certificate/Ex.P4, was examined as P.W.7. He has spoken about the damages caused to the vehicle. Even though there are contradictions between the evidence of the witnesses, the said contradictions are not material contradictions. The injured witness was examined as P.W.1. He has clearly spoken about the occurrence and his evidence was corroborated by P.W.2 & P.W.3, who had witnessed the occurrence. P.W.2 & P.W.3 are the person present nearby the place of scene of occurrence. Besides P.W.5/Docotor also corroborated the same and recorded the injury sustained by P.W.1.

15.The learned defence counsel has taken a stand that PW1 had accompanied one Kaviyarasu, but the said Kaviyarasu was not examined as witness, and non-examination of the said Kaviyarasu, is fatal to the case of the prosecution. In this case, PW1 is an injured witness, who sustained injury in the occurrence and his evidence was corroborated by the evidence of PW7, PW2 & PW5, who are the independent witnesses. Therefore, non-examination of the said Kaviyarasu, who is said to have accompanied the injured witness, is not fatal to the case of the prosecution,



since, in this case, the de-facto complainant is an injured witness and he has no previous motive or enmity against the appellant. The victim, who had driven the TATA ACE with load of haystack, was waylaid by the appellant, who scolded in filthy language, assaulted, caused injury to P.W.1 and also caused damages to the vehicle. It is settled proposition of law that if the evidence of victim is cogent, credible, trustworthy and inspires confidence of the Court, conviction is permissible based on the evidence of sole witness. The evidence of P.W.5/Doctor corroborated the evidence of the injured witness and he also made entry in the Accident Register that one unknown person pelted stone and caused the said injury. PW7 also stated that vehicle got damaged. Hence, there is no reason to discard the evidence of the injured witness and the contradictions, pointed out by the learned counsel for the appellant, are not material contradictions and it will not go into the root of the case of the prosecution.

16.This Court being an Appellate Court, has re-appreciated the entire evidence and finds the appellant committed offence under Section 323 of IPC., and under Section 5 of TNPPDL Act of 1992 and there is no merit in the appeal. Hence the appeal is liable to be dismissed.

17.In the result, the Criminal Appeal is dismissed. The conviction and sentence dated 01.10.2019, passed in S.C.No.123 of 2018, by the learned Principal Sessions Judge, Dharmapuri is confirmed. If the appellant/accused is not in duress, the trial court is directed to take appropriate steps to secure the presence of the appellant to serve the remaining period of sentence.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, Dharmapuri.
2. The Inspector of Police,
Kadathur Police Station,
Dharmapuri District.



3. The Superintendent of Prison,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court of Madras.

5. The Section Officer,
Criminal Section (Records), High Court, Madras.

Crl.A.No.785 of 2019

PL(CO)
CT 11/04/2022