



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A. No.619 of 2019

1. Basheer Ahmed
2. Hithayathulla

...Appellants/Accused 1 & 2

vs.

State Rep by,
The Inspector of Police,
Puduchatram Police Station,
Namakkal District
Crime No.68 of 2009

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., praying to call for the case records and set aside the conviction and the sentences passed against the appellants by the Principal Sessions Court, Namakkal in S.C.No.113 of 2010 dated 19.08.2019 and acquit them by giving them benefit of doubt arising out of the prosecution case.

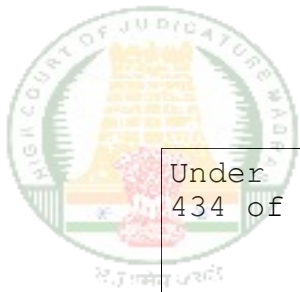
For Appellants	:	Mr.N. Ravishankar Vallatharasu
For Respondent	:	Mr.Leonard Arul Joseph Selvam Government Advocate (Crl.Side)

JUDGMENT

The present Criminal Appeal has been filed by the appellants to set aside the judgment of conviction and sentence passed by the learned Principal District and Sessions Judge, Namakkal, dated 19.08.2019 in S.C.No.113 of 2010.

2. The appellants 1 and 2 are arrayed as accused Nos.1 and 2 in the above referred case. They stood charged for the offence punishable under Sections 434 of IPC and 3 (ii) of the TNPPDL Act.

3. By the Judgment dated 19.08.2019, the learned Principal Sessions Judge, Namakkal, convicted the appellants herein under Sections 434 of IPC and 3 (ii) of the TNPPDL Act and sentenced them as follows:-



Under Section 434 of IPC	A1 and A2 were sentenced to undergo Rigorous Imprisonment for one year each and to pay a fine of Rs.1,000/-, each and in default of payment of fine to undergo Simple Imprisonment for 3 months.
Under Section 3 (ii) of TNPPDL Act	A1 and A2 were sentenced to undergo Rigorous Imprisonment for three years each and imposed a fine of Rs.4000/- each and in default of payment of fine to undergo Simple Imprisonment for 9 months

The trial Court ordered the sentences to run concurrently.

4. Challenging the said conviction and sentence, both the accused are before this Court by way of filing the present Criminal Appeal.

5. The case of the prosecution, in brief, is as follows:-

a) PW1-Thiyagarajan is working as the Village Administrative Officer in Tirumalaipatti Village. Before the occurrence, the village people had given an application to lay the landmark stone after surveying the Odai Poramboke and at the time of surveying the Odai Poramboke, he and his Assistant assisted the Surveyor. At that time, the survey stone were fixed in the midst of two Survey Nos.461 and 460. The land in Survey No.461 is belonging to the family of the accused. Survey No.460 is the Odai Poramboke which was situated adjacent to the land owned by the accused in Survey No.461. Then, on 12.02.2009 at about 9.00 p.m., the village people made a phone call to PW1 and stated that the landmark stone fixed by the Government Authority was removed by the accused by using JCB machine. After knowing the same, he went to the police station and gave a complaint under Ex.P1.

b) PW5-Pushparani- The then Inspector of Police, Pudhuchathiram, on receipt of the complaint given by PW1, registered a case against the appellants in Cr.No.68 of 2009 under Sections 434 of IPC and 3 (ii) of TNPPDL Act and on the next day i.e., on 14.02.2009 at about 6.30 a.m., she went to the place of occurrence and in the presence of PW4-Subramaniam and one Chinnusamy, she prepared an observation mahazar under Ex.P3. She drawn a rough sketch and the same was marked as Ex.P4. She examined the witnesses and recorded their statements. She arrested the accused and remanded them to the judicial custody. After completion of investigation on 30.03.2009, she filed a final report against the accused alleging that they were liable to be convicted under Sections 434 of IPC and 3 (ii) of the TNPPDL Act.

6. Based on the above materials, the trial court framed the charges under Sections 434 of IPC and 3 (ii) of the TNPPDL Act.



Both the accused denied the charges. In order to prove their case on the side of the prosecution, PW1 to PW5 were examined and Exs. P1 to P4 were marked.

7. Out of the said witnesses,

(i) PW1-Thiyagarajan, who is the defacto complainant in this case speaks about the receipt of oral complaint from the public and about lodging of written complaint before PW5. According to him, due to mischief committed by the accused, there was a loss to the tune of Rs.4000/- to the Government.

(ii) PW2-Pattikarar @ Ponnusamy is the neighbour to the accused. He is having lands near to the land owned by the accused. He deposed before the trial court as during the relevant point of time when he was going to take water, the JCB vehicle was running in that place, in otherwise, he did not know who are all there near to the vehicle.

(iii) PW3-Senthamilselvan is the resident of Tiruchengode. He is the neighbouring land owner to the Accused. He gave evidence as on 06.02.2009, the Village Administrative Officer and Surveyor have measured the cart track, Odai Poramboke and laid 10 Survey Stones in the boundary. On 12.02.2009 at about 10.00 p.m., both the accused along with one Hussain, with the help of JCB machine, removed the survey stones and took the sand from there and thereafter closed the pit with the sand. When the alleged act committed by the accused was questioned by him, both the accused gave an evasive reply.

(iv) PW4-Subramaniam, who was working as VAO Assistant, deposed about the fixing of survey stone in the occurrence place. Further, he states about the lodging of complaint by PW1 and about preparation of observation mahazar by PW5.

(v) PW5-Pushparani, The then Inspector of Police at Puduchathiram, speaks about the receipt of complaint from PW1, registration of the case, investigation and about the filing of final report.

8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., both the accused denied the same as false. However, none were examined on their side as a defence witness.

9. The learned Principal Sessions Judge, Namakkal, after perusing all the above materials and on considering the arguments advanced by the learned counsel appearing on either side, came to the conclusion that both the appellants were guilty under Sections 434 of IPC and 3 (ii) of TNPPDL Act,



convicted and sentenced them as stated in paragraph No.3 of this Judgment.

10. Aggrieved over the said conviction and sentence, both the appellants are before this Court with this appeal.

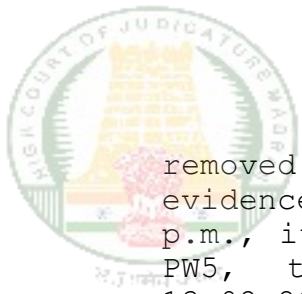
11. I have heard Mr.N.Ravishankar Vallatharasu, the learned counsel appearing for the appellants and Mr.Leonard Arul Joseph Selvam, the learned Government Advocate (Crl.Side) appearing for the respondent.

12. The learned counsel for the appellants would contend that in respect of the present case, PW1 lodged a complaint with the delay of 24 hours and the reason for the delay has not been explained. Secondly, in respect of the number of survey stones damaged by the accused, there was a material contradictions found in the evidence given by PW3 and PW4. He would further contend that though it was stated on the side of prosecution as in the alleged occurrence, one JCB is used for committing the offence, the same has not been recovered as a material object. Further, as per the rough sketch prepared by the Investigation Officer, the alleged survey stones damaged by the accused are all fixed in the land which belongs to the appellants and therefore, it cannot be said that during the relevant point of time, both the accused committed a mischief, destroyed the survey stones and caused a loss to the Government. According to him, lot of contradictions are available in the evidence given by the prosecution witnesses and the trial court without considering the said aspects, convicted the accused, which is liable to be set aside.

13. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the evidence given by PW1 to PW5, is very clear that at the time of occurrence, the appellants committed mischief by destroying the survey stones and also by altering the structure of Odai Poramboke. According to him, interference of this Court in the findings rendered by the trial court is not necessary.

14. I have considered the rival submissions made on either side and perused the records carefully.

15. Now for considering the first submission made by the learned counsel for the appellants, it is necessary to see whether the FIR pertains to this appeal has been registered with a delay. In this regard, in respect of the lodging of complaint, PW1, who is the defacto complainant gave an evidence before the trial court as on 12.02.2009 itself, at about 9.00 a.m., the village people made a phone call to him and informed that the survey stones fixed at the time of surveying the land were



removed by using JCB machine. Accordingly, as per the said evidence, he knew the occurrence on 12.02.2009 at about 9.00 p.m., itself. Afterwards in respect of the lodging of complaint, PW5, the Investigation Officer gave an evidence as on 13.02.2009, while she was working as Inspector of Police at Pudhuchathiram, PW1 appeared before her at about 9.30 p.m and gave a complaint as against the accused. Accordingly, the Village Administrative Officer lodged a complaint after 24 hours from the time of which he received information about the occurrence. In this regard, PW1 being the Village Administrative Officer, having the duty to protect the Government property did not say as, why he has not lodged a complaint immediately after knowing the occurrence. Therefore, it seems that there was a delay in lodging a complaint in the present case. However, being the reason that PW1 is not having any enmity with the appellants, the delay in lodging the complaint alone cannot be taken as a sole reason for disbelieving the entire case of prosecution.

16. In respect of another submission made by the learned counsel for the appellants, it is not in dispute that PW1, PW3 and PW4 had categorically stated that before sometime from the date of occurrence, the Surveyor attached with the said Village measured the property and fixed the survey stones in the boundary line of the accused field.

17. In respect of the same, PW3 gave evidence that while at the time of measuring the property, 10 survey stones are unearthed in the occurrence place, per contra, PW4 says only two survey stones are fixed and the same was removed, in this regard, PW1 who is the defacto complainant deposed as only one survey stone was removed by the accused. Therefore, in respect of the number of survey stones which were damaged during the time of occurrence, the evidences given by PW1, PW3 and PW4 are having lot of contradictions. Accordingly, it cannot be said that during the time of occurrence, the accused committed a mischief and caused loss to the Government to the tune of Rs.4000/-. More than that, in the observation mahazar prepared by the investigation officer, it appears that the survey stones are fixed in the land belonging to the appellants and not in the Odai Poramboke.

18. In general, the survey stones have to be fixed in the boundary line of Government property and not in the private property. Therefore, the contradictory evidence given by the prosecution witnesses, in respect to number of survey stones fixed, would create a doubt, as before the occurrence whether the revenue authority fixed the survey stones in the boundary lines of Odai Poramboke or not.



19. One another aspect which is necessary to be decided in this case is that during the time of cross-examination of PW1, on the side of the accused, there was a suggestion that the land in survey No.461/5C belongs to one Haseena Beevi. On the other hand, as per the case of prosecution, the public cart track has been damaged by filling the sand in S.No.460 and the land in Survey No.461/5B. In this regard in respect of ownership of S.No.461/5C, PW1 gave evidence as he does not know who is the owner of the S.No.461/5C.

20. Now, on considering the said evidence with the relevant records, being the reason that the present case pertains to the Survey No.461/5C, it is not known as to why the appellants who are not having the title over the same, had committed the offence, by filling the sand in S.No.460. In this regard, the prosecution has failed to show the ownership of Survey Nos.460 and 461/5C by producing the relevant revenue documents. More than that, it is the evidence given by PW3 as the alleged occurrence had happened at midnight and therefore, he was not in a position to see the number plate of the JCB which was used at the time of occurrence. On the other hand, he states about the presence of the accused in the place. The said evidence of PW4 would create a doubt as during midnight without any light how he saw the appellants and the same creates a million dollar question, whether the appellants were present in that place or not. Accordingly, in view of the contradictory evidence given by PW3 and PW4 and due to non producing of proof of ownership in respect of the alleged land in S.No.461/5C, this Court cannot come to the conclusion that the accused alone committed the offence as alleged by the prosecution. The trial court without seeing the same in a perspective manner, convicted the accused and the same is liable to be set aside

21. In the result, the order passed by the learned Principal Sessions Court, Namakkal in S.C.No.113 of 2010 dated 19.08.2019, is set aside and the Criminal Appeal is accordingly allowed. The accused are acquitted of the charges. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar



1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate No.II,
Namakkal.

3.The Inspector of Police,
Puduchatram Police Station,
Namakkal District
Crime No.68 of 2009

4.The Public Prosecutor,
High Court, Madras.

5.The Chief Judicial Magistrate, (for information)
Namakkal.

+1cc to Mr.M.Nataraj Vallatharasu, Advocate SR. No.17581

Crl.A. No.619 of 2019

NR (CO)
PR (30/03/2022)