



Crl.A.No.287 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated: 28.07.2023

Coram

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl. Appeal No.287 of 2018

1.Chandrasekaran

2.Senthilkumar

3.Ramesh

4.Veeramani

5.Sivaprakasam

.. Appellants/Accused 1-3 and 5 & 6

Vs

1.State Rep by

The Inspector of Police,

Perugavazhnthan Police Station,

Thiruvavarur District

(Crime No.154 of 2010)

.. Respondent



Crl.A.No.287 of 2018

Criminal Appeal filed under Section 374 (2) Cr.P.C to set aside the judgment and sentenced imposed by the learned Principal District and Sessions Judge, Thiruvarur, in S.C.No.65 of 2012 dated 17.04.2018.

For Appellants

..

Mr.N.R.Elango

Senior Counsel

For M/s.Aruna Elango

For Respondent

..

Mr.V.Meganathan

Govt. Advocate (Crl. Side)

JUDGMENT

This Criminal appeal has been filed to set aside the judgment and sentence imposed by the Principal District and Sessions Judge, Thiruvarur, in S.C.No.65 of 2012 dated 17.04.2018.

2.Mr.N.R.Elango, learned Senior Counsel appearing for the Appellant submitted his facts:

The learned Senior Counsel for the Appellants invited the attention of this Court, to the complainant in Ex.P.1 to the charges framed by the



Crl.A.No.287 of 2018

learned trial Court. The first charge relates to Section 147 IPC against all the accused and second charge relates to Section 148 IPC against A1,A2,A3 & A4 under Section 148 IPC and third charge framed under Section 452 IPC against A1 to A3, a5 & A6, fourth charge relates to Section 3(1) TNPPDL Act against 5th Accused, fifth charge relates to Section 3(1) TNPPDL Act charge framed against A1 to A3 and A6, Sixth charge relates to Section 506(ii) of IPC as against A1 &A3, Seventh charge relates to Section 294 (b) against A1, Eighth charge relates to Section 395 IPC against A2, A3, A4 & A5.

3.The learned Senior Counsel invited the attention of this Court that the prosecution had examined witnesses P.Ws.1 to 15 and marked 16 documents as Ex.P.1 to Ex.P.16 and Material Objects M.O.1 to 4. In the cross examination of the prosecution witnesses, the documents is favour of the accused was marked as Exs.P.1 to P.6. The learned Senior Counsel invited the attention of this Court to the deposition of this witnesses P.W.1 is complainant. The learned Senior Counsel invited the attention of this Court to the contents of the complaint marked under Ex.P.1, it was presented in the month of October, it was taken on file by the learned Magistrate and issued



Crl.A.No.287 of 2018

direction under Section 153 Cr.P.C to the Sub-Inspector of Police to register the case and proceed with the investigation. The learned Senior Counsel invited the attention of this Court to the contents of the complaint under Ex.P.1 wherein it was stated that the earlier complaint given by P.W.1 was not taken cognizance by the SHO, Police Station concerned. If so what prevented P.W.1-complainant from giving complaint to the Higher Officials of the Police Department had not been stated in the evidence of P.W.1. Further, the learned Senior Counsel invited the attention of this Court to the fact that the alleged occurrence had taken place in the month of August whereas, the complaint given to the learned Judicial Magistrate was in the month of October. The delay had not been explained either by P.W.1 or by the Police Officials. P.Ws.13, 14 &15. P.Ws.1,6,7, 8 & 9 only had supported the prosecution case. P.Ws.10 to 12 remains hostile. P.W.2 witnessed the occurrence and also a witness to the Observation Mahazar. He had turned hostile. P.W.4 is Observation Mahazar witness. He had also turned hostile. P.W.5-Panchayat Board President, who was examined to prove as to in whose name the property stood, turned hostile. P.W.3 is the Village Administrative Officer.



Crl.A.No.287 of 2018

4.The learned Senior Counsel invited the attention of this Court to the evidence of the P.W.3 wherein, he states, in his chief examination, that he used to travel in two wheeler to his office via the place of occurrence and one fine morning he noticed the house where P.W.1 resided was demolished. When he enquired with neighbours, nobody would give proper reply. At the same time, he had issued a certificate under Ex.P.3 stating that Chandrasekar/A1 and his sons had demolished the house standing in the name of P.W.1. This document issued by P.W.3-VAO is inadmissible. His evidence in examination chief states that to his enquiry nobody had given a proper response and therefore, how he came to know that this Chandrasekar/A1 and his sons had demolished structure is not clear known. This document is hit by Section 167 Cr.P.C and it is inadmissible. Further, he would submit that the documents marked as Ex.D.1 to D.3 were issued by the very same VAO, based on Revenue records. Admittedly, there was civil dispute between A1 and the elder brother of the husband of P.W.1. The learned Senior Counsel invited the attention of this Court to the evidence of P.W.1 and her mother-in-law-P.W.6. Evidence of P.W.6 is not supportive of P.W.1. As per P.W.6's evidence the disputed site belongs to elder son of P.W.6-Sekar and P.W.6 Sekar and P.W.6 used to reside with her daughters



Crl.A.No.287 of 2018

and not with her sons. The learned Senior Counsel invited the attention of this Court to the documents marked through IO in this case, family card and other documents under Exs.P.11 to P.15. Particularly, Ex.P.13 is the Family card, it ought to have been marked through P.W.1. But it had been marked through P.W.14. Ex.P.13 is the family card of the P.W.1. It is in the name of Rajkumar/Husband of P.W.1-Kalyani. Under Ex.P.13 there is an entry which clearly states verified 100% which means that the Civil Supplies Department had conducted door to door check up regarding Family Card and the family members mentioned in the family card and found out that P.W.6 is not residing in the address mentioned in the family card. Her name had been removed from the family card. Therefore, the complaint stating that P.W.1 and P.W.6 were residing together and they were attacked by the accused is falsified. Further, the learned Senior Counsel invited the attention of this Court to the evidence of P.W.6 and P.W.7, 8 & 9 who claimed to be eye witnesses. P.Ws.7, 8 & 9 are relatives of PW.1. P.W.8 is uncle of P.W.1 and P.W.7 is the uncle of husband of P.W.1. P.W.9 is the son in law of P.W.18. In their cross examination, it was clearly admitted that P.W.1 was residing in a separate place where there was hut; it was demolished and pucca structure was put up and she is residing in that house. Further, the learned Senior



Crl.A.No.287 of 2018

Counsel invited the attention of this Court to the evidence of P.W.14 who is the Investigation Officer. He had, in his evidence, admitted that the property which the accused herein are alleged to have demolished is the house belonged to A1 Chandrasekar. To the pointed question by the learned Counsel for defence before the trial Court to P.W.14 the Investigation Officer whether on the part of the investigation I.O - P.W.14 had collected the Revenue records from the Competent Revenue Officials regarding the ownership to the disputed property in which the alleged occurrence said to have occurred. He had answered clearly that he had collected Revenue records from the competent Officials and it is available in the case diary. That means he had not filed it as part of the documents in the final report filed in the Court of the learned Judicial Magistrate. Therefore, the learned Senior Counsel for the appellants sought indulgence of this Court to draw adverse inference for not marking documents which had been procured by the Investigation Officer-P.W.14 from the competent Revenue Authorities regarding any ownership. In the light of such admission, the cross examination of the witnesses who had supported the evidence of P.W.1 particularly, P.Ws.6, 7, 8 & 9, who are eye witnesses to the alleged occurrence in their cross examination, had stated differently. P.W.1 is



Crl.A.No.287 of 2018

residing in a place away from the alleged occurrence place or the house. She is residing in a pucca structure. The learned Sessions Judge, failed to appreciate the evidence to the prosecution witness, particularly, the alleged witnesses who had supported P.W.1 and who are also related to P.W.1. They had, in their cross examination, contradicted the claim of P.W.1. Under those circumstances, the learned Sessions Judge failed to claim the evidence available through the witnesses who claimed to have supported P.W.1. Therefore, the learned Senior Counsel seeks to set aside the judgment of the learned Sessions Judge, convicting the A1 for the offence under Sections 148, 452, 294(b), 395 IPC and Section 3(1) of TNPPDL Act 1992 r/w 149 IPC, A2 & A3 convicting for the offence under Section 148, 452, 395 of IPC and Section 3(1) of TNPPDL Act 1992 r/w 149 IPC, A5 convicting for the offence under Section 147, 452, 395 IPC and Section 3(1) of TNPPDL Act 1992 and A6 convicting for the offence under Section 147, 452, 395 IPC & Section 3(1) of TNPPDL Act 1992 r/w 149 IPC.

5.The learned Government Advocate appearing for the State submits that the prosecution had proved the case through the evidence of P.W.1, 3, 6, 7 & 9. The learned Judge had, on proper appreciation of the evidence,



Crl.A.No.287 of 2018

convicted the accused and the judgment of the learned Sessions Judge is well reasoned judgment which does not warrant any interference. Hence this appeal lacks merits. Further, the learned Government Advocate had invited the attention of this Court to the delay in FIR which had been clearly stated in the FIR itself. P.W.13-the Sub Inspector of Police had registered the FIR only from the endorsement from the Court that FIR was registered.

6.Learned Senior Counsel for the appellants/Accused submits that there is evidence in the cross examination of P.Ws.7 & 8 that immediately after the occurrence they were examined. If that is so, the evidence of P.W.1 that when she had given complaint to SHO, also complaint concerned. It was not acted upon and therefore, she had approached the Court under Section 200 Cr.P.C to lodge a complaint, is found unacceptable. Where is the earlier complaint? That was also not marked. P.W.1 in her evidence failed to give detailed description of the property and enjoyment by P.W.1. There is evidence available to the Court in the cross examination of P.W.3, P.W.6, P.W.7 & P.W.8 that there was a dispute between the elder brother of husband of P.W.1-Sekar and accused in the Civil Court. In no way. P.W.1 is the owner of the property as per the evidence. It is the evidence of P.W.6 that



Crl.A.No.287 of 2018

P.W.1 is residing in the house built in a property allotted to her son Rajkumar. P.W.14 Inspector of Police in his cross examination admitted that there is a dispute between the elder brother, husband of P.W.1-Sekar and A1 in the Civil Court. P.W.3 VAO had stated that the site wherein alleged occurrence took place belonged to A1 and he had issued Ex.D1 to D3 also. Therefore, the contention or the claim or the evidence of P.W.1 that on the alleged date of occurrence A1 to A6 alleged to have demolished the structure is found to be fictitious. In short, the prosecution failed to prove the charges. While so the conviction by the learned Sessions Judge is to be set aside.

7.On consideration of the rival submissions, the point for consideration is **whether the judgment of the learned Sessions Judge in S.C.No. 65 of 2012 dated 17.04.2018 is to be set aside and the accused/Appellants have to be set free?**

8.Heard Thiru.N.R.Elango, learned Senior Counsel for the Appellants/Accused and Thiru.Meganathan, learned Government Advocate (Crl. Side) for the State. Perused the evidence of P.W-1 to P.W-15 and Ex.P1 to Ex.P.16. On consideration of the rival submission the evidence of



Crl.A.No.287 of 2018

P.Ws.1,6,7,8 & 9 and P.Ws.13, 14 & 15 were perused. As highlighted by the learned Senior Counsel for the appellants, there are contradiction between the evidence of P.Ws.1, 6, 7, 8 & 9.

9. P.W.1 complainant admits that she resides in a pucca constructed house away from the site in which the alleged occurrence took place. P.W.7 is the uncle's Husband of P.W.1 and also P.W.8 is the uncle of P.W.1. Both had, in their cross examination, admitted that P.W.1 is residing away from the site where the alleged occurrence have taken place. P.W.3 Village Administrative Officer himself has admitted that he issued Ex-D-1 to Ex- D-3 in favour of A1. In the light of those facts, the evidence of P.W-14 the Inspector of Police who had conducted the investigation showed that he had obtained Revenue records from competent Revenue Officials but had not furnished it, as part of the final report. The failure of the prosecution to place those documents before the trial Court. The circumstance under which they are prevented from furnishing those documents, the Court has to necessarily draw adverse inference under Section 114 of Indian Evidence Act. Had they been furnished, the case of the prosecution would be weakened. Therefore, they had not marked. They had suppressed these revenue records. That is the



Crl.A.No.287 of 2018

only conclusion drawn by this Court. It is the subsequent evidence of P.W.14

that on his enquiry he came to know that site belongs to A1 Chandrasekar.

Further, as highlighted, by the learned Senior Counsel, as per the evidence of P.W.1, it is her husband's property. As per P.W-6, her mother-in-law, it is the property of Sekar elder son of P.W-6. Both Sekar and Rajkumar have not been cited as witnesses. Further, as highlighted by the learned Senior Counsel for the appellants/ Accused, P.W.1 in her chief examination states that eventhough A-1 to A-6 have demolished the structure nobody came to her help. Nobody supported her to prosecute A-1. Therefore, she was forced to give complaint to the learned Judicial Magistrate. In the light of the those circumstances the evidence of P.W.1 is found unbelievable. When the property itself is not in her husband's name and circumstances in which either her husband or his elder brother Sekar volunteered to help her or the failure of the investigation Officer to examine Sekar and Rajkumar creates doubt in the claim of P.W-1. Therefore, in the totality of the circumstances projected by the learned Senior Counsel for the appellants, the learned Sessions Judge failed to appreciate the materials available before her, before coming to the conclusion that the prosecution proved the case beyond reasonable doubt. There are many loopholes in the claim of the P.W.1. The



Crl.A.No.287 of 2018

learned Sessions Judge failed to consider those circumstances. The judgment of the learned Principal District and Sessions Judge, Thiruvarur, in S.C.No.65 of 2012 convicting the accused for the charges framed by the trial Court as per the judgment dated 17.04.2013 is found to be perverse warranting interference by this Court.

10. For the foregoing reasons, **this Criminal Appeal is allowed.** The conviction and sentence passed in S.C.No.65 of 2012 on the file of the learned Principal District and Sessions Judge, Thiruvarur, vide Judgment and order dated 17.04.2013 is set aside. The bail bond, if any, shall stand cancelled and fine amount, if any, paid by them is ordered to be refunded.

28.07.2023

vsn

To

- 1.The Principal District and Sessions Judge, Thiruvarur,
- 2.The Inspector of Police,Perugavazhnthan Police Station,
Thiruvarur District



WEB COPY



Crl.A.No.287 of 2018

SATHI KUMAR SUKUMARA KURUP,J.

vsn

Crl.A.No.287 of 2018

28.07.2023