



CRL A No.216 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	14.12.2022
Pronounced on	:	02.01.2023

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.216 of 2020

Ammasi

... Appellant

Vs.

The State, represented by
The Inspector of Police,
Vennandur Police Station,
Namakkal District.
(Crime No.487 of 2010)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Namakkal, Namakkal District dated 11.03.2020 in SC.No.237 of 2018 for an offence under Sections 431, 434, 447 of IPC and Section 3(ii) of TNPPDL Act, convicted under Section 434 of IPC and sentenced to undergo rigorous imprisonment for six months and imposed fine amount of Rs.1000/- in default of payment of fine to undergo simple imprisonment for 45 days, convicted under Section 447 of IPC and sentenced to undergo rigorous imprisonment for one month and fine sum of Rs.1000/- in default to undergo one week simple imprisonment, convicted under Section 3(ii) of



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TNPPDL Act and sentenced to undergo rigorous imprisonment for four years and imposed fine Rs.5000/- in default to undergo 1 year simple imprisonment.

For Appellant : Mr.Ilamvaludhi for Mr.R.Kamaraj

For Respondent : Mr.R.Murthi
Government Advocate (Criminal Side)

J U D G M E N T

This Criminal Appeal has been filed to set aside the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Namakkal, Namakkal District dated 11.03.2020 in SC.No.237 of 2018

2. The respondent registered the case in Crime No.487 of 2010 for the offences under Sections 431, 434, 447 of IPC and Section 3(ii) of TNPPDL Act. After completing the investigation, the respondent police filed the charge sheet before learned Judicial Magistrate, Rasipuram. The learned Magistrate taken the charge sheet on file in PRC No.11 of 2018. After completing the formalities, the learned Magistrate committed the case to learned Principal District and Sessions Judge, Namakkal, since the offence under TNPPDL Act is exclusively triable by the Court of



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Session. The learned Principal District and Sessions Judge, Namakkal, taken the case on file in SC.No.237 of 2018.

3. After completing the formalities framed the charges against the appellant for the offences under Sections 431, 434, 447 of IPC and Section 3(ii) of TNPPDL Act.

4. After framing the charges, in order to substantiate the charges framed against the appellant, during the trial, on the side of the prosecution, as many as 9 witnesses were examined as PW 1 to PW 9 and 10 documents were marked as Ex. P1 to P10. No material object was marked on the side of the prosecution.

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



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6. On completion of trial, hearing the arguments advanced on either side and considering the materials, the trial court found guilt of the accused for the offence under Sections 431, 434, 447 of IPC and Section 3(ii) of TNPPDL Act, convicted under Section 434 of IPC and sentenced to undergo rigorous imprisonment for six months and imposed fine amount of Rs.1000/- in default to undergo simple imprisonment for 45 days, convicted under Section 447 of IPC and sentenced to undergo rigorous imprisonment for one month and fine sum of Rs.1000/- in default to undergo one week simple imprisonment, convicted under Section 3(ii) of TNPPDL Act and sentenced to undergo rigorous imprisonment for four years and imposed fine Rs.5000/- in default to undergo 1 year simple imprisonment.

7. Challenging the said judgment of conviction and sentence passed by the trial court, the accused has filed the present appeal.

8. The specific case of the prosecution is that the defacto complainant is working as an Assistant Engineer in Irrigation Department, Rasipuram.



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On 16.09.2010, one Ganesan has sent a petition to the defacto complainant's higher officials stating that one Ammasi had cut bunds of two sides of the canal, leading to Akkaraipatti Lake, Mathiampatti Village and encroached the said portion into his land. The defacto complainant's higher officials visited the occurrence place, the canal, which leads to Akkaraipatti Lake and confirmed that it has been cut and damaged. Therefore, PW1 gave a petition to the Tahsildar to ascertain as to whether there was any encroachment in Survey No.67, River Poromboke. The Tahsildar deputed the Surveyor and the above said land was measured and boundary stone was laid. While measuring the Survey No.67, it was found that the lands were encroached adjacent to the Ammasi's land. Therefore, a case was registered against the appellant.

9. In order to substantiate the case, on the side of the prosecution totally 9 witnesses were examined and 10 documents were marked. The Assistant Engineer , Kullampatti, Canal Branch, Mettur was examined as PW1. She has narrated the above incident and also the steps taken by her to find out the fact that, as to whether any encroachment in the canal has been made. The person who sent the complaint to the Superior of PW1



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was examined as PW2 and one Tamilselvan was examined as PW3, who has spoken about the encroachment made by the appellant. The VAO was examined as PW4 and he deposed about the complaint made by PW2 and further submitted that the survey stone laid by Public Works Department was removed. The surveyor, who conducted survey on the said land was examined as PW5 stated that the survey was conducted in the presence of VOA, village assistant and officials of PWD. After conducting the survey, he laid the survey stone. Though other witnesses PW6 to PW8 turned hostile, the Investigating Officer has clearly stated that they received the complaint and investigated the matter and laid charge sheet.

10. From the evidence of PW1 to PW5, the prosecution has proved its case beyond reasonable doubt. Therefore, the trial Court rightly appreciated the evidence and convicted the appellant.

11. The learned counsel for the appellant would submit that the canal bunds are not a public property and there is no evidence to show that the appellant encroached and damaged the public property. PW1 has



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also not proved that the encroachment was made by the appellant. There were several contradictions between the prosecution witnesses. Further, individual witnesses namely PW6 to PW8 turned hostile and they have not supported the case of the prosecution. Other witnesses PW1 to PW5 and other official witnesses were not aware of the encroachment made by him. The prosecution has failed to prove the actual extent of encroachment and damages, specifically which was made by the appellant. He further submitted that under TNPPDL Act, the prosecution has to prove the worth of the damage. However, in this case the prosecution failed to prove the same. Therefore, in the absence of the same, the conviction and sentence awarded by the trial Court is erroneous and same has to be set aside and this appeal has to be allowed.

12. The learned Government Advocate (Criminal Side) would submit that the evidence of PW1 is very clear. Based on the complaint made by the PW2, the Tahsildar taken steps to measure the land in the presence of the Village Administrative Officer. Therefore, the Tahsildar, Village Administrative Officer and defacto complainant were examined as prosecution witnesses. They have clearly submitted about the receipt of



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the complaint from the villagers and based on the complaint, they measured the land and laid boundary stone. The measurement taken by the PWD officials shows that there was an encroachment and the same was damaged. The prosecution has clearly established its case. They have mentioned the worth of the damage in their report. There is no merit in this appeal and this appeal is liable to be dismissed.

13. Heard the learned counsel for the both sides and perused the materials placed on record.

14. The main allegation is that the appellant encroached the canal which belongs to the Public Works Department and damaged it. On the basis of the complaint received from PW2 and PW3, PW1 took steps to file the complaint before the Tahsildar. The Tahsildar measured the property with the help of a Surveyor and VAO and found the appellant had cut the two sides bunds of the canal leading to the Akkaraipatti Lake, Mathiampatti Village and damaged it.

15. A reading of the evidence of PW1, Assistant Engineer of Public Works Department clearly stated about the receipt of the complaint and



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the steps taken in that regard. PW2, one who also submitted that he, along with other village headmen gave complaint before the District Collector and Public Works Department. Therefore, the evidence of PW3 corroborated the evidence of PW2. PW4 is the Village Administrative Officer, whose evidence also corroborated with the evidence of PW2 and PW3. PW5 is the surveyor, one who conducted survey, based on the direction of the Tahsildar. Therefore, from the evidence of PW1 to PW5, it is clear that there was a complaint regarding the encroachment of removal of lake bunds, which is under the control of Public Works Department. Based on the evidence of PW2 and PW3, a complaint was given to the Collector. The evidence of PW1 clearly shows that he received a complaint from the villagers requesting Tahsildar to conduct survey and find out the encroachment.

16. Therefore, prosecution has proved its case beyond reasonable doubt and it is clear that appellant is the one, who encroached the lake bunds of the lake, which comes under the control of Public Works Department. Therefore, from the evidence of PW2 and PW3, it is clear that the appellant is the one who made encroachment and caused



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damages. Therefore, the prosecution has proved that prior to 07.10.2010, the canal bunds leading to Akkarapatty Lake was cut by the appellant on 10.10.2010 at about 10 am. The appellant removed the bunds of the canal by trespassing the Government property and obliterated the bunds of the canal, thereby caused damages worth Rs.1000/-. Therefore, the appellant has committed offence under Section 431, 434 and 447 of IPC and 3(ii) of TNPPDL Act.

17. This Court as an appellate Court and final Court of fact finding, re-appreciated the entire facts and evidence and finds that the prosecution has proved its case beyond reasonable doubt. Therefore, there is no reason to interfere with the judgment of the trial Court. The trial Court has rightly appreciated the entire evidence and convicted the appellant. There is no merit in this appeal and this appeal is liable to be dismissed.

18. Accordingly, this Criminal Appeal case is dismissed.

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Index:Yes/No

To

1. The Principal Sessions Judge, Namakkal, Namakkal District
2. The Inspector of Police,
Vennandur Police Station,
Namakkal District.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.216 of 2020**

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