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CRL A No.474 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.474 of 2020

1.Subramani
2.Ramasamy
3.Krishnan

... Appellants

Vs.

State by Inspector of Police
Namagiripet Police Station,
Namakkal District
Crime No.122 of 2013

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the judgment in S.C.No.22 of 2017, dated 16.10.2020 passed by the Principal District & Sessions Court, Namakkal in so far as convicting the appellants/accused 1 to 3 under Section 427 IPC and sentencing them to undergo 2 years imprisonment and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for a period of one month.



CRL A No.474 of 2020

For Appellants : Mr.E.V.Chandru Legal Aid counsel

Mr.S.Gokul for Mr.J.Kannan

For Respondent : Mr.R.Murthi G.A.(Crl., Side)

J U D G M E N T

This Criminal Appeal has been filed against the judgment of conviction and sentence imposed on the appellants in Session Case No.22 of 2017, dated 16.10.2020, on the file of the Principal Sessions Court, Namakkal in so far as convicting the appellants/accused 1 to 3 under Section 427 IPC and sentencing them to undergo 2 years imprisonment and to pay a fine of Rs.1000/-, each in default to undergo simple imprisonment for a period of one month.

2. The respondent police registered the case against the appellants/accused in Crime No.122 of 2013 for the offences under Sections 341, 294(b), 324, 506 (ii) IPC and also Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act (TNPPDL Act). After investigation laid charge sheet before the Judicial Magistrate, Rasipuram which was taken on file as PRC No.17 of 2016 and after



CRL A No.474 of 2020

completing the procedural formalities under Section 207 Cr.P.C., committed the case to Section 209 of Cr.P.C., to the Principal District Sessions Judge, since the offence under TNPPDL Act, exclusively triable by Court of Sessions and the learned Principal District Sessions Judge, Namakkal, taken the case on file in S.C.No.22 of 2017 and after completing the formalities framed the charges against the appellants/accused for the offence under Section 341, 294(b), 324, 506 (ii) IPC and also Section 3(1) of TNPPDL Act.

3. After framing the charges during the trial before the Trial Court on the side of the prosecution as many as 11 witnesses were examined as PWs-1 to PWs-11 and 16 documents were marked as Exs.P1 to Exs.P16; besides one material object was exhibited as MO-1. On the side of the defence, no oral and documentary evidence was produced.

4. On conclusion of trial, after hearing arguments advanced on either side and considering the materials facts, the Trial Court found guilty of the Appellants/accused 1 to 3 for the offence under Section 427



CRL A No.474 of 2020

WEB COPY

and convicted and sentenced to undergo **Two years** imprisonment and to pay a fine of Rs.1000/- each in default undergo **Six months** simple imprisonment and also the appellants were found guilty for the offences under Section 294(b) IPC and convicted and sentenced to undergo imprisonment for **Three months** and to pay a fine of Rs.1000/- each, in default to undergo **one month** simple imprisonment and the appellants/accused were not found guilty for the offences under Sections 341, 324, 506 (ii) IPC and also Section 3(1) of TNPPDL Act and they were acquitted from the said charges.

5. Challenging the conviction and sentenced passed by the Trial Court as against the appellants/accused for the offences under Section 427 and 294(b) IPC, the present appeal has been preferred by the appellants/accused. However, the State has not filed any appeal against the acquittal for the other charges as against the appellants/accused.

6. The specific case of the prosecution is that due to previous enmity on 08.04.2013 at about 3.30 am, the appellants/accused waylaid



CRL A No.474 of 2020

WEB COPY

the defacto complainant and the eye witness in front of the house of the Poongothai Rajamanicakan while proceeding in a motor-cycle bearing registration No.TN 28 AX 4677, scolded them with filthy language and also assaulted the defacto complainant Govindharaj and witness Ramarajan with an iron rod, brick stones and also made criminal intimidation on them and damaged the bike by causing a loss to the tune of Rs.10,250/-.

7. The learned counsel appearing for the appellants would submit that in the complaint/Ex.P1 filed by the defacto complainant/PW-1, he has not stated anything about the damages of the two wheeler and also the damage to any property much less the public property and also there is no specific overtact against the appellants/accused regarding the attack made by them. He further submitted that though the Trial Court has not accepted the evidence of the prosecution and acquitted all the appellants/accused from the charges under Section 3(1) of TNPPDL Act and Section 324 r/w 34, 341 and 506 (ii) IPC from the very same set of evidence and materials, they were found acquitted, but whereas,



CRL A No.474 of 2020

convicted for the offences under Section 427 and 294(b) IPC. Since the defacto complainant has not stated anything in the complaint about the damage of the property, the Trial Court also acquitted the appellants/accused for the offence under Section 3(1) of TNPPDL Act, but however, the Trial Court has wrongly convicted the appellants/accused for the offence under Section 427 IPC, even otherwise no charge was framed. The learned counsel would further submit that no doubt if the charges were framed only for the major offences, even without framing separate charges for the minor offences, punishment can be imposed for minor offences. Whereas the foundational fact is that the prosecution has not established that the property was damaged, though the Trial Court found that it is not a public property, therefore the offence would not fall under the purview of TNPPDL Act, if that be the case, even without framing the charges, the appellants/accused can be convicted for the offence under Section 427 IPC, when there is no allegation in the complaint regarding the damage of vehicle and they have not obtained certificate from the competent authority and simply he obtained some certificate from the private parties



CRL A No.474 of 2020

regarding the valuation of the vehicle. Furthermore, the learned counsel appearing for the appellant would submit that there is a material contradictions from the witnesses and also there is no corroborative evidence that the appellants alone caused the damages to the vehicle.

8. Further, the learned counsel would submit that the Trial Court has not believed the case of the prosecution even for causing injuries to the defacto complainant and taking suggestion made before the Doctor that if the person voluntarily fall on the surface of the land there is a possibility of causing injury from the very same way the person fall with the two wheeler would get damages. Further, in the first statement recorded by the Police, the defacto complainant has not specifically stated anything about the damages of the vehicle, if at all voluntarily damage causing to the vehicle, they could not have damaged before the Police when the first statement was recorded from the defacto complainant. Therefore, in this case, the prosecution has failed to prove its case beyond reasonable doubt, when the Trial Court accepted the version of the defence and found that the prosecution has not proved its



CRL A No.474 of 2020

WEB COPY

case for all the major offence and erroneously convicted the appellants/accused on the above two charges alone, which is perverse and absolutely there is no materials. Further the learned counsel appearing for the appellants/accused would submit that either the State or the defacto complainant or the victim has filed any appeal against the order of acquittal for the other charges and therefore, the findings of the Trial Court is perverse and the same is liable to be set aside and the appeal has to be allowed.

9. The learned Government Advocate (Criminal Side), appearing for the respondent would submit that defacto complainant/PW-1 lodged a complaint, when he was admitted in the hospital and the Police recorded the statement and registered the case, where the FIR is not an encyclopedia; Further, the learned Government Advocate would submit that the investigation revealed that the appellants/accused caused the damages to the vehicle and even though the Trial Court found that the other charges are not proved and from the available materials found that the appellants/accused scolded with filthy language and therefore, rightly



CRL A No.474 of 2020

WEB COPY

convicted, since because the appellants/accused were acquitted for some of the charges, which does not mean the appellants/accused have to be acquitted for all the charges and it is a settled proposition of law, the Trial Court can convict the person for the proved charges and therefore, the judgment of the Trial Court is not perverse, since the very same set of facts and evidence some of the appellants/accused have been acquitted for some of the charges, it cannot lead to acquit all the charges against the accused and therefore, the Trial Court rightly convicted the appellants/accused for two of the charges and there is no perversity in the conviction and sentence order passed by the Trial Court and there is no merit in the appeal and the same is liable to be dismissed.

10. Heard the learned counsel appearing for the parties and perused the materials placed on record.

11. Admittedly, the specific case of the prosecution is that the appellants/accused waylaid the defacto complainant and witness ramarajan, who were proceeding in a motor-cycle, scolded them with



CRL A No.474 of 2020

WEB COPY

unparliamentary words and also attacked them with iron rod and brick stone and also caused damages to the vehicle, but whereas the Trial Court found that the evidence of injured witnesses are not proved beyond reasonable doubt. Now either State or defacto complainant has not filed any appeal against the acquittal charges. The scope of the appeal is very limited whether the appellants/accused have committed the offence under Section 427 and 294(b) IPC or not?

12. Since this Court is an Appellate Court and also a final Court of fact finding, it has to re-appreciate the entire evidence and come to the conclusion independently. On a reading of the entire materials available on record, there are material contradictions between the evidence of the witnesses and there is no corroborative evidence, which would show that the appellants/accused have not caused any damages to the vehicle of the defacto complainant and the prosecution has not proved in the manner known to law. The defacto complainant has given a statement before the Police Officer in which he never whisper about the damages of the vehicle even though the first incident as the specific parts of the damages



CRL A No.474 of 2020

WEB COPY

of the vehicle need not be mentioned, but however, it should have been mentioned that the vehicle got damaged. If at all, the vehicle got damaged, which was done only by the appellants/accused, when they preferred complaint for attacking them with deadly weapon and certainly they could have been mentioned about causing of damages to the vehicle also and therefore, there is a contradiction between the prosecution witnesses, especially eye witness and thus the prosecution has not proved its charges beyond all reasonable doubt that the appellants/accused caused damages to the vehicle and hence, the conviction recorded by the Trial Court for the offence even though not framing the charges especially for the offence under Section 427 IPC and the reason given by the Trial Court, since the charge was framed for the offence under Section 3(1) of the TNPPDL Act and that was not proved, since the damaged properties have valued by a private person, but convicted for the offence under Section 427 IPC, which is the minor offence than the offence under Section 3(1) of TNPPDL Act. The said finding is perverse without any valid evidence and as already stated above, the defacto complainant has not stated in the first statement that the vehicle was



CRL A No.474 of 2020

damaged by the appellants/accused, even though it is a settled proposition of law that the complaint or FIR is not an encyclopedia, but at the same time, the complaint should reveal the minimum fact of commission of offence and therefore, this Court finds that the conviction order rendered by the Trial Court for the offence under Section 427 IPC is without any materials.

13. As far as the damages to the vehicle is concerned, valuation certificate obtained by the prosecution is not a valid document, which was obtained from the private person, who is not a competent authority, even otherwise mere production of certificate would not prove that the appellants/accused only has caused the damages to the vehicle. The damage certificate to the vehicle produced by the prosecution and the first statement recorded by the Police would not reveal that the appellants/accused only caused the damages to the vehicle and therefore, the conviction order passed by the Trial Court is perverse and the same is liable to be set aside.



CRL A No.474 of 2020

WEB COPY

14. As far as Section 294 (b) is concerned, none of the witnesses have spoken anything about that the appellants/accused scolded the defacto complainant with filthy language, but there is a contradiction between the witnesses and they have not stated exactly, uniformly the 'word' filthy language used by the appellants/accused and which of the appellants/accused used the particular word and reading of the evidence of the prosecution witnesses specifically the eye witness, there is a material contradiction and therefore, conviction cannot be recorded based on the uncorroborative evidence and once the offence of scolding in filthy language has not been corroborated by the witnesses, which is clearly a material contradiction and therefore two limbs are possible that when the doubt arises, the appellants/accused are entitled to get a benefit of doubt and therefore, this Court come to a conclusion that the prosecution has not proved its charges beyond all reasonable doubt as projected by them against the appellants/accused and without any materials and corroborative evidence, erroneously convicted the above two charges and therefore, appreciation of the evidence by the Trial



CRL A No.474 of 2020

WEB COPY

Court and finding of the Court below is perverse and the same is liable to be set aside and accordingly the judgment of conviction and sentence passed by the Trial Court is set aside.

In the result the Appeal is allowed. Consequently, connected Miscellaneous Petitions are closed.

06.02.2023

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Index : Yes/No

Internet: Yes/No



CRL A No.474 of 2020

WEB COPY

To
Principal District & Sessions Court, Namakkal



WEB COPY



CRL A No.474 of 2020

P.VELMURUGAN, J

pbn

Criminal Appeal No.474 of 2020

06.02.2023