



WEB COPY



Crl.A.No.481 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.481 of 2020

1. Venkatesh

2. Asaithambi @ Santhoshkumar

... Appellants

Vs.

State represented by,
The Inspector of Police,
Kannankurichi Police Station,
Salem District.

... Respondent

Prayer:

Criminal Appeal filed under Section 374 Cr.P.C., to set aside the judgment of conviction and sentence imposed upon the appellants/accused by the III Additional District and Sessions Judge, Salem passed in S.C.No.460 of 2016 dated 03.11.2020 and to acquit the appellants/accused by giving benefit of doubt.

For Appellants : Mr.V.Paarthiban



Crl.A.No.481 of 2020

and
Mr.H.Maruthiraj, Legal Aid Counsel

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 03.11.2020 passed in S.C.No.460 of 2016 on the file of the III Additional District and Sessions Judge, Salem.

2. The respondent police registered the case against the appellants and five others in Crime No.103 of 2016 for the offence under Sections 147, 148, 294(b), 323, 324, 326 IPC and 3(1) of TNPPDL Act. The respondent police, after investigation laid the charge sheet before the learned Judicial Magistrate No.IV, Salem. The learned Magistrate has taken the charge sheet on file in P.R.C.No.27 of 2016 and after completing the formalities under Sections 207 and 209 Cr.P.C., committed the case to the learned District and Sessions Court, Salem. The learned Principal District and Sessions Judge, Salem has taken the case on file in S.C.No.460 of 2016 and made over the same to the III Additional



Crl.A.No.481 of 2020

District and Sessions Judge, Salem. The learned III Additional District and Sessions Judge after completing the formalities framed the charges as against A1 for the offence under Sections 147, 148, 294(b), 326 IPC and Section 3(1) of TNPPDL Act, as against A2 for the offence under Sections 147, 148, 294(b), 324, 326 IPC and Section 3(1) of TNPPDL Act, as against A3 for the offence under Sections 147, 294(b), 323 IPC and Section 3(1) of TNPPDL Act, as against A4 for the offence under Sections 147, 148, 294(b) IPC and Section 3(1) of TNPPDL Act, as against A5 for the offence under Sections 147, 294(b), 323 IPC and Section 3(1) of TNPPDL Act, as against A6 for the offence under Sections 147, 294(b), 323 IPC and Section 3(1) of TNPPDL Act and as against A7 for the offence under Sections 147, 294(b), 323 IPC and Section 3(1) of TNPPDL Act.

3. In order to substantiate the charges framed against the appellants, on the side of the prosecution totally 17 witnesses were examined as P.W.1 to P.W.17 and 20 documents were marked as Ex.P1 to P20. Besides, four material objects were exhibited as M.O.No.1 to M.O.No.4.



Crl.A.No.481 of 2020

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. However, the accused denied the same as false and pleaded not guilty. On the side of the defence, no oral evidence was produced and one document was marked as Ex.D1.

5. On conclusion of trial after hearing the arguments advanced on either side and also considering the materials, the trial court found the accused A3 to A7 not guilty and acquitted them from all the charges framed against them. However, the trial court found the accused A1 and A2 alone guilty for the offence under Sections 326 IPC and Section 3(1) of TNPPDL Act and sentenced them to undergo five years rigorous imprisonment with fine of Rs.5,000/- in default to undergo six months rigorous imprisonment for the offence under Section 326 IPC and both of them sentenced to undergo two years rigorous imprisonment with fine of Rs.5,000/- in default to undergo six months rigorous imprisonment for the offence under Section 3(1) of TNPPDL Act.



Crl.A.No.481 of 2020

6. Challenging the said judgment of conviction and sentence, the convicted accused/A1 and A2 have filed the present appeal before this Court.

However either prosecution or the defacto-complainant or the victim have not filed any appeal against the order of acquittal passed by the trial court.

7. The specific case of the prosecution is that P.W.1 who is the defacto-complainant is residing at Kannankurichi with his family and doing mechanical works. P.W.15 is his son. A1 to A7 and P.W1 are close relatives and they have enmity with regard to the partition of the property. On 18.03.2016, at about 11.00 am., P.W.1 attempted to install EB post in his land which was objected by A4 and his men and they picked up quarrel with P.W.1 and stopped the work and went away. On the same day, at about 10.45 p.m., the appellants along with five others formed into unlawful assembly with common object of committing riot and to assault P.W.1 and his son/P.W.15. P.W.1 opened the door and came out, found A1 armed with knife and others armed with sticks and bricks and picked up wordy quarrel. P.W.1 was attacked by A1 with knife, A4 with brick stone and the other accused A3 and A5 to A7 beat P.W.1 with stones and caused injuries. On seeing the same, P.W.15 came in



Crl.A.No.481 of 2020

rescue of his father, at that time, he was attacked by A2 with brick stone on his back of his head and the other accused A3, A5 and A7 hit P.W.15 with stone.

Further, all the seven persons damaged Maruthi car of P.W.1 and the glass panel of window, table and chair and threatened P.W.1 and P.W.15 and left the scene of occurrence. Hence the complaint.

8. Learned counsel for the appellants would submit that the trial court has not properly considered the ingredients of offences and the same have not been categorically and specifically proved by the prosecution. Evidence of P.W.1 has not corroborated with any other independent witnesses. There is no materials are available to connect the appellants with the alleged offence. Evidence of P.Ws.1, and 15 are contrary to each other and also contrary to the medical evidence. Evidence of P.Ws.1 and 2 stand contrary to the statement made by them before the doctor with regard to the cause of injuries and the nature of weapon. Evidence of P.W.2 and P.W.5 are unbelievable. P.W.3, P.W.4 and P.W.6 have not supported the case of the prosecution. The findings of the trial court merely on the basis of the wound certificate, injuries sustained by P.W.1 and P.W.15 are found to be grievous in nature is not correct. In order



Crl.A.No.481 of 2020

to substantiate the charge under Sections 326 IPC, ingredients of Section 320

IPC have to be established and there is no evidence is available on this aspect before the trial court. P.W.12 and P.W.13 have not supported the case of the prosecution without any proof as to substantiate the nature of the injuries as grievous. Since P.W.1 and P.W.15 absconded from the Government Hospital without intimation, the doctors P.W.9 and P.W.11 have not given any opinion with regard to the injuries sustained by P.W.1 and P.W.15. In the absence of wound certificate, doctor evidence and other materials, conviction cannot be recorded for the offence under Section 326 IPC. The trial court failed to consider that whether the provisions under Section 3(1) of the Tamilnadu Property (Prevention and Damages and Loss) Act. 1922 can be rightly invoked by the prosecution. The trial court failed to consider the evidence of P.W.1 about the nature of occurrence, damages of property, manner of attack and involvement of the person so as to attract the offences leveled against the appellants/accused under Section 3(1) of Tamilnadu Property (Prevention and Damages and Loss) Act. 1922. The trial court failed to consider the first version made by P.W.1 before the doctor with regard to total number of persons at the time of occurrence. P.W.1, P.W.2, P.W.4, P.W.5, P.W.6 and P.W.15 are all



Crl.A.No.481 of 2020

close relatives and hence the witnesses for the occurrence are motivated against the appellants with regard to dispute over the property. P.W.3, P.W.4 and P.W.6 have not supported the case of the prosecution and they were treated hostile. The trial Court rightly appreciated the evidence and acquitted all other accused. But from the very same materials, the appellants were convicted for the charged offences which is against law. The trial court miserably failed to appreciate the evidence in the right perspective and wrongly convicted the appellants without any material which is against the proposition of law and the appeal has to be allowed and the conviction and sentence passed by the trial court against the appellants are liable to be set aside.

9. Learned Additional Public Prosecutor has submitted that P.W.1 and all the accused are close relatives and they have property dispute. On 18.03.2016, P.W.1 attempted to install EB Post in his land, the accused group objected to the same, due to which there was a wordy quarrel arose between them. On the same day, at about 10.45 pm, appellants along with A3 to A7 armed with knife, stick and bricks assaulted P.W.1, When P.W.15, who is the son of P.W.1, attempted to rescue his father, he was also assaulted by the



Crl.A.No.481 of 2020

accused. P.W.1 was stabbed by A1 with knife and other accused assaulted him with stone. All the accused joined together and damaged Maruthi car and window pane of P.W.1's house and left the scene of occurrence. P.W.3 took the injured to the Government Hospital. The respondent police obtained the statement and registered the case and investigated the matter. Thereafter, P.W.1 and P.W.15 were admitted in private hospital for further better treatment. P.W.1 and P.W.15 are the injured witnesses have categorically stated about the specific overtact attributed by the appellants as against them, which is supported and corroborated with the evidence of P.W.12 and P.W.13 doctors. It is found from Exs.P1 to P14, known persons assaulted P.W.1 and P.W.15 with weapon. Exs.P8 and P9 clearly show the damages caused to the P.W.1's car by the appellants to the tune of Rs.14,750/- . From the evidence of both oral and documentary, the prosecution has proved its case beyond all reasonable doubt and the trial court also rightly appreciated evidence and convicted the appellants for the charged offence. There is no merit in the appeal and the same is liable to be dismissed.



Crl.A.No.481 of 2020

10. Heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

11. When the injured witness P.W.1 attempted to install EB post in his land, the same was objected by A4 and his men and they picked up quarrel with P.W.1. Again the appellants along with other accused had gone to the house of P.W.1, shouted at him by using abusive words. When P.W.1 came out, at that time, the accused group armed with knife, stick, bricks assaulted P.W.1 and caused damages to the P.W.1's car to the tune of Rs.14,750/-. At that time of occurrence, when P.W.15 came in rescue of his father he also sustained injuries. Totally 17 witnesses were examined and 20 documents were marked on the side of the prosecution. Out of 17 witnesses, the defacto complainant, who is the injured witness was examined as P.W.1 has categorically stated about the occurrence and the quarrel made by the appellants. P.W.2 who was not present at the time of occurrence, but immediately soon after the occurrence, he took the injured P.W.1 and P.W.15 to hospital. P.W.15 is also injured witness has clearly spoken about the injuries sustained by him and he corroborated the evidence of P.W.1. Though there is



Crl.A.No.481 of 2020

no eye witnesses in this case, P.Ws.1 and 15 are injured as well as eye witnesses have categorically stated about the incident. From the evidence of P.Ws.1, 2 and 15, it is very clear that P.Ws.1 and 15 sustained injuries. Though learned counsel for the appellants vehemently contended that neither x-ray report nor scan report have filed by the prosecution, and hence conviction and sentence for the offence under Section 326 IPC cannot be recorded, whereas, in this case, Ex.P.10 and Ex.P.11 have clearly proved the injuries sustained by P.W.1 and P.W.15 and also it is stated in the medical report that there was a bleeding on his left ear and a swelling on the head. When making entry in the accident register, the internal injury cannot be found out and hence the same may not be entered in the Accident Register. On careful perusal of evidence of P.W.1 and P.W.15 who are the injured witnesses and P.W.2 is one of the occurrence witnesses, it is found that the prosecution has proved its case beyond all reasonable doubt as against the appellants. Since the other accused was acquitted by the trial court for some reason, it does not mean that the appellants are also entitled to get the same benefit ie., the order of acquittal. When specific overtact or specific allegation was substantiated by the injured witnesses or eye witnesses and medical evidence, that cannot be the reason to



Crl.A.No.481 of 2020

get order of acquittal automatically. The contradictions pointed out by the learned counsel for the appellants are not material contradictions which would go to the root of the case of the prosecution. There is no discrepancies or contradictions regarding the presence of the appellants/A1 and A2 at the time of occurrence in the place of occurrence. Evidence of P.W.1 and P.W.15 clearly shows that the appellant attacked the witness by using weapon and due to that they sustained injuries which are grievous in nature.

12. Considering the facts and circumstances of the case, the prosecution has proved its case beyond all reasonable doubts. This Court does not find any perversity or any reason to interfere with the judgment of the trial court and there is no merit in the appeal and the appeal is liable to be dismissed. Accordingly the Criminal appeal is dismissed. Since the appellants are on bail, the trial court is directed to take steps to secure the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set off under Section 428 Cr.P.C.,

07.02.2023

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

12/14



WEB COPY



Crl.A.No.481 of 2020

To

1. The III Additional District and Sessions Judge, Salem.
2. The Inspector of Police,
Kannankurichi Police Station,
Salem District.
3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.481 of 2020

P.VELMURUGAN, J.

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Crl.A.No.481 of 2020

07.02.2023