



Crl.A.No.330 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2023

DELIVERED ON : 20.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.330 of 2022

Arun

... Appellant

Vs.

State Rep. by
Avinashipalayam Police Station
Tiruppur District
Crime No.71/2013

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment dated 30.09.2021, passed by the learned II Additional District and Sessions Judge, Tiruppur, in S.C.No.154 of 2016.

For Appellant : Mr.R. Prabakar

For Respondent : Mr.S. Sugendran
Additional Public Prosecutor.



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JUDGMENT

WEB COPY This criminal appeal is filed against the judgment dated 30.09.2021, passed by the learned II Additional District and Sessions Judge, Tiruppur, in S.C.No.154 of 2016.

2. The appellant is the 2nd accused in S.C.No.154/2016 and he is convicted and sentenced as follows:

<i>Conviction</i>	<i>Sentence</i>
Section 451 IPC	A fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months.
Section 426 IPC	A fine of Rs.3,000/-, in default, to undergo simple imprisonment for three months.

3. The case of the prosecution in a nutshell is as follows:

3.1. Balakrishnan (P.W.1) who is a resident of V.O.C. Nagar, Kongu Main Road, Tiruppur, owns a Bakery in the name and style of 'Gokul Bakery' at Avinashipalayam-Nachipalayam four road junction.



3.2. On 12.03.2013, there was a Bandh call given by 'DMK', a political party. On that day at about 11 a.m. he along with Tea Master Madhavan (not examined), Prakash (P.W.2) and Mohanraj (P.W.3) was in the shop by covering the entrance of the shop with a tarpauline sheet.

3.3. P.W.1's deposition is that Ex-MLA Mani (since deceased and A1) along with Arun Kumar (A2/appellant), Ramesh (A3), Kandasamy (A4), Selvakumar (A5), Thangavel (A6) and Shanmugam (A7) entered the bakery pushing him (P.W.1) down and breaking the furniture and fixtures in the shop using two iron rods (M.O.1 and M.O.2). They had used abusive language and had questioned as to why the shop was open on a 'bandh' day. The value of the broken furnitures and fixtures in the shop was about Rs.30,000/- and P.W.1 had given a written complaint (Ex.P1) in Avinashipalayam Police Station. Thiru.Thangadurai (P.W.7), Special Sub-Inspector of Police, Avinashipalayam received the complaint from P.W.1 and registered FIR (Ex.P5) in Crime No.71/2013 of Avinashipalayam Police station at 1 p.m. on the same day on 12.03.2013, against all the accused and 7 other unknown persons, under Sections 148, 452, 506(ii), 427 IPC and



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Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss)

Act, 1992 and placed the same before the Inspector of Police.

3.4 Thiru.Pounraj (P.W.8), Inspector of Police, took up investigation in Crime No.71/2013, went to the scene of occurrence at about 2 p.m. and prepared an Observation Mahazar (Ex.P3) and a rough sketch (Ex.P6) in the presence of the witnesses Chandrasekaran (P.W.4) and Ramasamy (not examined) and recovered 2 iron rods (M.O.1 and M.O.2) from the scene of offence under the cover of a mahazar (Ex.P2) and sent the same to the court under Form 95 (Ex.P7). He summoned the photographer Lakshmanan (P.W.5) from Koduvai Mukil Studio to take photograph of the bakery. Accordingly P.W.5 took photographs of the damaged shop (Ex.P4 series). Subsequently he examined the witnesses and recorded their statements which was typed by Thiru.Krishnan (P.W.6), Special Sub Inspector of Police in his laptop. Later at 4.30 p.m. he arrested Arun (A2), Ramesh (A3), Thangavel (A6) and Shanmugam (A7) and produced them before the Judicial Magistrate, Avinasi, for judicial custody.



3.5. Praksh (P.W.2) who was working as a cashier in the Bakery had deposed that when he along with Mohanraj (P.W.3) were working together tying the tarpauline sheet at the entrance of the shop and the owner Balakrishnan (P.W.1) and Tea Master Madhavan were cleaning the shop, the accused 1 to 7 entered their shop with iron rods and questioned as to how they can keep the shop open on the day of the bandh. The accused also used abusive language while breaking the tea-boiler, Oven plate and other fixtures and also threatened them of dire consequences. Mohanraj (P.W.3) who is also a cashier corroborated the versions of P.W.2.

3.6. Thiru. Soundarrajan (P.W.9), Deputy Superintendent of Police, Mettur Sub Division, took up investigation since Pounraj (P.W.8) was transferred. After completing investigation, he laid a final report before the Judicial Magistrate, Palladam, in C.C. No.57/2014. The learned Judicial Magistrate in turn committed the case to the Court of Sessions under Section 209 Cr.P.C. after furnishing copies of records to the accused under Section 207 Cr.P.C. The learned Principal District and Sessions Judge, Tiruppur, took the case on file in S.C. No.154/2016 and made over the same



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to the II Additional District and Sessions Judge, Tiruppur, who framed charges under Sections 147, 148, 452, 506(ii), 427 IPC and under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 against the accused.

3.7. In order to bring home the guilt of the accused, the prosecution examined 9 Witnesses and marked 7 Exhibits and also 2 material objects.

3.8. When the accused were questioned under Section 313 Cr.P.C. about the incriminating evidence against them, they denied of having committed any offence. However, no documentary evidence was marked on the side of the accused.

3.9. The trial court after analysing the oral/documentary evidence acquitted the accused 2 to 5 and 7 from the charges 148,452, 506(ii), 427 IPC and under Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, however, convicted the appellant/2nd accused for the offences punishable under Section 451 and 426 IPC and sentenced



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him as stated in Paragraph No.2. The present appeal is against the conviction and sentence.

4. Mr. R. Prabakar, learned counsel for the appellant/accused contended that there was a previous enmity between the 1st accused (since deceased) and one Advocate Kumar who is the son-in-law of P.W.1. It was his argument that though both of them belonged to the same political party i.e. DMK, a false case was foisted against the accused due to previous enmity. It was also contended that the photographs (Ex.P4 series) do not have any date and time or even the place where they were taken and thus cannot be relied upon. His another contention was that the Material Objects recovered were not seized from the accused and also not identified by the prosecution witnesses P.W.1 to P.W.3. Therefore, it was contended that the appellant/2nd accused ought to have been acquitted for lack of evidence beyond reasonable doubts.

5. Per contra, Mr.S.Sugendran, learned Additional Public Prosecutor contended that the trial court had, after analysing the oral/documentary



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evidence, rightly convicted and sentenced the appellant/2nd accused and therefore no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

6. This episode of destruction of properties and issuance of verbal threats by the accused seems to arise from the fact that the Bakery was kept open with a tarpauline sheet covering the entrance on a day when Bandh was announced by a political party in the State. On a careful analysis of the depositions of the 3 eye witnesses who were present in the shop, the accused entered the shop with an intention to question them as to why they were not complying with the diktat of the party which had called for the Bandh. However, the witnesses were also clear that it was only A1 and A2 who indulged in violence and not the other accused.

6.1. The version of the defence that there was previous enmity between one Advocate Kumar and A1 (since deceased) is not established. The defence has also not questioned the prosecution witnesses on how the said Advocate Kumar is related to the Bakery. Merely because the said



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Kumar is the son-in-law of P.W.1, it cannot be construed that P.W.1 went ahead with foisting a false case against the accused in order to promote the political fortunes of his son-in-law. There was no need for P.W.1 to cause damage to his own shop without any reason or logic that too on a bandh day. The decision of the trial court acquitting the remaining accused is not convincing. Such acts of vandalism cannot take place without a group of people. It is not important as to whether all of them indulged in the act of vandalism and even if few of them remain mute, that lends support to the active participants. Unfortunately, the prosecution did not file any appeal against the acquittal of the other accused by the trial court. There is no reason to interfere with the conviction and sentence passed by the trial court as against the present appellant/A2.

6.2. In the opinion of this Court the evidence of P.W.1 to P.W.3 is cogent and clear and the prosecution has established the guilt of A2/appellant beyond reasonable doubts. As regards the sentence, the trial court already had taken a very lenient view by imposing a fine of Rs.5,000/, in default, to undergo simple imprisonment for six months for the offence



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punishable under Section 451 IPC and a fine of Rs.3,000/-, in default, to undergo simple imprisonment for three months for the offence punishable under Section 426 IPC. Therefore, it needs no intervention.

7. In the result.

- i. the Criminal Appeal is dismissed.
- ii. The judgment dated 30.09.2021, passed by the learned II Additional District and Sessions Judge, Tiruppur, in S.C.No.154 of 2016, is confirmed.

20.09.2023

bga
Index : yes/no
Speaking /Non speaking Order



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To
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1. The II Additional District and Sessions Judge, Tiruppur,
2. State Rep. by
Avinashipalayam Police Station
Tiruppur District
Crime No.71/2013
3. The Additional Public Prosecutor
High Court, Madras.
4. The Section Officer,
Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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