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CrI.A.No.584 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

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- 1.Balaji
- 2.Nagaraj
- 3.Kumar
- 4.Kumar
- 5.Saravanan
- 6.Aravind
- 7.Nehru
- 8.Senthil
- 9.Santhiya

...Appellants/
Accused – 1 to 5 & 7 to 10

-Vs-

State by Inspector of Police,
Pochampalli Police Station,
Krishnagiri District.
(Crime No.262/2008)

...Respondent/De facto Complainant

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment of the learned Principal District and Sessions Judge, Krishnagiri, Krishnagiri District in S.C.No.12 of 2015 dated 28.10.2021 and acquit the Appellants herein from the said charges.



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For Appellants : Mr.M.Maharaja
For Respondent : M/s.G.V.Kasthuri
Additional Public Prosecutor

J U D G M E N T

The Appellants have been arrayed as Accused – 1 to 5 & 7 to 10 and they have been tried, convicted and sentenced by the learned Principal District and Sessions Judge, Krishnagiri, by judgment 28.10.2021 in S.C.No.12 of 2015.

2. The Appellants/Accused – 1 to 5 & 7 to 10 have been convicted and sentenced by the learned Trial Judge as follows:-

Accused	Conviction under section	Sentence awarded
A3, A4, A5, A7, A8, A10	147 IPC	To undergo rigorous imprisonment for six months
A1, A2, A9	148 IPC	To undergo rigorous imprisonment for nine months
A1, A2, A3, A4, A5, A7, A8, A9, A10	447 IPC	To undergo rigorous imprisonment for three months
A1	324 (2 counts) IPC	To undergo rigorous imprisonment for six months
A9	324 IPC	To undergo rigorous imprisonment for six months
A1, A3, A4, A5, A7, A8, A9, A10	3(1) of PPD L Act	To undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- each



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Accused	Conviction under section	Sentence awarded
		and in default to undergo simple imprisonment for three months each

The sentences are ordered to run concurrently.

3. The challenge in this Appeal is to the above said judgment of the learned Principal District and Sessions Judge, Krishnagiri, by judgment 28.10.2021 in S.C.No.12 of 2015.

4. Learned Counsel for the Appellants submitted that originally there were A1 to A10. At the time of framing charges and at the conclusion of the trial, the learned Principal District and Sessions Judge, Krishnagiri, had convicted A1 to A10 for the offences under Section 294(b) of IPC as against A1 to A10, Section 447 of IPC as against A6, Section 506(ii) of IPC as against A2 and Section 3(1) of PPD L Act as against A2 and A6, which were not proved and acquitted under Section 235(1) of Cr.P.C.

5. It is the contention of the learned Counsel for the Appellants that A1 is the landlord of the building wherein, the P.W-1 was running a shop. On the alleged date of occurrence, A1 came to the shop of P.W-1 and there was wordy quarrel between them regarding the eviction of P.W-1 from the



shop. In the course of the wordy quarrel, it turned out to be a fisticuffs when the relatives of both parties intervened. Subsequently, there was a complaint given by P.W-2, the wife of P.W-1 and A1 also preferred a complaint against P.W-1. On the same day, it was closed by P.W-19 as mistake of fact.

6. It is the submission of the learned Counsel for the Appellants that P.W-1, who was injured, and his son, P.W-8, are also alleged to have been treated. They were treated by P.W-21 at the Government Hospital. P.W-19 had received complaints from the head constable of Krishnagiri Town Police Station, who had visited the hospital and received oral complaint from P.W-1. Based on which FIR was registered by P.W-19 in Crime No. 262 of 2008, he had conducted the investigation. P.W-20 had completed the investigation and laid the final report before the learned District Munsif-cum-Judicial Magistrate, Pochampalli.

7. It is the submission of the learned Counsel for the Appellants that P.W-19 and P.W-20 were official witnesses. P.W-21 is the Doctor of P.W-22, who is the servant of P.W-1. Except P.W-1, P.W-2, P.W-8, P.W-19,



P.W-20, P.W-21 and P.W-22, the other witnesses turned hostile. As per the evidence of P.W-2, she had given a complaint. In the evidence of P.W-1, he had stated that from the hospital bed he had given a complaint. Based on which, Ex.P-1 was taken by the police. Based on which FIR in Crime No.266 of 2008 was registered by the Pochampalli Police.

8. It is the further submission of the learned Counsel for the Appellants that originally the case was registered under the provisions of IPC. Subsequently, the provisions of PPDL Act was invoked and there was no alteration report filed before the Court. No material was placed before the Trial Court regarding the filing of alteration report. Further, he would submit that the Court and the Police Station are nearly half a kilometer away. While so, the FIR reached the Court only on 28.07.2008. The alleged occurrence was on 25.07.2008. P.W-21, Dr.Dhanasekaran, who treated P.W-1 and had issued accident register copy under Ex.P-11. There had been suppression of facts before the learned Trial Judge by the prosecution.

9. Learned Counsel for the Appellants invited the attention of this Court to the depositions of P.W-1, P.W-2, P.W-8, P.W-19, P.W-20, P.W-



21 and P.W-22. P.W-9, who is alleged to be Mahazar witness, turned hostile. As per the evidence of P.W-8, they were attacked with cricket bat, crowbar and iron rod. The material objects marked before the Trial Court are as follows:

- i. M.O-1 - Wooden reapers,
- ii. M.O-2 - Torn banner,
- iii. M.O-3 - Wooden log,
- iv. M.O-4 - Iron rod,
- v. M.O-5 - Iron rod.

There is no evidence regarding how M.O-1 to M.O-5 were recovered or seized in the course of the investigation. There are no Mahazar witnesses. The initial investigation was done by P.W-19. P.W-20 had completed the investigation and laid the final report. As per the evidence of P.W-8, the weapons used by Accused – 1 to 5 & 7 to 10 were stated, defined and identified, but those material objects were not marked before the Court. Also, there is evidence before the Trial Court that the offence attracting the PPDL Act has to be assessed by the officials of the Revenue Department, Motor Vehicle Department or Competent Authority regarding other valuables. Here, no such assessment report had been marked. No



officials of any other Government Department were examined as prosecution witness. What was the value of the objects or valuables damaged in the course of the alleged attack by Accused – 1 to 5 & 7 to 10 was not placed before the learned Trial Judge. In the cross-examination of P.W-1 and P.W-8, P.W-8, who is the son of P.W-1 had clearly stated that they had received back the items or articles belonging to them that were removed by Accused – 1 to 5 & 7 to 10 on the alleged date of occurrence. While so, the conviction recorded by the learned Principal District and Sessions Judge, Krishnagiri, under Section 3(1) of the PPDL Act is found to be perverse and is to be set aside.

10. The learned Counsel for the Appellants also invited the attention of this Court to the cross-examination of P.W-19 and P.W-20 regarding the complaint given by A1, which was closed as mistake of fact. Also, as per Exhibits under Ex.D-1 to Ex.D-3, there was a civil dispute between both the parties, regarding tenancy. That had been proved through Ex.D-1 to Ex.D-3. While so, the learned Principal District and Sessions Judge, Krishnagiri, failed to appreciate the materials made available in the course of the cross-examination of P.W-1 and P.W-8. As such, there are no



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sufficient materials to convict Accused – 1 to 5 & 7 to 10 for the offences under Section 3(1) of the PPDL Act. Therefore, the judgment of conviction recorded by the learned Principal District and Sessions Judge, Krishnagiri, is to be set aside.

11. Learned Additional Public Prosecutor vehemently objected to the line of argument of the learned Counsel for the Appellants, stating that witnesses who turned hostile remained indifferent to the conduct of Accused – 1 to 5 & 7 to 10. Those who suffered injuries had spoken cogently, particularly P.W-1 and P.W-8 and the same is corroborated by the evidence of P.W-22, the employee of P.W-1 and the evidence of P.W-21 the Doctor who treated the injured P.W-1. There are sufficient materials available to the Trial Court regarding the charges framed by the Trial Court through the evidence of the injured witnesses P.W-1 and P.W-8 had corroborated through P.W-21. Therefore, on proper appreciation of evidence, the learned Principal District and Sessions Judge, Krishnagiri, had convicted Accused – 1 to 5 & 7 to 10 for the offences under Sections 147, 148, 447, 324 (2 counts) and Section 3(1) of the PPDL Act. Only on assessment of the evidence, the learned Trial Judge had acquitted A1 to A6



from the charges. Therefore, the judgment of the learned Trial Judge does not warrant any interference by this Court. The same is to be confirmed and the Appeal has to be dismissed as having no merits.

12. Point for consideration:

Whether the judgment of the learned Principal District and Sessions Judge, Krishnagiri, in S.C.No.12 of 2015 dated 28.10.2021, is to be set aside as perverse?

13. On perusal of the evidence recorded by the learned Trial Judge through the evidence of P.W-1, P.W-2, P.W-8, P.W-19, P.W-20, P.W-21 and P.W-22 and Ex.P-1 to Ex.P-12, the submission of the learned Counsel for the Appellants is found justified from the materials available in the cross-examination of P.W-1 and P.W-8. P.W-2 was not cross-examined. P.W-21 had treated P.W-1 and had issued accident register copy under Ex.P-11. P.W-21 had also marked the accident register copy of P.W-8 under Ex.P-12. P.W-21 is not the Doctor who had treated P.W-8. Also in the cross-examination of P.W-1 and P.W-8, it is found that it describes the weapons used by each of the Accused, which are found to be different from the material objects marked as M.O-1 to M.O-5. Further, there is no evidence regarding the seizure of M.O-1 to M.O-5. The alleged Mahazar



witness turned hostile. Also, in the cross-examination of P.W-19 and P.W-20, the Investigation Officers, it is found that A-1 had also given a complaint against P.W-1, which was closed as mistake of fact. P.W-2 is the wife of P.W-1. She had in her evidence stated that she went to the police station and lodged a complaint. Whereas P.W-1 states that the complaint was given by him from the hospital bed. It was recovered by the Head Constable of Krishnagiri Town Police Station.

14. On perusal of Ex.P-1, it is found that it was the complaint recorded by the Head Constable of Krishnagiri Town Police Station from the hospital, based on which the FIR under Ex.P-3 was registered by P.W-19 at the Pochampalli Police Station. When there are fisticuffs between two groups, the Investigation Officer has not conducted fair investigation and has placed all the materials before the learned District Munsif-cum-Judicial Magistrate, Pochampalli, who has closed the complaint given by A1 against P.W-1 as a mistake of fact. From the evidence, it is found that there is a dispute between landlord and tenant.

15. Under those circumstances, when all the materials had not been collected in a fair manner by the Investigation Officer, choosing one



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complaint for investigation to its logical end and closing the other complaint is found unfair. Based on such investigation and prosecution case, judgment recorded by the learned Trial Judge is to be considered perverse. The learned Trial Judge failed to appreciate the facts and circumstances, the materials available in the cross-examination of P.W-1, P.W-2, P.W-8, P.W-19, P.W-20, P.W-21 and P.W-22. Therefore, the same is set aside. The point for consideration is answered in favour of the Appellants/Accused – 1 to 5 & 7 to 10 and against the Respondent/Prosecution.

In the result, **the Criminal Appeal is allowed.** The judgment of conviction, sentence of imprisonment imposed on the Appellants/ Accused – 1 to 5 & 7 to 10 are set aside. The Appellants/Accused – 1 to 5 & 7 to 10 are acquitted, and the fine amount already paid by the Accused – 1 to 5 & 7 to 10 has to be refunded to the Appellants/Accused – 1 to 5 & 7 to 10.

22.08.2023

cda
Speaking/Non-speaking order

SATHI KUMAR SUKUMARA KURUP, J.,

cda



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To

- 1.The learned Principal District and Sessions Judge,
Krishnagiri.
- 2.The Inspector of Police,
Pochampalli Police Station,
Krishnagiri District.
- 3.The Public Prosecutor,
High Court, Madras.

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