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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 01/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.A(MD)Nos.259 and 265 of 2022

(1)Cr1.A(MD)No.259 of 2022:-

Nihal : Appellant/A4
Vs.

1.The State represented by
its Inspector of Police,
Kadayanallur Police Station,
Tenkasi District,
(Crime No.390 of 2016) : 1st Respondent/Complainant

2.Abdul Kader : 2nd respondent

Prayer: Criminal Appeal is filed under section 374(2) Cr.P.C to call for the records and acquit the appellant from all the charges by setting aside the impugned judgment passed by the Additional District and Sessions Judge, (FTC), Tenkasi, in SC No.599 of 2018, by judgment, dated 15/03/2022 and pass such further orders.

For Appellant : Mr.V.M.Jegadeesh Pandian

For 1st Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.N.M.Sajahan



(2) Cr1.A(MD) No.265 of 2022 :-

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1.Sulaimansait
2.Mohamed Thapeeth
3.Mohamed Kalith

: Appellants/A1 to A3

Vs.

The State represented by
its Inspector of Police,
Kadayanallur Police Station,
Tenkasi District,
(Crime No.390 of 2016)

: Respondent/Complainant

Prayer: Criminal Appeal is filed under section 374(2) Cr.P.C to call for the records and allow this appeal and acquit the appellants from all the charges by setting aside the impugned judgment passed by the Additional District and Sessions Judge (FTC), Tenkasi, in SC No.599 of 2018, by judgment, dated 15/03/2022 and pass further or other orders.

For Appellants : Mr.Aayiram K.Selvakumar

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

COMMON JUDGMENT

These Criminal Appeal have been filed seeking in order to set aside the judgment passed by the Additional District and Sessions Judge, (FTC), Tenkasi, in SC No.599 of 2018, dated 15/03/2022.

**2. The facts in brief:-**

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The de-facto complainant namely PW1 lodged a complaint stating that on 31/10/2016, when he was sleeping in his house along with PW2 his brother, on hearing the barking of the dog, PW1 came out of the house, at the time, A1 to A4 were sitting nearby the Yamaha Bike TN-76-AA-1103, which belongs to PW2, and doing some mischief. PW2 wake up by him and both were abused by A1 to A4 in filthy language and also threatened with dire consequences. They also threatened that they will set fire to PW1 and the vehicle. On hearing the noise, the neighbours gathered and when inspected the vehicle, it was found the back seat, right side mirror, indicator got damaged. The accused also put sand in the engine, brake wire was cut off. When the neighbour gathered, the accused persons fled away from the place. On the basis of the above said, a case was registered in Crime No.390 of 2016 for the offences punishable under sections 294(b), 506(ii) IPC r/w section 3 of the TNPPDL Act. After completing the formalities of investigation, charge sheet was filed before the trial court and it was taken as SC No.599 of 2018.



3. Before the trial court, on the side of the prosecution, 10 witnesses have been examined, 12 documents marked, apart from two material were marked. On the side of the accused, no oral and documentary evidence was adduced.

4. The trial court, after considering the oral and documents evidence available on record, came to the conclusion that the charges framed against A1 to A4 for the offences under sections 294(b), 506(2) and Section 3 of TNPPDL Act have been proved beyond reasonable doubt and accordingly, they are found guilty and convicted and sentenced to undergo RI for one year each and imposed a fine of Rs.2,000/0- each with default clause for the offence under section 3 of TNPPDL Act; to undergo one month each SI and imposed a fine of Rs.2,000/- each with default clause for the offence under section 294(b) IPC and to undergo six months RI and imposed a fine of Rs. 2,000/- with default clause for the offence under section 506(2) IPC and directed to run the sentences concurrently.



5. Now challenging the above said conviction and sentence, A1 to A4 are before this court by way of filing these criminal appeals.

6. Pending both criminal appeals, compromise was reached between the de-facto complainant and A4-Nihal. In so as A1 to A3 are concerned, there was no compromise. So that matter was heard on merits. CrI.A(MD)No.259 of 2022 is concerned, since it is a matter of compromise, this also disposed of along with this judgment. So without going into the other aspects, now let us concentrate on the appeal preferred by A1 to A3.

7. The background facts and the motive for the above said occurrence can be taken at the first instance, so that a clarity may come.

8. The motive for the occurrence, as stated by PW2 is that he is having some issue, with his uncle namely Sarputheen. There is also a civil dispute between PW1 and the above said Sarputheen.



9. Now as per the case of the prosecution, at the instance and instigation of the above said Sarputheen, who is A5, A1 to A4 who are the appellants in these appeals alleged to have caused damage to the vehicle and made criminal intimidation and abused in the language. Now the trial court, after considering the evidence on record came to the finding the charge against A5 Sarputheen was not proved beyond all reasonable doubt. On that account, he was acquitted.

10. Now the learned counsel appearing for the appellants/A1 to A4 would submit that when the motive itself was not properly established before the trial court and since because A5, who alleged to have abetted the commission of the offence by these appellants, they have also to be acquitted; The prosecution against them is without any basis and it has to be set aside.

11. Now let us come to the findings of the trial court on this aspect. Because absolutely, there was no motive between A1 to A4 and the de-facto complainant. The motive was only between PW1 and A5 namely Sarputheen.



12. Para 10 of the judgment of the trial court is devoted to answer this issue, which would run thus:-

"10. Whereas the learned counsel for the 5th Accused person in his written argument has stated that charge against A5 is that he committed the offence of criminal conspiracy punishable u/s 120(B) IPC. To attract the offence of conspiracy, the basis ingredients are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing illegal means an act which by itself may not be illegal. In this case, there is no evidence let in on the side of the Prosecution to prove that what was the agreement between the parties, who were all parties to the agreement, when that agreement was happened or took place. In the absence of such evidence, A5 cannot be said to have committed an offence u/s 128(B) IPC. So there cannot be a charge of conspiracy against one person here in this case against A5. The Investigation Officer in his evidence has admitted that one person



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cannot commit criminal conspiracy and there is no evidence against A5 to prove that against whom he had criminally conspired together to commit the offence. And also admitted that except the Confession Statement there is no other evidence and also admitted, that for criminal conspiracy there must be two or more persons. And also admitted that it is not stated in the Charge Sheet and in the 161(3) Cr.P.C statements of the witnesses that along with whom A5 had committed criminal conspiracy. And he has also admitted that it is not revealed in the investigation that on which date, on which time, on which place A5 had committed criminal conspiracy. In this case, framing of charge u/s 120(B) IPC against A5 alone is not sustainable. The counsel has also submitted the ruling reported in 1995 Supreme Court Cases (Criminal) 215 in which it is held that,

"The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons, who are alleged to conspire and the said agreement should be for



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doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

"An offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or interferences which are not supported by cogent evidence.

Hence, A5 is to be acquitted free."

13. With regard to the criminal intimidation, even though charge was framed under section 120-B IPC, for which, there was no enough material, on the side of the prosecution to show the meeting of mind between A1 to A4 and A5. Even for the offence under section 109 IPC, there



was no charge. In the absence of any such material, except the confession statement of the co-accused, absolutely, no other circumstances are available even to prove the prosecution story. No cross appeal was also filed by the prosecution against the acquittal of A5. So this also must be taken into account, while discussing with regard to the other aspects.

14.No doubt that motive is not required to be proved by the prosecution beyond reasonable doubt, when specific proof with regard to the commission of the criminal offence. Now let us go to this aspect.

15.PW1 has stated that on the date of the alleged occurrence, on hearing the barking of the dog, he came out of the house, at the time, four persons were found near the two wheeler and later, PW2 also was wake up and he was also come out of the house and saw that the vehicle was found damaged and the another vehicle, in which the above said accused came was also found in that place. According to him, the damage was worth about Rs.15,000/-. Cross examination was also undertaken to show that PW1 himself is not a law-abiding person and



several cases have been registered against him. But we do not concentrate much upon that point, since the character of the witnesses in a criminal case will assume importance only in specific circumstances.

16.PW2 also corroborated PW1 on this aspect with regard to the availability of A1 to A4 in the place of occurrence and the damages were found in the vehicle.

17.PW3 is the neighbour. He would also say that on the particular day, on hearing the noise of the dog, he came out of the house and saw that A1 to A4 standing in that place and the vehicle was also found damaged. On enquiry, it was told that A1 to A4 caused damage to the vehicle and near the petrol tank of the two wheeler sand was also found spread.

18. The learned Additional Public Prosecutor would submit that the evidence of PW1 and PW2 fully corroborated the neighbour namely PW3. So according to him, nothing is available on record to disbelieve his version.



19.From the evidence of PW1 to PW3, it stands established on the side of the prosecution that on the particular date of the occurrence, these accused persons were also standing nearby the vehicle bearing registration No.TN-76-AA-1103, which belongs to PW2 and was found damaged.

20.Now we will come to the evidence of PW8, who inspected the vehicle for issuing the damage certificate. He is not an authorised person to issue such a damage certificate. Even as per his own evidence, he has stated that on 11/11/2016, PW2-Ayub Khan handed over the vehicle for repair. On his inspection, he found that maximum amount of Rs.14,953/- is required for making repair. He also issued a certificate under Ex.P6.

21.In the light of his evidence, let us go to the evidence of the Investigating Officer (PW10) as to the seizure of the vehicle. He would say that on 31/10/2016 at about 10.15 am, he visited the place of occurrence and prepared the Observation Mahazar, Rough Sketch and Seizure Mahazar. He seized the vehicle bearing registration No.TN-76-AA-1103 and TN-67-K-6606 through Seizure Mahazar Ex.P10.



22.The date of the occurrence is stated to be 30/10/2016. The date of seizure is 31/10/2016. But the vehicle was produced by PW2 to PW8 only on 11/11/2016.

23.The properties were also remanded to custody and probably, PW2 would have been returned with the property on interim custody. It appears that without proper inspection all the damages by the Motor Vehicle Inspector, the same was produced before the trial court and even in the Athachi or in the mahazar, we find no reference or indication with regard to the damages that in the vehicle. How this important factor was omitted by the Investigating Officer is not explained by him. Even as mentioned earlier, PW8 is not the competent person to inspect the vehicle and issue the damage certificate. So the investigation completely failed on this aspect in assessing the correct damages.

24.So in the absence of any contradictory evidence, the question which arises for consideration is whether the evidence of PW1 to PW3 can be relied to show that there were damages in the vehicle. No doubt that they were clear in their evidence that there were



damages. But what sort of damage occurred is not specifically mentioned by the Investigating Officer. Correct valuation has not also been done in a proper manner. So in the absence of any such proper material, except stating that there were some damages to vehicle, the cost of the vehicle assessed by PW8 cannot be relied.

25.Now, PW1 and PW2 were not the direct eye witnesses to the alleged damages caused by A1. They simply stated that on the date of the alleged occurrence, they saw the accused persons standing in the place of occurrence and the vehicle found damaged.

26.The next question is whether any inference can be drawn, they are culprits and they are responsible for the damages caused to the vehicle.

27.Since primary motive is not established by the prosecution, mere presence of the accused persons in the place of occurrence and that too in the absence of the materials to show the damages, I am of the considered view that mere presumption is not enough to draw presumption that they are the persons, who made the damage.



28. Similarly, coming to the abusive and criminal intimidation are concerned, PW1 stated that the accused used filthy language and also criminal intimidation. But from the facts and circumstances of the case, there is no evidence to show that because of the above said criminal intimidation, PW1 and PW2 feared threat to their life. Since the primary motive itself is not established stating that if PW1 continued his issue with A5 namely Sarputheen, he will be done to death, may not have any meaning at all. It is also feasible and usual for the witnesses to make such sort of allegation that they were abused and criminal intimidated. Totality of circumstances must be taken into account to decide the issue. When we take into account the totality of circumstances, I am of the considered view that sections 294(b) and 506(ii) IPC may also be not established beyond reasonable doubt.

29. The trial court went on the assume that A1 to A4 present in the place of occurrence and they were also damaged the vehicles. The reasons are not standing to the reason because of the above said infirmities. On that ground, the judgment of conviction and sentence imposed



upon A1 to A4 are also liable to be interfered, more particularly, when there is compromise between A4 and PW1. Why partial compromise is reached between them is not explained by PW1.

30. In the light of the above said facts and circumstances of the case, the judgment of conviction rendered by the trial court is liable to be aside and accordingly, it is set aside.

31. In the result, both the criminal appeals are **allowed** and the judgment passed by the trial court against the appellants namely A1 to A4 is hereby set aside and fine amount, if any, paid by them shall be refunded to them by the trial court.

01/03/2023

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WEB COPY To,

- 1.The Additional District and Sessions Judge,
(Fast Track Court), Tenkasi.
- 2.The Inspector of Police,
Kadayanallur Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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Cr1.A(MD) Nos.259 and 265 of 2022

01.03.2023