



.Crl.A.No.711 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 28.08.2023

Delivered On : 28.02.2024

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.711 of 2016

and

Crl.M.P.No.14266 of 2019

Nagaraj

... Appellant/Accused

Vs.

State Rep. By
The Inspector of Police,
G-2, Pudumund Police Station,
Udhagamandalam,
Nilgiris District.
(Cr.No.75 of 2015)

... Respondent/Complainant

PRAYER: Criminal Appeals filed under Section 374(2) of Cr.P.C., to set aside the Judgment passed against the Appellant on 30.08.2016 in S.C.No.3 of 2016 on the file of the learned Mahila Judge, Fast Track Court, Udhagamandalam, Nilgiris District and acquit him from all the charges.

For Appellant : Mr.M.Velmurugan

For Respondent : Ms.G.V.Kasthuri
Additional Public Prosecutor



WEB COPY



.Crl.A.No.711 of 2016.

: Mr.T.Karunakaran
for Intervenor

JUDGMENT

This Criminal Appeal has been filed to set aside the Judgment passed by the learned Judge, Fast Track Mahila Court, Udthagamandalam, Nilgiris District in S.C.No.3 of 2016, dated 30.08.2016.

2. The learned Counsel for the Appellant submitted that P.W-1 is a practising Doctor. The property is the hermitage bungalow is owned by P.W-1 as it was settled in her favour by her mother. The Appellant herein who is the Accused is none other than a distant cousin of P.W-1. The dispute between P.W-1 and the Accused is before the learned Sub Judge, Nilgiris. While so, only to settle scores against the Accused who is claiming share in the property, P.W-1 who is a practising Doctor using her influence in the society, had foisted this case against the Accused.

3. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1 who is the Complainant, P.W-2 and P.W-3



.CrI.A.No.711 of 2016.

WEB COPY

who are labourers working under P.W-1, P.W-4 is the Administrator of her Hospital, P.W-5 who is working in Computer sales and service and who had installed the C.C.T.V Camera in the hermitage bungalow, P.W-6 is the gardener in the hermitage bungalow. All are related to the Complainant/P.W-1, P.W-7 is the Inspector of Police/the Investigation Officer in this case. Ex.P-1 is the settlement deed executed by adopted mother of P.W-1. Ex.P-2 is the property tax receipt in the name of P.W-1. Ex.P-3 is the telephone bill in the name of P.W-1. Ex.P-4 is the Complaint of P.W-1. Ex.P-5 is the observation mahazar prepared by P.W-7/ Investigation Officer. Ex.P-6 is the Seizure Mahazar and Ex.P-7 is the FIR registered by P.W-7. Ex.P-8 is the rough sketch and Ex.P-9 is Form-91.

4. It is the contention of the learned Counsel for the Appellant that he is attacking the Judgment of the learned trial Judge on five grounds. First, non-production of CCTV footage by P.W-1 or any of her staff/P.W-2 to P.W-6. Second, FIR was registered on the next day of occurrence. Third, the damage caused to the hermitage bungalow which was suffered by P.W-1 was not assessed as per the Provisions of Tamil Nadu Properties Damages and Loss Act. Fourth, the contradictions between P.W-1 to P.W-3. Fifth,



.CrI.A.No.711 of 2016.

WEB COPY

the learned Judge failed to appreciate the documents marked by the Accused as Ex.D-1 and Ex.D-2 which shows that the Accused is also the co-owner of the property and there is no exclusive right on P.W-1 alone. When the Accused also have share in the property, he is entitled to enter into the property. By filing this case, P.W-1 who is a practising Doctor having influence in Ooty, had foisted the case against the Accused. Therefore, the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam in S.C.No.3/2016 is to be set aside.

5.The learned Counsel for the Appellant submitted that Ex.P-4 is the Complaint of P.W-1 which itself clearly shows that she had installed the C.C.T.V Camera in the place of occurrence. She was informed by her labourers/P.W-2 and P.W-3 who were engaged for attending work in the hermitage bungalow. Immediately, on hearing the news that the Accused had broken the window and door panes, she had informed the same through her mobile phone to P.W-4 who is the Administrator in the Hospital and she found out that the same had been damaged by the Accused. She had on the next day of occurrence registered the FIR under Ex.P-7. There are material contradictions between P.W-1 to P.W-5. The learned trial Judge failed to



.CrI.A.No.711 of 2016.

WEB COPY

consider those contradictions and mechanically convicted the Accused for the offence under Section 3 of TNPPDL Act.

6. In support of his contention, the learned Counsel for the Appellant had relied on the ruling of the Hon'ble Supreme Court in **(2015) 7 SCC 178** in the case of ***Tomaso Bruno and another Vs. State of Uttar Pradesh*** wherein it is stated that when C.C.T.V footage had not been produced by the Prosecution. Therefore, adverse inference is to be drawn against the Prosecution. If the C.C.T.V footage is produced, the case of P.W-1 will be exposed. That is why, she had not furnished C.C.T.V footage. The learned Sessions Judge, Fast Track Mahila Court, Nilgiris had ignored the above ruling cited by the Accused and convicted the Accused. Therefore, the Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nilgiris is to be set aside as perverse.

7. The learned Additional Public Prosecutor submitted that the evidence of P.W-1 had been cogent. P.W-2 and P.W-3 are labourers in the hermitage bungalow who had on seeing the damages caused by the Accused, had questioned him and came near the Accused. On which, the



.CrI.A.No.711 of 2016.

WEB COPY

Accused is alleged to have threatened them with dire consequence. Hence scared of him they remained as mute-spectator. Still, they had informed the development of the occurrence to P.W-4, Administrator of the Hospital where P.W-1 is serving. On instructions, P.W-4 directed P.W-5 to collect the materials from the C.C.T.V footage. Accordingly, P.W-1 saw the incident from her mobile phone and based on which, she had given a Complaint under Ex.P-4. The contents of Ex.P-4 is clear that the Accused had damaged the window and door panes. Due to mere technical snag, C.C.T.V footage produced by the Prosecution is not feasible. Section 65 of Indian Evidence Act regarding electronic evidence applies. Here, P.W-1, P.W-4 and P.W-5 had produced electronic evidence before the Investigation Officer. When the Investigation Officer wanted to verify, he cannot succeed to see any feasible evidence. Still the evidence of P.W-1 to P.W-5 inspires confidence of the Court. The learned Judge had discussed the deposition of P.W-1 to P.W-7 and Ex.P-1 to Ex.P-9 and the documents relied by the Accused as Ex.D-1 and Ex.D-2. The learned Judge had discussed the entire materials in the paragraph Nos.12 to 19. The Judgment of the learned Sessions Judge, Fast Track Mahila Court, Nilgiris is a well-reasoned Judgment that does not warrant any interference. This Appeal lacks merits



.CrI.A.No.711 of 2016.

and is to be dismissed.

WEB COPY

8. The learned Counsel for the intervenor submitted that Ex.D-1 and Ex.D-2 will not hold good as Ex.D-1 is a representation given by the Accused subsequent to the date of the alleged occurrence only to create evidence that he has a claim. Whereas Ex.D-1 clearly stated by the authorities of the Municipal Corporation of Ooty that his representation is rejected. Likewise, Ex.D-2-Chitta extract does not mention the Patta number and Adangal details. Therefore, that is also a created document for the purpose of defence of the Accused.

9. The learned Counsel for the intervenor submitted that the C.C.T.V footage was produced by the Investigation Officer. Due to some technical reasons, it cannot be viewed by the learned Single Judge. It does not mean the entire Prosecution evidence shall be rejected. Further, the learned Counsel for the intervenor submitted that Ex.P-1 is the settlement in favour of P.W-1 by her father's brother's widow/paternal uncle's widow. As per Ex.P-1, the settlement deed executed in favour of P.W-1 by her paternal uncle's widow which was registered in the year 2008 in which it is clearly



.Crl.A.No.711 of 2016.

stated that P.W-1 was their adopted child as they did not have children.

WEB COPY

The property tax was calculated from P.W-1 by the authorities concerned under Ex.P-2. The telephone connection was installed in the hermitage bungalow under Ex.P-3. Ex.P-3 is the bill in the name of P.W-1. While so, on the alleged date of occurrence i.e., 09.04.2015, after 7 years from the date of execution of Ex.P-1, the Accused had trespassed into the property. The submission of the learned Counsel for the Appellant that the Appellant also has a share in the property, is not true. The Appellant claims that there is a suit pending between the Appellant and P.W-1 before the Civil Court. If that was so, instead of marking Ex.D-1 and Ex.D-2, the Appellant as Accused before the trial Court should have filed pleadings of the pending suit before the learned Sub Judge, Ooty or stated so. In his evidence, he had not let in evidence as D.W-1. He had only marked Ex.D-1 and Ex.D-2. In his cross-examination, he had not produced any pending Civil cases before any Civil Courts between P.W-1 and Accused. Further, the learned Counsel for the intervenor invited the attention of this Court to Ex.D-1 which is a representation dated 17.07.2015, only to create documents favouring the defence of the Accused, the Accused had produced it. Ex.D-2 is the alleged Chitta extract which does not contain Patta number and the details of the



.CrI.A.No.711 of 2016.

WEB COPY

Adangal. It is furnished as though the adopted parents of P.W-1 and the Accused have a share in the properties. The learned Counsel for the intervenor invited the attention of this Court to Ex.P-1 wherein three properties are specifically mentioned – Item No.1 dealt with undivided $\frac{1}{2}$ share of Parvathammal, the widow of paternal uncle of P.W-1, Item No.2 also has undivided $\frac{1}{2}$ share of Parvathammal husband and paternal uncle of P.W-1 and Item 3 has $\frac{1}{2}$ share of Widow, paternal uncle of P.W-1 and Parvathammal. While so, no document had been furnished by Accused to show that the Civil case is pending before the Sub Court. If the argument of the learned Counsel for the Appellant is to be accepted, Accused himself ought to have filed Complaint before the Police for the damages caused to hermitage bungalow. But, he had not done so. Apart from all those things, the evidence of the direct witnesses P.W-2 and P.W-3 who were present in the scene of occurrence had been discussed by the learned trial Judge in his Judgment in S.C.No.3/2016 in Paragraph Nos. 14 to 22. Further, he submitted that the explanation offered by the learned Counsel for the Appellant is that on the date of examination of Witnesses, the Advocates were on boycott. Therefore, they were unable to cross-examine the witnesses. If that be so, after the boycott, they could have filed Petition to



.CrI.A.No.711 of 2016.

WEB COPY

recall witnesses and cross-examine them, but they had not done so. That has been discussed by the learned Judge, in his Judgment, in Paragraph Nos.15 and 16. The rulings cited by the learned Counsel for the Accused in **(2015) 7 SCC 178** was rejected on the ground that there are direct evidence available otherwise. Therefore, the learned Sessions Judge had rejected the ruling and arguments on behalf of the Accused. When there is direct evidence, the learned Judge had appreciated the direct evidence and arrived at a conclusion that the Accused alone had caused damages to the buildings and had convicted the Accused. Further submission of the learned Counsel for the intervenor that the assessment of damages and the witnesses not produced will not hold good. The Investigation Officer himself had assessed it based on the value of the window panes that was damaged. Further, he submitted that being at hill station, due to climatic condition, the C.C.T.V footage produced through C.D could have been damaged by natural cause, that cannot be used against the Prosecution. The learned Counsel for the intervenor relied on the observation mahazar under Ex.P-8 to arrive at a conclusion that loss caused due to the conduct of the Accused. P.W-2 and P.W-3 had spoken cogently who being direct witnesses, were threatened by the Accused and they have identified the material objects in the trial Court



.CrI.A.No.711 of 2016.

under M.O-1 and M.O-2. Therefore, the learned Judge had on proper appreciation of evidence had arrived at a conclusion that the charge framed against the Accused by the Prosecution through P.W-1 to P.W-7 and Ex.P-1 to Ex.P-9 is proved. Therefore, the learned Counsel for the intervenor seeks to dismiss this Appeal as having no merit.

Point for Consideration:-

Whether the Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nilgris in S.C.No.3/2016 dated 30.08.2016 is to be set aside as perverse?

10. Heard the learned Counsel for the Appellant, the learned Additional Public Prosecutor and the learned Counsel for the intervenor. Perused the evidence of P.W-1 to P.W-7, perused the documents under Ex.P-1 to Ex.P-9 and Ex.D-1 and Ex.D-2 and the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Nilgris in S.C.No.3/2016 dated 30.08.2016.

11. On perusal of the evidence of P.W-1 to P.W-7 and the Judgment of



.CrI.A.No.711 of 2016.

WEB COPY

the learned Sessions Judge in Paragraph Nos.14 to 23, it is found that the learned Judge had specifically dealt with the evidence of the Prosecution Witnesses particularly the defence of the Accused that the C.C.T.V footage was not produced before the trial Court and placing reliance on the reported ruling of the learned Counsel for the Accused in **(2015) 7 SCC 178**. The learned Judge had stated that if there was a material in favour of the Accused, the Accused ought to have cross-examined P.W-7/Investigation Officer regarding non-production of C.C.T.V footage. The Accused had not at all cross-examined the Investigation Officer. In the light of that, the learned Judge had rejected the ruling relied by the learned Counsel for the Accused before the trial Court regarding the C.C.T.V footage. Here, C.C.T.V footage is not the only evidence available before the trial Court, the direct witnesses are there. P.W-1 muted, P.W-2 and P.W-3 are proof of the hermitage bungalow which were stated in her favour by her paternal uncle widow after the death of the paternal uncle. While so, the Accused having no claims over the property is alleged to have damaged with vengeance as the property was not settled in his favour by the widow of paternal uncle of P.W-1. The Accused is also related to paternal side of P.W-1. The Accused is alleged to be another paternal uncle's daughter's son and grand son to the



.Crl.A.No.711 of 2016.

WEB COPY

widow who settled the property in favour of P.W-1. There is nothing in favour of the Accused from the evidence available through P.W-1 to P.W-7. When there is direct evidence of P.W-2 and P.W-3 that will be sufficient to arrive at a conclusion to convict the Accused. P.W-2 and P.W-3 even identified the material object/M.O-2-iron pipe before the Court. As pointed out by the learned Counsel for the intervenor, Ex.D-1 and Ex.D-2 are subsequent to the alleged occurrence. Therefore, it is to be treated as created by the Accused to wriggle out of the case as though he had claim in the property. If that be so, he should have filed the documents or pleading filed before the Civil Court, no such documents were filed by the Accused. Regarding the delay in filing FIR, P.W-1 herself states that she does not go to the hermitage building regularly. She is a practising Doctor in different place. She used to visit the hermitage bungalow only when she has free time. Therefore, she employed P.W-2 and P.W-3. Those two persons immediately contacted her. Only after her visit and taking stock of the development, she had preferred a complaint under Ex.P-4. Therefore, the delay in lodging the Complaint cannot be held against the Prosecution. As per the guidelines issued by the Hon'ble Supreme Court in the case of **Betal Singh -vs- State of M.P.** reported in (1996) 8 SCC 205, if on the same set



.CrI.A.No.711 of 2016.

WEB COPY

of evidence, the learned Appellate Judge arrives at a different conclusion, the conclusion arrived by the learned trial Judge shall not be disturbed. This is due to the fact that the learned trial Judge had the advantage of observing the demeanour of witness and the Accused which is not available to the learned Appellate Judge. Therefore, the conclusion or the finding arrived by the learned trial Judge is to be given due weightage. Applying the same principle, the Judgment of the learned Sessions Judge, Fast Track Mahila Court is found acceptable and reasonable and had on proper appreciation of evidence. Therefore, the submission of the learned Counsel for the Appellant that the Judgment of the learned trial Judge is perverse, is rejected. The arguments of the learned Additional Public Prosecutor and the learned Counsel for the intervenor that the Judgment is a well-reasoned Judgment, is accepted. The only point raised by the learned Counsel for the Appellant is that there was no assessment of damage by competent expert for which the learned Counsel for the intervenor relied on the Observation Mahazar prepared by the Investigation Officer under Ex.P-5 and Ex.P-9. The delay had been explained by P.W-1 that she had not been regular visitor to the hermitage bungalow. Therefore, she had employed P.W-2 and P.W-3. Whenever she gets time, she used to visit it. On hearing about the damage



.Crl.A.No.711 of 2016.

caused by the Accused, P.W-2 and P.W-3 contacted the Manager/P.W-4.

WEB COPY

Immediately, P.W-1 saw the occurrence on her mobile phone and she had requested P.W-5 to record the video of occurrence and hand over to the Investigation Officer, very well the same was done. But nevertheless, it could not be viewed in trial and it might have been damaged due to natural cause. The present technology advancement is not available in 2015. That may be one of the reasons, for which, the reliance of the Hon'ble Supreme Court reported in **2015 7 SCC 178** is rejected by the learned Sessions Judge on the ground that the reasons for not producing the CCTV footage and was not sought in the cross-examination by the learned Counsel for the Accused before the trial Court. Further, direct evidence of P.W-2 and P.W-3, when the Accused is alleged to have threatened them when they wanted to prevent him from damaging. Since it is a well-reasoned Judgment, the Appeal lacks merits and the Judgment of the learned trial Judge is to be given due weightage.

12.In the light of the above discussion, the point for consideration is



.Crl.A.No.711 of 2016.

WEB COPY

answered in favour of the Prosecution and the intervenor and against the Accused. The Judgment of conviction recorded by the learned Sessions Judge, Fast Track Mahila Court, Nilgris in S.C.No.3/2016 dated 30.08.2016 is a well reasoned judgment and the same is to be confirmed.

In the result, the **Criminal Appeal is partly allowed** by modifying the sentence of imprisonment alone considering the age of the Appellant/Accused and the offence under Section 3(i) of PPDL Act and under Section 506(ii) of IPC. The Appellant/Accused is released on probation on executing a bond for Rs.10,000/- each for a likesum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Udthagamandalam, one of the sureties shall be a blood relative. He shall execute the bond under the Probation of Offenders Act, 1958. He shall remain on probation of good conduct on supervision of the Probationary Officer concerned. The learned Sessions Judge, Udthagamandalam, shall warn him that if he violates the bond, his probation will be cancelled and thereby he had to undergo the remaining period of sentence of imprisonment as per the judgment dated 30.08.2016. Consequently, connected miscellaneous petition is closed.



.Crl.A.No.711 of 2016.

28.02.2024

WEB COPY

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The Judicial Magistrate,
Udhagamandalam.
2. The Sessions Judge,
Fast Track Mahila Court,
Udhagamandalam,
Nilgiris District.
3. The Inspector of Police,
G-2, Pudumund Police Station,
Udhagamandalam,
Nilgiris District.
4. The Public Prosecutor,
High Court, Madras.



WEB COPY



.Crl.A.No.711 of 2016.

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
Crl.A.No.711 of 2016

28.02.2024