



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.01.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

Crl.A.No. 585 of 2018

Mahalakshmi

... Appellant

Vs.

1. State represented by
The Inspector of Police,
J-5, Sasthri Nagar Police Station,
Chennai.

2. Gopi

3. Venkatesh

... Respondents

PRAYER: Criminal Appeal filed under Section 372 of the Criminal Procedure Code, to set aside the order passed in S.C.No. 356/2015 by the the VI Additional Sessions Court, Chennai dated 09.02.2018 in acquitting the respondents who were fixed in Crime No. 789/2013.

For Appellant : Mr.S. Thiruvengadam

For Respondents : Mrs. G.V.Kasthuri
Additional Public Prosecutor (for R1)
Mr.R.Vivekananthan (for R2 and R3)



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JUDGMENT

The defacto-complainant herein has preferred this criminal appeal against the order of acquittal passed in S.C.No. 356 of 2015 dated 09.02.2018, by the VI Additional Sessions Court, Chennai.

2. The case of the prosecution in brief is as follows:

- Smt. Sivangai W/o Paramasivam is residing at No.25, Oorurkuppam, Besant Nagar, Chennai – 600 090 which is situated along the seashore.
- In the year 2012, due to cyclone-Neelam Storm, a Ship by name- Kauvery got struck down in the sea and the defacto-complainant sent four persons from her Kuppam in her own Boat bearing No. TN 03 FR PC2405 in order to rescue the employees of Kavery ship and rescued four employees.
- But, the then President of Oorurkuppam received Rs. 1,00,000/- cash prize from the Government of Tamil Nadu, as if, he rescued the stranded four employees of Kavery Ship.
- Smt. Sivangai, defacto-complainant lodged a complaint to the Special Cell of the Chief Minister, who in turn advised her to lodge a



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complaint to the Deputy Commissioner, Adyar, accordingly she did so.

- On 11.01.2013, when a serious wordy altercation took place between the two sons of defacto-complainant and her brother, her brother fell down and due to head injury, he died.
- A.1 Gopi, A.2 Manikam, A.3 Venkatesh, A.4 Rajesh, A.5 Kannan, A.6 Vinoth, A.7 Santhosh and A.8 Vadivelu came to the house of the defacto-complainant armed with deadly weapons and she shut the door.
- A.1 Gopi instigated the other accused to set fire to the house of the defacto-complainant and other accused gained entry into the house: all of them caused injuries to the defacto-complainant and her husband and used all obscene words by shouting that the defacto-complainant would not receive any prize amount for having rescued the four employees of Kauvery Ship.
- A.1 Gopi broke open the bureau and took 21 sovereigns of gold jewels, cash amount of Rs. 1,10,000/- silk sarees, silver articles, title deeds, R.C.Book of boat, insurance policy of two wheelers.
- A.1 threatened 18 tenants of the defacto-complainant to evict the



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rented houses. A.1 Gopi instigated A.2 Manickam, A.3 Venkatesh, A.4 Rajesh to set fire to the house hold articles of the defacto-complainant and they did so. A.1 Gopi instigated A.6 Vinoth, A.7 Santhosh and A.8 Vadivelu to set fire to the two wheelers with the intention to create alarm about A.1.

- A.1 Gopi attempted to set fire on the body of the defacto-complainant at the place of occurrence and all the accused fled away from the place of occurrence with stolen articles. Damaged articles are worth about Rs. 27 lakhs.

3. Upon the complaint given by P.W.1, a case was registered by the Sasthri Nagar Police Station in Crime No. 789 of 2013 under Sections 147, 148, 452, 435, 427, 323, 506(ii) of Indian Penal Code. Final report was placed before the learned IX Metropolitan Magistrate, Saidapet, Chennai who in turn took cognizance of this case and committed to the Principal Session Court, Chennai S.C.No.356 of 2015 was made over to VI Additional Sessions Judge Court, Chennai for disposal in accordance with law.



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4. On appearance of all the accused, after hearing both sides, charges were framed against the accused under Sections 147, 148, 452, 506(ii) read with Section 149 of IPC and Section 4 of T.N.P.D.D.L Act. When they were explained about the charges, they denied the same. After commencement of the Trial, death of Accused No. 5 was reported on 08.12.2016 and the charges framed against him stood abated.

5. At trial, to substantiate the charges on the prosecution side, 10 witnesses were examined, 19 documents and one material object were marked. No witness was examined by defence side.

6. Upon consideration of the oral and documentary evidence, the Trial Court acquitted all the accused by the impugned judgement. Against which the defacto-complainant has preferred this appeal.

7. Heard the arguments of Mr.S.Thiruvengadam, learned counsel for the appellant, Mrs. G.V.Kasthuri, learned Additional Public Prosecutor for the first respondent and Mr.R.Vivekananthan, learned counsel for the second and third respondent and perused the materials placed on record.



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8. It is the evidence of the defacto-complainant/P.W.1-Smt.Sivagangai that three years before in the month of January she went to Puthupatinam along with her husband to her sister-in-law's house. On 15th when she returned home she noticed their fishing boat, two wheelers three in numbers, house utensils, documents kept in the bureau were found missing. Somebody had intruded into their house by breaking open the door and took away the articles inside her house. On enquiry her neighbours told her that they did not know anything. She went to the police station and as per her narration compliant was written by the police. The contents of the complaint was read over to her and thereafter she signed in the complaint. She estimated the damage caused at Rs. 1,00,000/-. She identified all the accused during trial, as they are residing in her area. P.W.2, Mr. Paramasivam corroborated the evidence of his wife P.W.1.

9. P.W.3, Mr.Citibabu who is also a resident of Oorurkuppam, Besant Nagar would state that on 13.01.2013, Gopi's son-in-law Venkatesan came and told him that the sons of Smt.Sivagangai (P.W.1) committed murder. The said person asked him to show the house of Smt.Sivagangai. As he refused to show the house of Sivagangai, they



abused him in filthy language and threw away the articles kept at his residence. As per the instructions of police, he stayed away from his house for about 15 days as tension was prevailing in that case.

10. P.W.4 Smt.Mahalakshmi has corroborated the evidence of her husband P.W.3. She identified the first and third accused as Gopi and Venkatesh.

11. Mr.Venkatraman (P.W.5) neighbour of P.W.3, would state that on 11.01.2013 at about 12.00 noon, there occurred a wordy quarrel between Mahesh and Karthick who are his brother's son and one Kuppusamy. On 13.01.2013 in the early morning, some persons intruded into his house and also did break open the lock of house of his brothers Mr.Paramasivam and Citibabu. He would further state when he returned back to home at about 7.00 am, the household articles were found missing.

12. P.W.6, Mr.Kannan did not support the prosecution case and he was treated as hostile witness.



13. P.W.7, Mr.A.Thanukkodi, registered Surveyor of the Chennai Corporation would state that upon the requisition of Sasthri Nagar Police Station, on 26.02.2015, after inspection of the house of defacto-complainant he gave a report (Ex.P.3) on 02.03.2015 assessing the damage caused at Rs. 1,36,917/-.

14. P.W.8, Mr.M.Mohamed Nainar, the Assistant Director of Chennai Fishing Development Department has deposed that upon the requisition of the Sasthri Nagar Police he gave a report with regard to damaged country boat - TN 03 FR PC 2405 (Ex.P.5).

15. P.W.9, Mr.Jegadeesh has spoken about the preparation of observation mahazer and rough sketch by the Sasthri Nagar Police at the scene of occurrence (Observation mahazer Ex.P.6 and seizure mahazer Ex.P.7).

16. It is the evidence of P.W.10, Mr.Christin Jayasil the Inspector of Police, that on 09.05.2013 at 19.00 hours, upon the receipt of complaint from Smt.Sivagangai (P.W.1), a case was registered in Crime No. 789 of



2013 under Sections 147, 148, 452, 435, 427, 323, 506(ii) of Indian Penal Code. (First Information Report – Ex. P.9) As a part of investigation, he proceeded to the scene of occurrence and prepared Ex.P.10 Observation Mahazer and Ex.P.11 Rough Sketch in the presence of witnesses Desingh and Jegathesh. The burnt two wheelers and Scooty were seized by him in the presence of said witnesses under Seizure Mahazer Ex.P.12. The photos and CD showing the burnt vehicle is M.O.1 (series). On 10.05.2013, the above said witnesses were examined and statements were recorded. Subsequently, reports were received from the Assistant Director of Fish Development Corporation. Alteration report was filed. On 18.06.2015, formal arrest of the accused Rajesh and Venkatesh were made in this case, as they were kept already in Puzhal prison in some other case.

17. From the evidence of P.W.1 to P.W.4, it is discernable that the house of P.W.1 was ransacked when the inmates were away from their residences. It appears that two wheelers were also burnt during the occurrence.



18. The defacto-Complainant (P.W.1) and her husband have not supported the prosecution case. P.W.3 and P.W.4 are husband and wife. P.W.3 has spoken about what had happened at his residence. In the same line, his wife Smt.Mahalakshmi (P.W.4) has spoken. Though the P.W.5 and P.W.6 are said to be ocular witnesses they have not supported the prosecution case. P.W.7 and P.W.8 are official witnesses.

19. On thorough perusal of the evidence of prosecution side witnesses, it appears that the ocular witnesses have not spoken about the occurrence. Even, P.W.1/defacto complainant has deviated from her complaint details. The defacto-complainant/P.W.1 would state that as per her narration, the complaint was written. She would depose that she does not know who got involved in this case. P.W.1 and her husband P.W.2 did not identify any of the accused. The occurrence took place on 13.01.2013 and complaint was lodged on 04.05.2013 (Ex.P.1) and case was registered on 09.05.2013 by the Inspector of Police of J5, Sasthri Nagar Police station.

20. Other ocular witnesses P.W.4 Smt.Mahalakshmi and her husband P.W.3, Mr. Citibabu have narrated that the accused came to their



house in the wee hours and they have stated about the happenings that took place in their residence and not about this case. The evidence of P.W.5 and P.W.6 will no way help the prosecution case. P.W.7 and P.W.8 are the official witnesses who have spoken about the issuance of report in connection with the occurrence.

21. Therefore, based on the aforesaid discussion, it is concluded that the prosecution has not brought home the guilty of accused A.1 to A.4 and A.6 to A.8 under Sections 147, 148, 438, 452, 506 (ii) of Indian Penal Code read with Section 149 of Indian Penal code and under Section 4 of T.N.P.P.D.L. Act.

22. In fine, the prosecution has not proved the charges framed under Sections 147, 148, 438, 452, 506(ii) of Indian Penal Code read with Section 149 of Indian Penal code and under Section 4 of T.N.P.P.D.L. Act against the A.1 to A.4 and A.6 to A.8, beyond all reasonable doubts. Therefore, A.1 to A.4 and A.6 to A.8 are ordered to be acquitted under Section 235(1) of Criminal Procedure Code from the charges under Sections 147, 148, 438, 452, 506 (ii) of Indian Penal Code read with Section 149 of



Indian Penal code and under Section 4 of T.N.P.P.D.L. Act. The charges framed against the A.5 stood abated as he passed away.

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23. Based on the aforesaid observations, this Criminal Appeal stands dismissed. The Judgment passed in S.C.No. 356 of 2015 by the the VI Additional Sessions Court, Chennai dated 09.02.2018 stands confirmed.

29.01.2024

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. The VI Additional Sessions Court,
Chennai
2. The Inspector of Police,
J-5, Sasthri Nagar Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
VR Section, High Court, Madras.



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