



Crl.A(MD)No.160 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.08.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.160 of 2019

1.Amsavalli

2.Senthil @ Senthil Kumar

3.Rajam ... Appellant/ Accused Nos.1 to 3

Vs.

State represented by
The Inspector of Police,
Ariyamangalam Police Station,
Tiruchirappalli District.
(Crime No.62 of 2015)

... Respondent / Complainant

Prayer : This Appeal is filed under Section 374 of Cr.P.C., to set aside the judgment passed by the Principal Sessions Judge, Thiruchirappalli, in S.C.No. 157 of 2018 dated 28.03.2019 and acquit the appellants herein.

For appellants : Mr.T.J.Ebenezer Charles

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



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J U D G M E N T

This Criminal appeal is preferred against the judgment of conviction and sentence passed by the Principal Sessions Judge, Thiruchirappalli, in S.C.No.157 of 2018 dated 28.03.2019, against the appellant.

2. The case of the prosecution in brief is that P.W.1 namely Kandasamy belongs to Barathiyar street, Ammakulam. The accused are his neighbours living on the western side. The neighbouring land measuring about 7 ½ cents belongs to him. The accused are making trouble in the place. So there was frequent quarrel over the landed property. The accused filed a suit before the Trichy Civil Court. It was decreed in favour of the complainant in 2014. On 14.01.2015, P.W.1 along with his family members, where planting stone pillars for fencing the property. At the time the accused came there picked up quarrel, abused them in filthy language, made criminal intimidation and caused damage to the stone pillars worth about 12,000/-. On the basis of the occurrence, he lodged a complaint before the jurisdictional police station which was marked as Ex.P1. That complaint was received by P.W.13- Inspector of Police on reference by Commissioner, Trichy and



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further the order passed in Crl.O.P.(MD)No.1556 of 2015. He registered a case in Crime No.62 of 2015 under Section 447, 489, 294(b), 387 and 506(i) and Section 3(i) of TNPPDL Act. He took up the further investigation and in the place of occurrence on 18.02.2015 at about 9.30 p.m., prepared Observation Mahazar and prepared sketch in the presence of the witnesses and P.W2 and P.W.5. He recorded the statement of the witnesses and filed a alteration report before the trial Court by altering the offences as under Sections 447, 294(b), 506(i) of IPC and Section 3(1) of TNPPDL Act. He submitted the document to the Court. In the meantime, P.W.13 was transferred and the investigation was handed over to P.W.14 Periyaiya. He again recorded the statement of witnesses and recorded their further statement. He examined one Shahul Hameed obtained Damage Value Certificate - Ex.P3 ; on completing the investigation filed the final report against the accused for the offences punishable under Sections 447, 294(b), 506(i) of IPC and Section 3(i) of TNPPDL Act.

3. The trial Court after taking cognizance of the offences and after completing the formalities, framed the following charges against the accused.

(i) on 14.01.2015 at about 11 a.m., the accused trespassed into the property in plot No.107 and thereby committed the offence punishable under Section 447 of IPC ;



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ii) On the same date and time and furtherance of the above criminal trespass, the accused 1 to 3 damaged and removed stone pillars worth about Rs.12,000/- and thereby committed offence under Section 3(i) of TNPPDL Act ;

iii) Against the first accused, on the same date and time, the first accused abused the defacto complainant in filthy language and thereby committed offence under Section 294(b) ; and

iv)Against accused Nos.2 and 3 on the very same date, time and place, the accused persons caused criminal intimidation to the defacto complainant's wife and the son and thereby committed offence under Section 506(i) of IPC;

4. The accused Nos. 1 to 3 are found guilty of offence under Section 447 and 427 of IPC, but found not guilty under Section 3(i) of TNPPDL Act.

(i) In respect of the 1st charge under Section 447 of IPC, the accused 1 to 3 are convicted and sentenced to undergo simple imprisonment for three months each and pay a fine of Rs.500/- each, in default to pay the fine amount, the accused 1 to 3 shall undergo simple imprisonment for one month each.



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(ii) In respect of 2nd charge under Section 427 of IPC, the accused 1 to 3 are convicted and sentenced to undergo simple imprisonment for two years each and pay a fine of Rs.1,000/- each, in default to pay the fine amount, the accused 1 to 3 shall undergo simple imprisonment for 6 months each.

(iii) In respect of 3rd charge under Section 294(b) of IPC, the 1st accused is found guilty and acquitted from the charge under Section 235(1) of Cr.P.C.,

(iv) In respect of 4th charge under Section 506(i) of IPC, the 2nd and 3rd accused are found not guilty and acquitted from the charge under Section 235(1) of Cr.P.C.,

(v) The substantive sentences awarded shall run concurrently.

The accused pleaded not guilty and claim to be tried.

5. On the side of the prosecution to prove the charges, 14 witnesses were examined, seven documents were marked. Two material objects were produced. After completing the prosecution side evidences the accused were put on questions under Section 313 of Cr.P.C. They denied the evidences produced by the prosecution. None was examined on the side of the defence. At the conclusion of the trial Court process, the trial Court found guilty for



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the offences under Sections 447 and 427 of IPC and Section 3(i) of TNPPDL

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Act. Against which this appeal is preferred by the appellant.

6. Heard both sides.

7. As mentioned in the preamble portion of the judgment, it is seen that the accused and the defacto complainant P.W.1 are neighbours. Property dispute existed between the parties in respect of adjacent area. According to P.W.1, over the dispute, a suit was filed by the accused against them before the civil Court in Trichy. But the correct particulars with regard to the suit judgment and decrees are not available. It is also admitted by the P.W.1 that he did not hand over the judgment or decree in respect of that property to the investigation officer. He even disowns the contents of Ex.P1 stating that due to the lapse of time he could not remember those things. He has further stated that immediately after the occurrence, he went to the police station and lodged the complaint. At the same time, he would also admit that Ex.P1 was preferred by one Advocate by name Mohan. When we go to the evidence of P.W.13, who is the first investigation officer and it is seen that no complaint was given immediately after the alleged occurrence. The date of the occurrence as per P.W.1 is 14.01.2015. The complaint was received by the



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Commissioner office in pursuance of Crl.O.P.(MD)No.1556 of 2015 on 18.02.2015. There is no explanation on the part of P.W.1 as to why step was not taken after the occurrence. Further it has been stated as above, no document was submitted by P.W.1 to the investigation Officer regarding the ownership of the property. It is the contention on the part of the accused that the civil suit has been pending as on the date of the occurrence. Whether it is correct or not, is not known. No finding can be recorded in the absence of documentary evidence. These are the two lapses which are available against the prosecution case.

8. Coming to the occurrence, a portion of the occurrence is admitted by the accused as projected by the prosecution. They would say during the course of cross examination of P.W.1 that P.W.1 and his family members put the stones in front of the accused house. Those stones were removed by them. At that time, photographs were taken by complainant's son. Now it has been exaggerated and projected as if they planted the stone and the accused damaged it. P.W.2 is the wife of P.W.1. P.W.3 is his son. He repeated the very same allegations. P.W.4 is an independent witness who is also a resident of the street and he stated that he know the issue between the accused and the complainant party. On the particular day of occurrence, the accused were found removing the stones and P.W.5 is an another independent



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witness. He also corroborated P.W.4's evidence regarding the occurrence.

P.W.4, P.W.5 and P.W.6 have spoken about the occurrence stating that on the date of the occurrence, the accused were found removing the stones. Other independent witnesses were turned hostile. From the evidence of independent witnesses P.W.4 to P.W.7, it is established that the accused were found removing the stones from the place. As mentioned above, the accused have not disputed the entire occurrence. But they stated that they were removing only the stones put up by the complainant party in front of their house.

9. As mentioned above, unless, the prosecution establishes the fact that the disputed property belongs to the complainant party, they were granted a decree and judgment, the charges framed under Section 447 IPC may not be attracted. Regarding the damage and removal of the stones, there is no clear evidence on record. The Investigation Officer – P.W.13 has admitted during the course of cross examination that the damaged stones were not found in the place of occurrence. But those were found near the place of occurrence. But he has not mentioned, in the observation mahazar, the place where the broken stones were found. Unless in the observation mahazar, the availability of broken stones were mentioned, the oral evidence cannot be taken into account. Because the occurrence took place on 14.01.2015 and he



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was examined as a witness on 10.01.2019. It appears that he is speaking about the availability of the broken stones, from memory. Moreover, the proper damage certificate was not obtained from any competent authority. How many stones were damaged is also not clearly mentioned in the damage certificate or noticed by the investigation officer.

10. In the light of the defence taken by the accused, as mentioned above, unless it is established the ownership, we can only find that there was commotion between the complainant party and accused persons, over planting of stones. The accused tried to remove the stones. So, by exaggerating the occurrence, it appears that the complaint has been launched. So the contra finding recorded by the trial Court, there is no necessity, to prove the ownership of the property, is not acceptable. The trial Court has noted that in the complaint - Ex.P1, P.W.1 has stated that the suit in O.S.No. 378 of 2007 was filed before the District Munsif Court, Trichy and the same was decreed on 10.11.2014, in his favour. As mentioned above, those documents were not produced before the investigation officer. So this goes to the root of the prosecution case. Apart from that as noticed above, the damage cost is also not properly brought on record.



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11. In view of that as stated above, the commotion took place at the time of planting the stone pillars between the parties an exaggerated complaint has been given. So a judgment of conviction and sentence imposed upon the appellants under Section 447 and 427, 294(b) and 506(i) of IPC are set aside and the accused are acquitted of the charges.

12. Accordingly, this Criminal Appeal is allowed and the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Thiruchirappalli, in S.C.No.157 of 2018 dated 28.03.2019, is set aside and the fine amount, if paid, are refundable.

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NCC : Yes / No
Index : Yes/No
Internet : Yes/No

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G.ILANGO VAN,J.

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To

1. The Principal Sessions Judge, Thiruchirappalli.
2. The Inspector of Police, Ariyamangalam Police Station,
Tiruchirappalli District. (Crime No.62 of 2015)
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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