



Crl.A(MD)No.184 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	25/10/2024
Date of Pronounced	03/12/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.184 of 2019

Majitha Ahamed

: Appellant/De-facto
Complainant

Vs.

1.The Inspector of Police,
Ammapettai Police Station,
Thanjavur District.
(Crime No.309 of 2015)

: 1st Respondent/Complainant

2.Mohan

3.Narasimman

: R2 and R3/Accused 2 and 3

Prayer: This Criminal Appeal is filed under Section 372 of Criminal Procedure Code, to call for the records in SC No.451 of 2015 on the file of the Additional District Court (Fast Track), Kumbakonam and set aside the judgment, dated 25/09/2018.

For Appellant : Mr.G.Karnan

For 1st Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For R2 and R3 : Mr.Karuppasamy
for Mr.S.Venkatesan



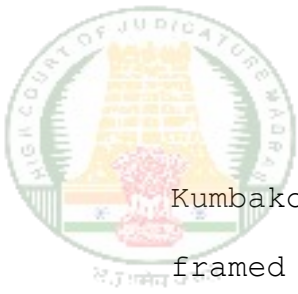
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This Criminal Appeal is filed against the judgment, dated 25/09/2018 passed in SC No.451 of 2015 by the Additional District Court (Fast Track), Kumbakonam.

2.The case of the prosecution in brief:-

The de-facto complainant is the owner of the property in survey No.65/15 measuring about 35 cents. On 21/06/2015 at about 10.00 pm, the accused persons trespassed into the property of the de-facto complainant and damaged the thatched shed as well as the concrete wall along with the black stones fencing worth about Rs.2,00,000/-. On seeing the same, PW2-Daniel Nerkunram gave information to the de-facto complainant through phone. The de-facto complainant came to the spot and questioned the accused. At that time, the accused persons abused the de-facto complainant and also threatened him with dire consequences. Upon the occurrence, a case in Crime No.309 of 2015 was registered by the respondent police for the offences under sections 447, 294(b) and 506((ii) IPC r/w section 3(1) of TNPPDL Act. After completing the investigation, final report was filed for the offences under sections 447, 294(b) and 506((ii) IPC r/w section 3(1) of TNPPDL Act and it was taken cognizance in SC No.451 of 2015 by the Additional Sessions Court (Fast Track),



Kumbakonam. After completing 207 Cr.P.C proceedings, framed the charges for the offences punishable under sections 447, 294(b), 506(ii) IPC and section 3(1) of the TNPPDL Act.

3.The following charges were framed against the accused:-

"On 21/06/2015 at about 10.00 pm, the accused persons trespassed into the property of the de-facto complainant and damaged the thatched shed as well as the concrete wall along with the black stone fencing worth about Rs.2,00,000/-; On seeing the same, PW2-Daniel Nerkunram gave information to the de-facto complainant through phone; The de-facto complainant came to the spot and questioned the accused; At that time, the accused persons abused the de-facto complainant and also threatened him with dire consequences and thereby they have committed the offence under sections 447, 294(b) and 506(ii) IPC and section 3(1) of TNPPDL Act."



4.To that charges, the accused pleaded not guilty and claimed to be tried.

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5.During trial, on the side of the prosecution, 8 witnesses were examined and 10 documents marked. Apart from that, 2 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.

6.**PW1** is the owner of the property situated in survey No.65/15 measuring about 35 cents at Deepambalpuram, Ammapettai, Thanjavur District. On the south of the property, he is owning 1-12/ acres. He enclosed the property by fencing and in that property, he put up a thatched shed. In the property, the first accused claimed that PW1's father entered into a sale agreement with him. In pursuance of the sale agreement, he handed over the possession. On that basis, he filed a suit before the District Munsif Court, Papanasam. In the meantime, on 21/06/2015 at about 10.00 pm in the night, PW2 informed him that some persons trespassed into the property and caused damage to the thatched shed. Immediately, he went to that place. At that time, he saw the accused along with 5 or 6 persons causing damage. They were armed with deadly weapons. He was criminally intimidated, abused in filthy language. So, PW1 immediately went to the Ammapettai Police Station at about 11.30 pm. The police officials



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refused to receive the complaint stating that he must bring all the relevant documents. He approached the higher officials. In spite of that, there was no proper action. So, he initiated proceedings before this court and as per the direction issued by this court, the case was registered in Crime No.309 of 2015 for the offences under sections 447, 294(b) and 506(ii) IPC and section 3(1) of TNPPDL Act.

7.**PW8** is the Investigating Officer. He received the file on 30/06/2015 and took up the investigation. At about 06.00 pm, he registered the case in Crime No.309 of 2015 IPC. He submitted the original documents to the court and the copies to the concerned higher authorities, visited the place of occurrence in the presence of the witnesses, prepared observation mahazar and rough sketch under Exs.P7 and P8. At about 07.30 pm, he seized the damaged stone pillars in the presence of the witnesses under Ex.P9. He took the photos of the place of occurrence which was marked as MO2, submitted the seized articles to the court in Form No.95 and recorded the statement of the witnesses, made a request to the Village Administrative Officer, Deepambalpuram over the ownership of the property and after recording his statement and certificate, completed the investigation and filed a final report. In the meantime, the accused were granted anticipatory bail by the Principal Sessions Judge, Thanjavur.



8.**PW2** Daniel Nerkundram, as mentioned above informed the occurrence to PW1. PW3 witnessed the occurrence but unable to identify the persons who caused the damage.

9.**PW4** heard some commotion in the place of occurrence. On the next day went to the place of occurrence and found the damaged stone pillars.

10.**PW5 and PW6** though signed in the observation mahazar and seized mahazar turned hostile.

11.**PW7** is the Village Administrative Officer working in Deepambalpuram village on in-charge. As per his enquiry, he came to know that the disputed property was in possession of the Samburani Rawther @ Abdul Kathar family. He issued a certificate showing the same to the Investigating Officer.

12.After closure of the prosecution evidence, When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same.



13.At the conclusion of the trial process, the trial court acquitted the accused finding that the guilt of the accused was not proved beyond all reasonable doubt.

14.Against which, this criminal appeal is preferred by the de-facto complainant as appellant.

15.Heard both sides.

16.To whom the property belongs the issue was before the District Musif Court, Papanasam. Till the completion of the trial process, it appears that the suit did not conclude and this was pointed out by the trial court stating that unless the above said issue is decided no finding can be recorded by the criminal court regarding the possession and ownership. So, this is the background facts.

17.It is the submission by the appellant that though the suit is filed for declaration, but causing damage to the property is the subject matter of the criminal case. So, the criminal court need not wait till the disposal of the civil suit. Whether any damage was caused to the stone pillars is the only point to be answered by the trial court. But the trial court recorded a finding unless the ownership is decided, the criminal liability cannot be gone into is not correct.



18.The learned Additional Public Prosecutor appearing for the first respondent would submit that as per the evidence of PW7, the Village Administrative Officer. the possession of the de-facto complainant was established. PW1 identified the accused at the time of the occurrence and the damage to the stone pillars worth about Rs.2,00,000/-. According to the learned Additional Public Prosecutor, the judgment of acquittal passed by the trial court is not proper and as requested by the complainant, it must be reversed.

19.Per contra, the learned counsel appearing for the respondents 2 and 3/A2 and A3 would submit that the since the suit is pending with regard to the ownership and possession, the judgment of acquittal passed by the trial court is perfectly legal, since there was no independent witness to the occurrence and even the independent witness produced by the prosecution did not support their case. No identification parade was conducted in the light of the complaint given by PW1 namely the appellant herein that along with the present accused some 5 or 6 persons were also present, causing damage to the stone pillars. Apart from that, it is submitted by him that there is contradiction in the evidence of PW1 with regard to the time of occurrence. So according to him, no interference is called for.



20.It is a judgment of acquittal. So, the principles to be taken into account while deciding the appeal against the acquittal must be kept in mind as detailed in the judgment reported in **Sanwat Singh & others Vs. State of Rajasthan (AIR 1961 SC 715):-**

"(i)Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive-inclusive of all evidence, oral or documentary;

(ii)Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground challenge;

(iii)If the Court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv)If the view of the Trial Court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v)If the appellate Court is inclined to reverse the acquittal in appeal on a re-appreciation of evidence, it must specifically address all the reasons given by the Trial Court for acquittal and must cover all the facts;



(vi) *In a case of reversal from acquittal to conviction, the appellate Court must demonstrate an illegality, perversity or error of law or fact in the decision of the Trial Court."*

21. It is further settled that the appellate court has full power of reviewing the evidence and can come to its own conclusion; The duty is cast upon the appellate court to record a finding of fact which caused it to differ from the judgment of acquittal; The reason must be assigned for deviating from the view taken.

22. With this principle in mind, we will go to the evidence available on record. Before that one issue must be addressed. It is not proper on the part of this court to accept the evidence of PW7 to regard a finding that the complaint was in possession on the date of the occurrence. According to PW7, as per his enquiry the property was found as a Government natham poramboke land. It was brought for sale by the District Munsif Court and in the auction proceedings, one Suthan Rawther belongs to Alankumar street purchased the same in 1988. He sold the property to one Mohammed Ali who is the father of PW1. As per the evidence of PW1, the claim was made by A1 stating that he entered into a sale agreement with Mohammed Ali over the property.



At the time of sale agreement, the possession was handed over to the accused. As mentioned above, for this issue only the suit is pending before the District Munsif, Papanasam. So, on the basis of the evidence of PW7, it may not be proper on the part of this court to record a finding to the effect that the property was in possession of the appellant on the date of the occurrence. If any finding is recorded then it will automatically interfere in the issue pending civil suit.

23.It is the basic and fundamental principle that the judgment of the civil court is binding upon the criminal court and not vice versa. So, the ownership and possession issue cannot be touched at this stage.

24.Now coming to the occurrence, as stated above, PW1 has stated that PW2 informed him about the occurrence. PW2 Daniel Narkunram would say that on the particular date of occurrence, he returned to his house after completing his work. At about 10.00 to 10.30 pm, he found some persons causing damage to the gate. He informed the same to PW1. To that extent he supported the case of the prosecution. But he has further added that he does not know whether the accused was present in the place of occurrence and causing damage. PW3 another witness alleged to have witnessed the occurrence, turned hostile, so also PW4. So,



except PW1, no other witness has supported the case of the prosecution regarding the overtact attributed against the accused. But it stands established from the evidence of PW2, PW3, PW4 and the parvai mahazar prepared by PW8, seizure mahazar under Ex.P10, damages were found to the stone pillars in the place of occurrence. Who accused damage is the only point to be decided.

25.As mentioned above, PW1 has stated that by getting information from PW2 he went to the place of occurrence and found those two accused along with 5 or 6 persons causing damage. He was abused, criminally intimidated. He immediately went to the police station and the police refused to receive the complaint. So further action was taken by him. The complaint is dated 21/06/2015, which means that on the same day of the occurrence, the complaint was lodged. The endorsement reads that on the same day itself, the complaint was received and CSR No.376 of 2015 was issued, handed over the file to the Investigating Officer. Further endorsement made by the Investigating Officer shows that CSR No.376 of 2015 was perused by him and he registered the case in Crime No.309 of 2015 on 30/06/2015. But PW1 has given contra facts. As mentioned above, he has stated that on the very same day of occurrence at about 11.30 or 12.00 pm, he lodged the complaint. But the police refused to receive the complaint,



he approached the Superintendent of Police. Even though intervened, the case was not registered, thereafter he approached this court for a direction. Only in pursuance of the direction of this court, the case was registered. But. as mentioned above, this is quite contra to the endorsement made by the Investigating Officer and the Sub Inspector of Police. Who received the complaint from PW1 and made an endorsement and issued CSR. In the complaint, he has made insertion as if the occurrence took place at about 10.00 pm on the previous day namely on 20/06/2005. In the evidence, he has stated that the occurrence took place on 21/06/2015 at about 10.00 pm. Which one is correct is not explained by him.

26.As mentioned above, whether the occurrence took place on 21/06/2015 or at 10.00 pm on 20/06/2005, during the course of the cross examination, he has stated that the occurrence took place on 20/06/2015. So, the foundation case itself is damaged by PW1 himself by changing the date of occurrence. When there is doubt with regard to the date of the occurrence itself, then his evidence cannot be relied to show that on the particular day I.e., on 21/06/2015 at about 10.00 pm, the accused along with other persons caused damage to the fencing put up by him. Nothing more is required to discuss or consider in view of the glaring contradiction. This was pointed out by the trial



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court. So, the judgment of acquittal passed by the trial court requires no interference at the hands of this court.

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27.In the result, this criminal appeal is **dismissed**, confirming the judgement of acquittal passed by the trial court.

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To,

- 1.The Additional District Court,
(Fast Track), Kumbakonam.
- 2.The Inspector of Police,
Ammapettai Police Station,
Thanjavur 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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