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Crl.A(MD)No.484 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12/09/2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl. A. (MD)No.484 of 2019

Koil Pichai

: Appellant/De-facto
Complainant

Vs.

1.Subbaiah
2.Jayapaul
3.Chithirai

: Respondents 1 to 3/
Accused 1 to 3

4.State Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.

: 4th Respondent/
Complainant

Prayer: This Criminal Appeal is filed under Section 372(2) of the Criminal Procedure Code, to call for the records of the acquittal judgment made in SC No.171 of 2017 on the file of the I Additional District and Sessions Judge, Thoothukudi, dated 31/08/2018.

For Appellant : M/s.C.Arockia Selvi

For R1 to R3 : Mr.M.S.Jeya Karthik

For 4th respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



J U D G M E N T

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This Criminal Appeal is filed against acquittal judgment passed in SC No.171 of 2017 by the I Additional District and Sessions Judge, Thoothukudi, dated 31/08/2018.

2.The case of the prosecution in brief:-

The de-facto complainant is residing at Palaniappapuram. He is owning properties situated in Survey No.404 measuring about 25 Acres on the southern of the main road. There is a well with electric connection and installed with bore-well. On the northern side of his property, the accused persons are having land with standing palmyra trees. There is issue between them. Some 10 days prior to the occurrence, the accused persons abused him in filthy language and threatened him as to how he could enjoy the property. On 31/10/2015 at about 10.00 pm, the de-facto complainant along with his son went to the property for watering the land. At that time, the accused persons were found damaging the bore-well and electric connection, etc. When he enquired and objected their conduct, he was abused, criminally intimidated and damaged the property worth about Rs.1,08,375/-. On the basis of the complaint given by the de-facto complainant, a case in Crime No.493 of 2015 was registered by the 4th respondent police for the offences under sections 294(b), 506(ii)IPC r/w 3 of TNPPDL Act.



After completing the investigation final report was filed and it was taken cognizance in SC No.171 of 2017 by the I Additional District and Sessions Judge, Thoothukudi. After completing 207 Cr.P.C proceedings, framed the charges for the offences under section 3 of TNPPDL Act and sections 294(b) and 506(2) IPC.

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

(i)On 31/10/2015 at about 10.00 pm, the de-facto complainant along with his son went to the property for watering the land; At that time, the accused persons were found damaging the bore-well and electric connection, etc., thereby caused damaged to the tune of Rs. 1,08,375/-. So, all the accused are charged under section 3 of the TNPPDL Act.

(ii)In pursuance of the above said occurrence, when the de-facto complainant enquired and objected their conduct, he was abused by the accused persons. So all the accused are charged under section 294(b) IPC.

(iii)In the above said occurrence, all the accused persons criminally intimidated the de-facto complainant. So all the accused are charged under section 506(2) IPC.



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

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5.On the side of the prosecution, 11 witnesses were examined and 10 documents were marked. Apart from that, 3 material objects were marked. On the side of the accused, no oral and documentary evidence was adduced.

6.PW1-de-facto complainant lodged a complaint on 03/11/2015 with the respondent police stating that he is owning properties situated in Survey No.404 measuring about 25 Acres on the southern of the main road. There is a well with electric connection and installed with bore-well. On the northern side of his property, the accused persons are having land with standing palmyra trees. There is issue between them. Some 10 days prior to the occurrence, the accused persons abused him in filthy language and threatened him as to how he could enjoy the property. On 31/10/2015 at about 10.00 pm, the de-facto complainant along with his son went to the property for watering the land. At that time, the accused persons were found damaging the bore-well and electric connection, etc. When he enquired and objected their conduct, he was abused and criminally intimidated and damaged the property worth about Rs.1,08,375/-. On the basis of the complaint given by the de-facto complainant, a case in Crime No.493 of 2015 was



registered by the 4th respondent police for the offences under sections 294(b), 506(ii)IPC r/w 3 of TNPPDL Act.

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7.From PW1 the complaint was received by PW10 Special Sub Inspector of Police on 03/11/2015 and registered a case in Crime No.493 of 2015 for the offences under sections 294(b), 506(ii)IPC r/w 3 of TNPPDL Act.

8.Investigation was undertaken by PW11 Inspector of Police and visited the place of occurrence, prepared mahazar, rough sketch and from that place, he recovered the damaged plastic pipes and other material objects under Ex.P10. At about 02.30 pm, he arrested A1 and A2, took steps to remand them, collected damage certificate from PW8 as well as photographs, recorded the statement of the witnesses. After completing the investigation, filed a final report against the accused persons.

9.PW2 is the son of PW1. He corroborated PW1 with material particulars.

10.PW3 and PW4 turned hostile who stated to be the eye witnesses.

11.PW5 is the witness to the observation mahazar turned hostile, so also PW6 and PW7. PW8, as stated above,



at the request made by the Inspector of Police issued damage certificate. According to him, damaged property is worth about Rs.56,775/-. He identified Ex.P6 damage certificate issued by him.

12.PW9 is the photographer who took photos of the damaged portions of the land. He prepared the CD and hand over to the Inspector of Police, which is marked as M04. With that, the prosecution side evidence was closed.

13.The accused were put to section 313 Cr.P.C, proceedings. The denied the facts deposed by the prosecution witnesses.

14.At the conclusion of the trial process, the trial court acquitted the accused stating that the prosecution has not established the case beyond all reasonable doubt.

15.Against which, this appeal is preferred by the de-facto complainant.

16.Heard both sides.

17.Enmity exists between the de-facto complainant an the accused persons over the ownership of palmyra trees



standing between their lands which is admitted by both parties. Now, according to the appellant, over the enmity only to prevent him from enjoying the property extensive damage was caused by the accused.

18.From the evidence on record, parvai mahazar, rough sketch and the photographs taken from the place of occurrence indicate that there was some heavy damage to the electric connection, bore-well, etc. According to PW8, the worth of the damage is more than Rs.66,000/-. The damage was proved by the prosecution beyond reasonable doubt.

19.Who caused the damage is to be considered. According to the appellant, on the date of the occurrence, they went to water the lands at about 10.00 pm in the night, at that time they saw the accused persons damaging the property.

20.By pointing out the evidence of PW1 and PW2, it is contended on behalf of the appellant that their case is proved, even though there is no corroborative evidence from the independent witness. More so, the enmity is admitted by the accused. Except the accused, no other person would have caused damage. So, the appellant wants to arrive conclusion that their evidence must be accepted, since no substance was brought on record to discard their evidence.



21. So, the question which arises for consideration is whether in the existence of enmity between two groups of people, the evidence of PW1 and PW2 are sufficient enough to record a finding of guilt, upsetting the findings recorded by the trial court.

22. Here comes the delay. The occurrence said to have taken place on 31/10/2015 at about 10.10 pm, but only on 03/11/2015, the complaint was given. There is a delay of 3 days in preferring the complaint. The reason for the delay, according to the appellant is that they were waiting for the approach to be made by the accused to make a compromise and to pay the compensation. This appears to be unreasonable explanation. When there is enmity between the people, stating that they were waiting for a compromise to be made by the accused is highly improbable. So, this ground made by the appellant for explaining the delay cannot be accepted. That was the main reason for rendering acquittal by the trial court.

23. Another important aspect is that there is improvement made by the PW1 in his evidence before the court. He says that on hearing the noise, PW2 who came to that place to answer the natural's call, witnessed the occurrence. But PW2 says that along with PW1, he went to that land for watering. Why PW1 is giving some other reason



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for the presence of PW2 in the place of occurrence is not known. This shows that both were not present in the place of occurrence, when the damage took place. So, this shows that they are not reliable witnesses.

24.In the light of the enmity between the two group of people, the possibility of false implication is completely ruled out. Similarly the possibility of the accused to have damaged cannot also be ruled out. Both suspicion will not take the place of proof. So, I find no reason to upset the findings recorded by the trial court.

25.For all the reasons stated above, this court finds no infirmity or irregularity in the judgment of acquittal passed by the trial court.

26.In the result, this criminal appeal is **dismissed.**

12/09/2024

Index : Yes/No
Internet : Yes/No
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To,

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- 1.The I Additional District and Sessions Judge,
Thoothukudi.
- 2.The Inspector of Police,
Sathankulam Police Station,
Thoothukudi 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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