



Crl.A(MD)Nos.410 and 415 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)Nos.410 and 415 of 2018

Crl.A(MD)No.410 of 2018

M.Balu

... Appellant / Accused No.1

Vs.

The State of Tamil Nadu
Represented by
The Inspector of Police,
Fort (Law & Order) Police Station,
Trichy, Trichy District
(Crime No.18 of 2014)

... Respondent / Complainant

Prayer : This Appeal is filed under Section 374 of Cr.P.C., to call for the records of the judgment dated 11.08.2018 in S.C.No.154 of 2015 on the file of Sessions Court, Tiruchirappalli in Crime No.18 of 2014 on the file of the respondent police and set aside the same and acquit the appellant / accused No.1.

For appellant : Mr.T.Lajapathi Roy
Senior Counsel
for M/s.S.Rajasekar

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



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Saravanan

... Appellant / Accused No.2

Vs.

The State of Tamil Nadu
Represented by its
The Inspector of Police,
Fort (Law & Order) Police Station,
Tiruchirappalli.
(Crime No.18 of 2014)

... Respondent / Complainant

Prayer : This Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgment and conviction dated 11.08.2018 by learned Principal Sessions Judge, Tiruchirappalli, in S.C.No.154 of 2015 and acquit the appellant.

For appellant : Mr.S.Deenadhayalan

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

COMMON JUDGMENT

These Criminal appeals are filed to set aside the judgment and conviction dated 11.08.2018 by learned Principal Sessions Judge, Tiruchirappalli, in S.C.No.154 of 2015 and acquit the appellants.



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2. The case of the prosecution in brief is that the defacto complainant namely Kumar is running a shop called Srihari Fancy and Stationery Shop at Nadukalla Theru, Trichy. He was acting as a Divisional Head of a political party. The accused 1 and 2 did not like the growth of the defacto complainant. Over the enmity, on 04.01.2024, they went to the shop of the defact complainant, took up a quarrel and questioned the son of the defacto complainant namely Prasanna about his father's contact and asked him to advice his father to behave properly otherwise they will kill him, caused damage to the show case, weighing machine, coin phone, fancy and stationery things and the two wheeler parked in front of the shop, to the total damage worth of Rs.1 Lakh. On the basis of the complaint of the defacto complainant, a case was registered in Crime No.18 of 2014 under Section 294(b), 506(i) of IPC and Section 3 of TNPPDL Act. After completing the investigation, final report was filed charge sheeting the accused for the offences punishable under Sections 294(b) and 506(i) of IPC and Section 3 of Tamil Nadu property (Prevention of Damage & Loss) Act, 1992. After appearance of the accused, complying 207 Cr.P.C., proceedings, the following charges were framed.



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

(i) on 04.01.2014 at about 7.15 p.m., the accused trespassed into the shop of the complainant and scolded the son of the complainant in filthy language and thereby committed the offence punishable under Section 294(b) of IPC ;

ii) On the same date and time and furtherance of the above criminal trespass, the accused persons criminally intimidated the son of the complainant and thereby committed offence under Section 506(i) of IPC ;

iii) Against the accused persons, on the same date and time, they damaged the show case, weighing machine, coin phone, fancy and stationery things and the two wheeler parked in front of the shop.

4. The trial Court found that the accused Nos.1 and 2 are found guilty of offence under Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

(i) In respect of the 1st charge under Section 294(b) of IPC, the accused 1 and 2 are found not guilty and acquitted from the charge under Section 235(1) of Cr.P.C.



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

(iii) In respect of 3rd charge under Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, each of the accused A1 and A2 are convicted for the offence punishable under Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act and each of them are sentenced to undergo simple imprisonment for two years and to pay a fine of Rs.1,000/- each. In default, to undergo simple imprisonment for further period of 6 months each.

(iv) The accused pleaded not guilty and claim to be tried.

5. On the side of the prosecution, eight witnesses were examined and six documents were marked. On the side of the respondent no witnesses or documents were marked. Six material objects were marked. At the conclusion of the trial process, the trial Court found the accused Nos.1 and 2, guilty and sentenced him to undergo two years simple imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for further period of 6 months each.



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6. P.W.1 is the defacto complainant who as mentioned in the preamble portion that according to him, on 04.01.2014 at about 6.30 p.m., the political party meeting was arranged at Shivas Thirumana Mandapam, Keeraikadai Chekkadi Bazar Street, Trichy. At about 7.15 p.m., he was informed by his son called Prasanna that the shop was damaged by the accused. He immediately rushed to the shop and at that time the son told him that the accused 1 and 2 namely Balu and Saravanan came to the shop scolded him in filthy language, broken the articles mentioned above. On the basis of the said information about the occurrence, he lodged a complaint which is marked as Ex.P1. That complaint was received by P.W.8 - Inspector of Police who was working at Fort Police Station, Trichy on 04.01.2014 at about 9 p.m., and registered a case in Crime No.18 of 2014 under Section 294(b), 506(i) of IPC read with Section 3 of TNPPDL Act. He prepared the printed FIR and submitted the original and copies to the concerned authorities. He took up the investigation and visited the place on occurrence, prepared observation mahazar and rough sketch in the presence of witnesses which are marked as Ex.P2 and Ex.P5. He seized M.Os.1 to 4 in the presence of the same witnesses and arrested the first accused on 05.01.2014. The second accused was already in remand in Gandhi market case. He examined the witnesses and recorded their statements.



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7. After completing the investigation filed a final report under Sections 294(b), 506(i) of IPC and read with Section 3 of TNPPDL Act. P.W.2 is the son of P.W.1 as mentioned above. He has spoken about the occurrence and causing damage of the shop by the accused. He informed P.W.1 who is his father who visited the shop after the above said occurrence as mentioned above. P.W.3 is the eye witness to the occurrence. P.W.4 was present in the place of occurrence when the Inspector of Police visited the shop, prepared the observation mahazar and rough sketch and also witnessed recovery of M.O.1 to M.O.4. P.W.6 is the photographer who took photographs of the shop and damaged articles etc.

8. After completing the examination of witnesses, on the side of the prosecution evidence was closed and the accused were put on Section 313(b) of Cr.P.C., question. The accused denied the evidence given by the prosecution. On the side of the accused none was examined and no document was marked. At the conclusion of the trial process, the accused were found guilty of offence under Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and sentenced to undergo two years simple imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo



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simple imprisonment for further period of 6 months each. Against which these appeals are preferred.

9. Heard both sides.

10. Now we will straight away go to the observation mahazar to find out whether there is any prima facie case on the side of the prosecution to show that the shop of P.W.1 was damaged and any untoward incident was happened in the place of occurrence. Ex.P2 is the Observation Mahazar which indicates that the stationery articles were found scattered in and around the shop. The show case, coin box phone, weighing machine and a two wheeler were found damaged. From that place, the broken show case pieces, weighing machine and coin phone damaged particulars were recovered and marked as Ex.P.3. The preparation of Ex.P2 and recovery of damaged articles were proved by the Inspector of Police - P.W.8, corroborated by the independent witnesses, P.W.4 - Chitibabu and P.W.5-Sheik Dawood. So the oral evidence and documentary evidence clearly indicates that the shop of P.W.1 was damaged and articles were scattered etc. According to P.W.1, the worth of the articles damaged is about Rs.1 Lakh.



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11. Now we will go to the other aspect of whether these accused caused the above said damage. P.W.1 is not an eye witness. He arrived the spot only after getting information from P.W.2. P.W.2 is the eye witness to the occurrence. He stated in his evidence that on 04.01.2014 at about 7.15 p.m., in the night the accused came to the shop questioned him about the whereabouts of P.W.1 and caused damage to the shop and articles mentioned above. Criminally intimidated him stating that without their support, one cannot function has a political party functionary. Now according to him, only the accused persons caused damage, criminal intimidation, abuse etc.

12. Learned counsel for the appellant would draw the attention of this Court to the complaint Ex.P1 lodged by P.W.1 and in that complaint P.W. 1 has stated that PW.2 has informed him that some two persons came to the shop at about 7.15 p.m., and caused damage as mentioned above, enquired the whereabouts of himself and caused criminal intimidation. He immediately went to the place of occurrence and on enquiry with the neighbours he came to know that only the accused persons who came and caused the damage.



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13. According to the learned counsel for the appellant if really the accused person caused damage and criminal intimidation to P.W.2, P.W.2 would have informed P.W.1 even at the first instance itself that the accused are involved. There was no necessity for P.W.1 to make enquiry after visiting the shop to the neighbours. It is not even stated in the complainant that P.W.2 himself informed the identity of the persons involved in the occurrence. So according to the learned Senior Counsel appearing for the appellant, the oral statement available in this case is not supported by proper evidence about the involvement of the present appellants.

14. Now in this contention we will go to the evidence of P.W.2. As mentioned above, he has stated that only these accused persons who were present at the time of occurrence, before the trial Court are responsible for the occurrence. He informed P.W.1, about the occurrence immediately. If it is so, P.W.1 could have stated the involvement of these appellants in the complaint itself. So it clearly indicates that the person involved in the occurrence were not property brought on record at the initial stage.



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15. Now we will go to the evidence of P.W.1 who has spoken about the enquiry he has stated that only the neighbours informed him about the identity of the accused. So there is contradiction between the allegations made in the complaint, evidence of P.W.1 and P.W.2 before the trial Court. This is the first issue available against the prosecution case. Now we will look into the evidences of independent witnesses in the light of the contradictions mentioned above. P.W.3 has stated that he was purchasing medicines at that time in Kavitha Medicals situated in the street and at that time there was a commotion in the P.W.1's shop, he saw the accused persons caused damages to the articles and shop. Evidence of P.W.3 was believed by the trial Court, to record a conviction, since he seems to be an independent witness. But it is admitted that he is known to P.W.1 for about 10 years. So he cannot be termed as complete independent witness, according to the learned Senior Counsel for the appellant.

16. Now according to the learned Senior Counsel for the appellant, even if we admit that P.W.3 was present in the nearby place, but from the rough sketch prepared by the police, Kavitha Medical shop is situated on the extreme North. The complainant's shop is situated on the western side and in



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between more than 10 shops are available. There was no possibility for him to look back to the said occurrence when he was purchasing medicines at the medical shop.

17. No doubt, it is a minor issue. It is natural that on hearing the commotion, everyone will look at the place. So this argument on the side of the appellant is not convincing but the fact remains that he is the close friend of P.W.1. He also admitted that in the place, there were about 50 to 100 person. Except him, no other neighbours were examined on the side of the prosecution to show the involvement of the appellants. It was also admitted by P.W.8 during the course of evidence that neighbours were not examined as witness and all the witnesses shown in the final report were residing some 3 to 5 kilometers away from the place. Why the neighbours were not examined is not explained by him.

18. With this second defence in mind, let us go to the genuineness of the complaint. P.W.1 has stated that soon after the occurrence, he lodged a complaint. He never went to Gandhi Market police station for lodging complaint. Police came to Keeraikadai Shivas Thirumana Mandapam and obtained his signature. But as mentioned above, in the preamble portion,



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P.W.8 has stated that P.W.1 came to the police station at about 9 p.m. on that date and lodged the complaint. Why there is contradiction even with regard to lodging the complaint, is not clearly explained by the prosecution.

19. The background events may also be taken into consideration. On that date at about 6.30 p.m., the party meeting was conducted at Shivas Thirumana Mandapam, Keeraikadai, Chekkadi Bazar street. The occurrence said to have been taken place at about 7.15 p.m., On the same day itself at about 6 p.m., one Jerome lodged a complaint against the accused and a case was registered. The accused namely Balu, Saravanan, Prabhu and five others were secured by the police and were kept in the police station. So according to the learned counsel for the appellants, there is no possibility for these accused persons to cause damage to the shop of P.W.1 at about 7.15 p.m., since the second accused was already arrested in connection with the complaint lodged by one Jerome. P.W.7 stated in his evidence that on 04.01.2014, the accused Saravanan was arrested in connection with Crime No.7 of 2014 and remanded to custody, which means that on the same date of occurrence the accused Saravanan was secured in connection with some other crime number. But P.W.8 has denied that accused Nos.1 and 2 were not secured on 04.01.2024 at 4 p.m in connection with Crime No.7 of 2014. At



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which time, the accused were arrested in connection with Crime No.7 of 2014 was not even enquired by the investigation officer.

20. Now we will go to Ex.P1, complaint in this contention. P.W.1 has stated in the complaint itself that on 04.01.2014 at about 6 p.m., when the party meeting was underway, some persons caused damage to the car of the District President. A case was registered on the basis of the complaint and probably, this complaint was the one given by Jerome as admitted by P.W.1, himself. After the occurrence, it appears that some sort of compromise talks between them.

21. P.W.1 has admitted that Jerome has given a sum of Rs.30,000/- towards the cost of purchasing the weighing machine. But from whom the money was received is not known. So it is highly unbelievable that P.W.1 has not made any enquiry with regard to the source of Rs.30,000/- paid to him towards the cost of damage for the weighing machine. So this itself indicates that there was a compromise talks between them over the occurrence. There is an observation that the damaged articles cost was also received by P.W.1.



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22. When prima facie doubt is created with regard to the presence of the these accused in the place of occurrence, more particularly, in view of registration of Crime No.7 of 2014 and securing of the accused in the crime number, I am of the considered view that prosecution failed to establish the guilt of the accused beyond reasonable doubts.

23. On that account, these Criminal Appeals are allowed. The judgment of conviction and sentence passed by the learned Principal Sessions Judge, Tiruchirappalli in S.C.No.154 of 2015 dated 11.08.2018, is set aside. The appellants are acquitted of the charges framed. Fine amount, if any, paid by the accused, shall be refunded.

25.09.2024

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, Tiruchirappalli.
2. The Inspector of Police,
Fort (Law & Order) Police Station,
Trichy, Trichy District
(Crime No.18 of 2014)

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