



Crl.A(MD)No.552 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2024

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.552 of 2019

1.Kaliraj
2.Gomathi

: Appellants/A1 and A2

Vs.

State rep. by
The Inspector of Police,
Nalattinpudur Police Station,
Tuticorin district.
(Crime No.172 of 2017)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 372(2) of Criminal Procedure Code, to call for the records from the lower court and to duly set aside the judgment passed in SC No.199 of 2019, dated 26/09/2019 on the file of the Principal Sessions Judge, Tuticorin and to pass such further or other orders.

For Appellants : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Prabhu

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

J U D G M E N T

This Criminal Appeal is filed against judgment passed in SC No.199 of 2019, dated 26/09/2019 by the Principal Sessions Judge, Tuticorin.



2.The case of the prosecution in brief:-

On 08/06/2017 at about 12.30 midnight, the EB connection of one Subbaiah and Thangammal were damaged by unknown persons. On the basis of the complaint given by the Assistant Engineer, TNEB, Nalattinpudur, a case in Crime No.172 of 2017 was registered by the respondent police for the offence under section 427 IPC. After completing the formalities of investigation, filed a final report and it was taken cognizance in SC No.199 of 2018 by the Principal Sessions Judge, Tuticorin. After completing 207 Cr.P.C proceedings framed the charges for the offence punishable under section 3 of the TNPPDL Act against the first accused and under section 34 IPC r/w 3 of the TNPPDL Act.

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

(i)On 08/06/2017 at about 12.30 midnight, EB service connection of Subbaiah and Thangammal was damaged by the 1st accused and thereby caused damage to the tune of Rs.8,600/- and thereby the 1st accused has committed an offence punishable under section 3 of the TNPPDL Act.



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(ii) During the course of the above said occurrence, the 2nd accused standing below the electric post, induced the 1st accused to cut and remove the electric wire and thereby the 2nd accused has committed an offence punishable under section 3 of the TNPPDL Act r/w 34 IPC.

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

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

6. The de-facto complainant/PW1 has lodged a complaint stating that one Subbaiah filed a petition with him stating that on 09/06/2017 at about 12.30 pm in the night, some unknown persons cut and removed the electric wires. The de-facto complainant, on the basis of the petition, visited the place of occurrence and found that service connection Nos. 217 and 696 belonged to Subbaiah and Thangammal were found damaged.



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7.On the basis of the above said complaint given by the de-facto complainant, CSR No.103 of 2017 was issued by the Judicial Magistrate No.1, Kovilpatti and granted permission to register a case.

8.The above said complaint was received and registered by PW8, who was working as Sub Inspector of Police of Nalathinpudur Police Station. On 18/06/2017 at about 09.30 am, on receipt of the permission letter from the Judicial Magistrate No.1, Kovilpatti, he registered a case in Crime No.172 of 2017 under section 427 IPC. He took up the investigation, visited the place of occurrence at about 11.00 am; in the presence of the witnesses, prepared observation mahazar and rough sketch under Exs.P7 and P8. In the presence of the above said witnesses, he seized two white colour service wires measuring 8 feet each, as per the Athatchi Ex.P9. Submitted the material objects to the court, which were marked as MO1 and MO2.

9.Further investigation was undertaken by PW9 Inspector of Police. He recorded the statement of witnesses and on 06/07/2017 at about 12.45 pm, the accused voluntarily appeared before him. He arrested and released them on bail. He submitted a letter for obtaining damage certificate. He altered the penal section to section 3 of the TNPPDL Act. Alternation report is Ex.P20.



10.Further investigation was undertaken by PW10/Inspector of Police. Again, he examined the witnesses and they repeated the very same statement given before the Sub Inspector of Police. He recorded the statement of the other witnesses. Finding that the accused are responsible for the above said commission of the offence, finally filed the final report. With that, the prosecution side evidence was closed.

11.The accused were questioned under section 313(1) (b) of the Code of Criminal Procedure Code about the incriminating circumstances against the accused. They denied the evidence of the witnesses as false and stated that a false case has been foisted against them. No witness was examined on the defence side.

12.At the conclusion of the trial, the trial court found the 1st accused guilty of the offence under section 3(1) of TNPPDL Act and 2nd accused under section 3(1) of TNPPDL Act r/w 34 of IPC and sentenced them to undergo one year RI each and to pay a fine of Rs.1,000/- each in default to undergo one month SI for each offence respectively.

13.Against which, this criminal appeal is preferred by the appellants.



14.Heard both sides.

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15.Against the judgment of conviction and sentence, the appeal is preferred by the appellant.

16.The learned Senior counsel appearing for the appellants would submit that in the complaint given by PW2 Subbiah, he has not stated anything about the accused persons; The complainant simply stated that some unknown persons cut and removed the service connection wires; Even the FIR was registered against unknown persons, but the charge has been framed in an improper manner. Against his own complaint, PW2 has given evidence. According to him, the conviction and sentence are not based upon the legal evidence. Contradiction between the complaint given by PW2 to PW1 was not properly appreciated by the trial court; There is no eye witness to the occurrence; There is a suit between Ayyadurai and the complainant, in which the accused persons are noway involved.

17.The learned Government Advocate (Criminal side) would submit that on the same day of occurrence, a petition was given by PW2 to the EB officials namely PW1 and there is no delay on the part of PW2; PW6 is the eye witness to the occurrence; He has spoken about the involvement of the accused persons and the damage caused to the service



connection wires is also established by way of recovery of material objects from the place. According to him, no interference is required.

18.Before entering into the other aspects, let us straightaway go the issue of civil suit.

19.Suit in OS No.146 of 2013 was filed by one Ayyadurai against PW2. That suit was in respect of survey No.177/30 and the suit was decreed against him. Now according to the appellant, the above said Ayyadurai is the son of Gomathi. PW2 admitted that Ayyadurai is the son of PW2, Gomathi.

20.So far as A1-Kaliraj is concerned, it is admitted by PW2 that he belonged to Vellakuruchi and living in Chettikuruchi village. He is the son of A2's brother. But it is denied by PW2. According to him, the first accused Kaliraj is not the son of his own brother. Now whatever it may be, the issue between the Ayyadurai and himself is admitted by PW2.

21.By pointing out this issue, it is argued on the side of the appellants that to wreck vengeance only, this false case has been foisted as if at the instigation of the A2, A1 damaged the service connection.



22.Now let us go to the earliest statement made by PW2 in the form of petition given by him to PW1. That complaint is marked as Ex.P1, wherein he has stated that on 08/06/2017 at about 12.30 in the night, there was no power supply. So, he went upstairs to check. At that time, some four persons, at the instigation of Ayyadurai and Gomathi damaged the service wire. When we enquired the same one of the persons caused assault with stones. After having talk with Gomathi, all those persons fled away from that place. Simultaneously, he has given the complaint to the police also. In the above said complaint, nothing has been stated about appellants. But he has spoken about some four persons, those persons were not identified by him even during the course of investigation.

23.Now we will go to the evidence given by before the court. He has stated that due to power cut, he went upstairs. At that time he saw A2 standing near the EP post. A1 was standing on the post. A2 told A1 to snap the service connection. A1 caused damage. On hearing the noise, his son Chelladurai came to that place. On seeing his son, the accused went away from that place. So, this is the clear improvement over his earlier statement before PW1. PW3 is the wife of PW2. She has stated that at about 01.00 am, on 08/06/2016, power stopped. She came out of the house. On seeing her, both the accused ran away from that place. PW6



is the son of PW2 and PW3. He is residing in the neighbouring house. He corroborated PW2 on the above said occurrence.

24.From the evidence of PW2, PW3 and PW6, they say that at the instance of A2, A1 caused damage. As mentioned above, if it is really so, PW2 would have stated the above said facts in the earlier statement itself. Why he omitted to mention the important fact is not explained by him. Improvement made by him does indicate that he is not a reliable person.

25.But the damage has been established by the prosecution. In view of the evidence of PW7, observation mahazar, recovery mahazar etc, even the occurrence namely damage to the service lines mentioned in the complaint are established. But the involvement of the accused is doubtful.

26.In view of the improvement made by PW2 before the trial court as corroborated by PW3 and PW6, the possibility of false implication in view of the civil issue between A2's son and PW2 cannot also be ruled out completely. So, it is not safe to convict the accused on the interested and improved testimony of PW2, PW3 and PW6. I am of the considered view that the judgment of sentence



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passed by the trial court requires to be interfered. Accordingly, the judgment of conviction and sentence passed by the trial court is liable to be set aside and accordingly, set aside.

27.In the result, this appeal is **allowed**. The judgment of conviction and sentence passed by the Principal District and Sessions Judge, Thoothukudi, in SC No.199 of 2018, dated 27/10/2019 is set aside. The appellants are acquitted from all charges. The bail bonds executed by them shall stand discharged and fine amount, if any, paid by them shall be refunded to them.

18/09/2024

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

- 1.The Principal Sessions Judge,
Thoothukudi.
- 2.The Judicial Magistrate No.1,
Kovilpatti.
- 3.The Inspector of Police,
Nalatinputhur Police Station,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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