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CrI.A.No.495 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.495 of 2021

1.Senthil Kumar
2.Senthil Kumar

... Appellants

Vs.

State represented by
The Inspector of Police,
Dharapuram Police Station,
Dharapuram,
Tiruppur District.
[Crime No.504 of 2018].

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment and conviction passed on 01.09.2021 made in S.C.No.72 of 2019 on the file of the learned Principal Sessions Judge, Tiruppur.

For Appellants : Mr.B.M.Subash

For Respondent : Mr.L.Baskaran
Government Advocate [CrI. Side]
Assisted by Ms.M.SumI Arnica



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JUDGMENT

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The appellants/accused convicted by the Trial Court in S.C.No.72 of 2019 by judgment dated 01.09.2021 and sentenced to undergo three months simple imprisonment each for the offence under Section 294(b) IPC and to undergo four years simple imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo one month simple imprisonment for the offence under Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act [TNPDDL Act] r/w. 34 IPC. Against which, the present appeal is filed.

2.The prosecution case is that the respondent police received a complaint from the defacto complainant/P.W.1 stating that the defacto complainant is an Advocate of considerable age practising in Dharapuram, on 12.10.2018 at about 7.00 p.m., one Mekala Mythili, wife of Senthil Kumar/A1 along with her father came to his office and complained that her husband Senthil Kumar taken to liquor, constantly abusing and assaulting her, hence she needs divorce from him. As the said Senthil Kumar is an Advocate Clerk, the defacto complainant informed her that he will speak to



her husband and try to sort out the issue. On the same day at about 12.40 a.m., during midnight the said Mekala Mythili called the defacto complainant and complained that her husband Senthil Kumar along with another Senthil Kumar in a drunken state, assaulting her. The defacto complainant informed her that he will speak to him on the next day. Following early hours on that day, both the appellants came to the defacto complainant's home in Alto Car, abused him using filthy languages and later, A1 had thrown a brass lock on the defacto complainant's Honda City Car damaging the wind shield, since the neighbours hearing the shout and noise came out of their houses, both appellants left the place in their Maruthi Alto car. On receipt of the complaint, P.W.12 registered FIR and placed before P.W.13/Investigating Officer, who visited the scene of occurrence, examined the neighbours and witnesses present near the scene of occurrence, namely, P.W.1 to P.W.5, recording their statements, prepared observation mahazar and rough sketch in the presence of P.W.7 and P.W.8, arrested the accused/A1 in presence of P.W.9 and P.W.10. On his confession, recovery made. P.W.11/Approved Assessor of Insurance Company gave a report for the damage caused on the defacto complainant's car. On completion of investigation, charge sheet filed. During trial, P.W.1



to P.W.13 examined, Ex.P1 to Ex.P16 marked, M.O.1 and M.O.2 produced on the side of the prosecution. On the side of the defence, no witness examined and Ex.D1/photographs marked through P.W.1. On conclusion of trial, the Trial Court convicted the appellants as above.

3.The contention of the learned counsel of the appellants is that the first appellant is an Advocate Clerk attached to one Sekar, who was earlier Junior to P.W.2/wife of P.W.1. Since the first appellant used to refer lot of motor accident claim cases to the said Sekar who was flourishing in the practice, hence there was animosity against the first appellant. P.W.1 being a leading Criminal Lawyer threatened the first appellant not to support the said Sekar. He would submit that in this case, the alleged occurrence is said to have taken place on 13.10.2018 in the early hours but the complaint was lodged with a delay of 8½ hours. The Police Station is only few meters within walkable distance, P.W.1 being a Criminal Lawyer not informed the Police through phone or immediately went to the Police Station. He further submitted that in this case, the damage caused is to the wind shield of the defacto complainant's car which was parked inside the house, is not a public property and no offence under TNPPDL Act gets attracted. The case



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originates and the motive projected against the appellants is that P.W.6/wife of first appellant had some difference of opinion with the first appellant and she approached the defacto complainant, complained about the first appellant and she took advise for divorce, hence the first appellant got enraged, came in a drunken state picked up fight with the defacto complainant and caused damage to the defacto complainant's car. In this case, P.W.6 not supported the case of the prosecution. Hence, the foundational fact and the motive projected gets demolished. Now the prosecution projected P.W.1 to P.W.5 as eye witnesses to the occurrence in this case. P.W.1 is the defacto complainant, P.W.2 is the wife of P.W.1 and P.W.3 to P.W.5 are neighbours. P.W.1 confirms that after he shouted at the appellants and chased them out, P.W.3 to P.W.5 came later to the scene of occurrence, hence P.W.3 to P.W.5 cannot be eye witnesses. P.W.2/wife of P.W.1 confirms that she had seen the occurrence from window and she came down from the first floor, hence she cannot be an eye witness. Now except for P.W.1's statement there is no other witness to confirm that the appellants abused the defacto complainant and caused damage to his car. He further submitted that in this case, the valuation report for the damage to the wind shield was given by P.W.11/Approved Assessor of Insurance



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Company, who admits that P.W.2/wife of P.W.1 is the Panel lawyer to the Insurance Company and hence, he cannot be considered as an independent valuer. The prosecution not given any reason as to why no damage report obtained from the Motor Vehicle Department. Further, Ex.D1 to Ex.D5 photographs captured in the CCTV camera placed in the house of defacto complainant's neighbour Advocate Annadurai, not examined as witness. From Ex.D1 to Ex.D5, it is seen that the appellants not present at that point of time. The Trial Court not referred to Ex.D1 to Ex.D5. Further, there are contradictions between the evidence of P.W.1 to P.W.5, with regard to the manner in which abused started and the wind shield damage. The Trial Court though acquitted the appellants for the offence under Sections 452 and 506(ii) IPC but convicted the appellants for the offence under Section 294(b) IPC and Section 3 of TNPPDL Act. The Trial Court further on its own gives a finding as though the first appellant acted as a tout to the said Sekar which is not proper. Thus the Trial Court not considered and analysed the evidence required but convicted the appellants on a preconceived notion to appease the defacto complainant and P.W.2 since both are Senior Advocates of the Bar.



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4.The learned Government Advocate (Crl. Side) filed his counter and submitted that P.W.1/defacto complainant is a leading lawyer in Dharapuram with considerable practice and experience. P.W.1 lodged a complaint on 13.10.2018 at about 10.30 a.m. stating that on 12.10.2018 the first appellant's wife Mekala Mythili (P.W.6) along with her father Rajendran met the defacto complainant in his office, confirmed by the Advocate Clerks, P.W.9 and P.W.10. The defacto complainant not immediately rushed to issue any Advocate notice, considering the fact that the first appellant is an Advocate Clerk and wanted to change him to new life, get rid of liquor and not to assault his wife, advised P.W.6 and assured that he would speak to the first appellant. On the same day during midnight both appellants came in a drunken state, the first appellant picked up quarrel with P.W.6 and she immediately called the defacto complainant who advised her that on the next day morning, he would sort out the issue. Thereafter, the appellants came to the defacto complainant's house during early hours, shouted at him, abused him with filthy language and thereafter, threw the brass lock on the defacto complainant's car and damaged the wind shield. After defacto complainant shouted at them, hearing the noise and



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commotion neighbours gathered and appellants left the place in M.O.2/Maruthi Alto Car. Thereafter, complaint was lodged to P.W.12, who registered FIR, P.W.13 took up investigation, examined the defacto complainant and other witnesses present in the scene of occurrence, recorded their statements, prepared observation mahazar and rough sketch, arrested the accused, on his confession M.O.2/Car seized and M.O.1/brass lock recovered. P.W.11/Approved Assessor of Insurance Company gave a report/Ex.P11 for the damage caused. On completion of investigation, charge sheet filed. In this case, P.W.1, P.W.2 and P.W.5 clearly state about the incident. The first appellant is a known person and there is no dispute of identity. P.W.1 clearly states that he switched on the light and came down, the first appellant abused him which was resisted and he was shouted back. The appellants who were drunk, in a enraged mood threw the brass lock on the defacto complainant's car and left the place. P.W.3 and P.W.4 supported the case of the prosecution to the extent of abuse. Thus from the evidence of P.W.1 to P.W.5, the eye witnesses, P.W.7 and P.W.8, witnesses to the observation mahazar and rough sketch, P.W.9 and P.W.10, witness for the arrest of the accused and to the fact that on the previous day morning i.e. on 12.10.2018 P.W.6 along with her father consulting P.W.1, complaining



about the abuse and assault by her husband/first appellant, are proved. The

Trial Court on the materials available, had rightly convicted the appellants.

The first appellant being an Advocate Clerk in a drunken state abused and caused damage to the defacto complainant's car cannot be let off lightly.

Hence prayed for dismissal of the appeal.

5.Considering the submissions made and one perusal of the materials, it is seen that in this case P.W.1 to P.W.5 are the projected eye witnesses. P.W.1 and P.W.2 are husband and wife. On 12.10.2018 P.W.6 along with her father met P.W.1 and complained about the first appellant's conduct of abusing and assaulting her daily in a drunken state which was the reason for the appellants to have motive, who came to the defacto complainant's house during midnight, abused him and thereafter thrown the brass lock on the defacto complainant's car and damaged the wind shield. In this case, P.W.6 not supported the case of the prosecution. Hence, there is no evidence for any motive. As regards the presence of the appellants and abuse, P.W.1 to P.W.5 are projected as eye witnesses, P.W.3 and P.W.4 not supported the case of the prosecution, P.W.5 admits that he was not well and saw the occurrence from inside his house and admits that from inside, P.W.1's house



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cannot be seen. P.W.2's evidence is that she had seen the incident through the window while coming down from the first floor. P.W.1/defacto complainant's specific complaint is that after he shouted and chased away the appellants thereafter, P.W.3 to P.W.5 came there, hence they cannot be eye witnesses. Now, the only evidence available is of P.W.1. The specific case of P.W.1 is that the appellants trespassed into his house, abused him and thrown the brass lock on his car. The defacto complainant's neighbour Annadurai is an Advocate but not examined as witness. The defacto complainant admits that in the house of Annadurai, CCTV cameras fixed and the photographs/Ex.D1 to Ex.D5 captured from the CCTV and marked through P.W.1. From the photographs/Ex.D1 to Ex.D5, it is clear that the appellants not trespassed into the house. The Trial Court not considered or referred to Ex.D1 to Ex.D5 in any manner, P.W.6 not supported the prosecution, which shakes the foundational fact of the case. In this case, the evidence of P.W.1 to P.W.5 are contradictory to each other and the evidence of P.W.1 is without any corroboration, on the other hand it is with contradictions. The appellants were convicted for using abusive words and causing damage to the public property. In this case, admittedly the car belongs to the defacto complainant/P.W.1, a private property inside the



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house and the damage report given by P.W.11 cannot be accepted as an independent report, valuation is not properly done. It is admitted that the first appellant attached to Advocate Sekar, previously Junior of P.W.2, the first appellant helped Sekar in building his practice and was a point of reference, due to which, there was some animosity in the defence of the first appellant which cannot be brushed aside. Hence, this Court is of the view that the prosecution miserably failed to prove the case beyond all reasonable doubt.

6.In the result, the Criminal Appeal is allowed setting aside the judgment of the trial Court, dated 01.09.2021 in S.C.No.72 of 2019. The appellants/accused are acquitted from all the charges levelled against them. The bail bond, if any, executed shall stand cancelled. Fine amount, if any, paid, shall be refunded to them.

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Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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M.NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
Dharapuram Police Station,
Dharapuram, Tiruppur District.
- 2.The Principal Sessions Judge,
Tiruppur.
- 3.The Public Prosecutor,
High Court, Madras.

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