



Crl.A.No.1261 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1261 of 2022

Kolanjirajan

... Appellant

Vs.

State rep. by
The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai – Post,
Nagapattinam – District.
(Crime No.940 of 2014).

... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to allow the criminal appeal by setting aside the judgment made in Sessions Case No.36 of 2018 on the file of the Additional District and Sessions Judge, Mayiladuthurai dated 28.09.2022.

For Appellant : Mr.V.Prabhakaran

For Respondent : Mr.Leonard Arul Joseph Selvam,
Additional Public Prosecutor assisted by
Ms.Harshana.T

JUDGMENT



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This Criminal Appeal has been filed by the appellant to set aside the impugned judgment, dated 28.09.2022 in Sessions Case No.36 of 2018 passed by the learned Additional District and Sessions Judge, Mayiladuthurai (trial Court).

2.The conviction and sentence passed by the trial Court against the appellant are as follows:

- For offence under Section 294(b) IPC, the appellant is convicted and ordered to pay a fine of Rs.1,000/-, in default to undergo one month Rigorous Imprisonment.
- For offence under Section 352 IPC, the appellant is convicted and sentenced to undergo two months Rigorous Imprisonment.
- For offence under Section 506(i) IPC, the appellant is convicted and sentenced to undergo one year Rigorous Imprisonment.
- For offence under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, the appellant is convicted and sentenced to undergo four years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo one month Rigorous Imprisonment.

3.Gist of the case is that the defacto complainant (died) was running a



Idly shop in a push cart near riverside which is opposite to Mayiladuthurai Palakkarai ATS Traders and the appellant was having a tea shop nearby. On 28.11.2014, at about 03.00 p.m., the appellant picked up a quarrel with the defacto complainant objecting for Idly shop and abused and attacking the defacto complainant on his face and back of his shoulder. Not stopping with that, the appellant damaged the defacto complainant's push cart worth Rs.4,000/- and threw it into the river. He also threatened the defacto complainant showing a wooden log to do away. This was witnessed by PW1 and her brother PW2 when they crossed Mayiladuthurai Palakkarai road in two wheeler. Thereafter, the defacto complainant went to the respondent Police Station, lodged a complaint (Ex.P4) at about 04.30 p.m. PW4, Special Sub Inspector of Police received the complaint (Ex.P4) and registered FIR (Ex.P3) in Crime No.940 of 2014 for offence under Sections 294(b), 352 & 506(i) IPC and Section 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992. PW5, Inspector of Police took up investigation, visited the scene of occurrence, enquired the witnesses present in the scene of occurrence, recorded their statements, prepared Observation Mahazar (Ex.P1), Rough Sketch (Ex.P5), arrested the appellant at 06.00 p.m and produced for remand. On completion of investigation,



PW5 filed charge sheet before the trial Court. During trial, on side of the prosecution, PW1 to PW5 examined and Exs.P1 to P5 marked. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted and the lower appellate Court confirmed the conviction of the appellant as stated above.

4.The learned counsel for the appellant submitted that the appellant falsely implicated in this case, the defacto complainant died after giving complaint (Ex.P4) and could not be examined as witnesses. Non examination of defacto complainant is fatal to the prosecution case. The other witnesses viz., PW1 & PW2, sister and brother are relatives of the defacto complainant. The defacto complainant is the father-in-law of PW1's sister. The case is that on 28.11.2014 at about 03.00 p.m, the defacto complainant was running a Idly shop in push cart near Mayiladuthurai, Palakkarai opposite to ATS Traders and the appellant who running a tea shop nearby, got affected questioned the defacto complainant, beaten him, damaged the push cart and pushed into cauvery river. PW1 & PW2 claimed that on the date of occurrence, they went to Mayiladuthurai for purchase of vegetables, while returning, they saw a crowd near Palakkarai and saw the



appellant assaulting the defacto complainant and causing damage to the push cart. The evidence of PW1 & PW2 are contradictory to each other and their evidence is in the nature of hearsay. Though PW1 states that she and her brother/PW2 saw appellant abusing and threatening the defacto complainant, but PW2 states he heard about the incident and damage caused to the push cart by the appellant. The abuse, assault and damage to push cart are in one sequence, hence, the evidence of PW1 is nothing but an exaggeration and her presence is doubtful. On the other hand, PW2 who was along with PW1 confirms that on hearing the news, both PW1 & PW2 reached there. PW3 is the witness for Observation Mahazar (Ex.P1) and Rough Sketch (Ex.P5) and for recovery of push cart from cauvery river. PW3 admits that he is employed in a cement godown which is 12 feet from the scene of occurrence and the push cart though seized in presence of PW3, but not produced as Material Object. The wooden log used in the attack not produced as Material Object. PW3 further confirms that he does not know what is written in Exs.P1 & P5. The Special Sub Inspector of Police/PW4 registered the FIR (Ex.P3) and PW5 is the Investigating Officer.

5.He further submitted that though the occurrence took place in



public, no public or any independent person neither cited nor examined as witness. Non production of wooden log and the push cart is fatal to the prosecution case. There are inconsistencies and latches in the prosecution case. The trial Court without analyzing the evidence and materials convicting the appellant is not proper and sustainable. In support of his submissions and for non production of the properties, the learned counsel for the appellant relied on the decision of this Court in ***Seerangan v. Forest Range Officer, Salem*** reported in ***2005 CRI.L.J. 987***.

6.The learned Additional Public Prosecutor for the respondent submitted that the appellant is a notorious person in the area having four previous cases. The case is that the appellant was running a tea shop near Mayiladuthurai, Palakkarai and threatened everyone who were doing business near Palakkarai. The defacto complainant was running a Idly shop in push cart for his survival. On 28.11.2014 at about 03.00 p.m., the appellant questioned, threatened and warned the defacto complainant not to run any Idly shop. He pushed and damaged the push cart into cauvery river. PW3 is the witness for Observation Mahazar (Ex.P1) and Rough Sketch (Ex.P5) and in his presence, push cart retrieved from cauvery river. On the



date of occurrence, PW1 & PW2 had been in Mayiladuthurai market to purchase vegetables, when they were coming back in two wheeler, saw crowd near Palakkarai and witnessed the appellant attacking the defacto complainant using wooden log and causing damage to the push cart. PW4 is Special Sub Inspector of Police received the complaint (Ex.P4) and registered FIR (Ex.P3) and PW5 investigated the case. In this case, PW1 & PW2 identified the appellant who assaulted the defacto complainant and causing damage to push cart. PW3, Observation Mahazar witness confirms the damage to push cart and retrieval of the same from cauvery river. The trial Court finding the evidence of PW1 and PW2 are natural and believable, rightly convicted the appellant. He fairly submitted that though there are four cases against the appellant, one case referred, one disposed, one not taken on file and one pending trial. Except the present case, the appellant is not suffering any conviction.

7.This Court considered the rival submissions and perused the materials available on record.

8.In this case, PW1 & PW2 are relatives of the defacto complainant.



After lodging the complaint (Ex.P4), the defacto complainant during pendency of trial for some other reason died, hence, he could not be examined as witness. The other two eye witnesses PW1 & PW2 (sister and brother) are relatives to the defacto complainant. Their case is that on 28.11.2014 when PW1 & PW2 were coming back from Mayiladuthurai market, they saw crowd near Palakkarai and found the appellant attacking defacto complainant and damaging the push cart and pushed the cart into cauvery river. In this case, the evidence of PW1 & PW2 are contradictory to each other. Though PW1 states that she and PW2 saw the appellant abusing and threatening the defacto complainant, but PW2 states he heard about the incident and damage caused by the appellant. A reading of PW1 & PW2 evidence, it is seen their evidence is in the nature of hearsay. It is admitted that there was crowd near the scene of occurrence and it was a busy area. But no independent person examined as witness.

9.PW3, Observation Mahazar witness admits that he is employed in the cement godown, which is 12 feet away from the scene of occurrence, where the Observation Mahazar and Rough Sketch (Exs.P1 & P5) prepared. PW3 confirms though he signed in Ex.P1, he does not know what is written



in it. PW3 states that the respondent Police recovered push cart damaged by the appellant from cauvery river and he signed in Recovery Mahazar (Ex.P2), but the push cart not produced as material object and there is no reason or explanation given for non-production. Added to it, the wooden log allegedly used in the attack of defacto complainant not seized and produced as material object. The non-production of damaged push cart and wooden log is fatal to the prosecution case.

10.In this case, it is admitted that the defacto complainant was attacked by the appellant on 28.11.2014 at 03.00 p.m., and he lodged the complaint (Ex.P4) on the same day at 04.30 p.m. Whether the defacto complainant sustained any injury, or he was referred to any hospital, is not known. PW4 is the Special Sub Inspector of Police received the complaint (Ex.P4) and registered FIR (Ex.P3). PW5, Inspector of Police has not given any acceptable reason or explanation for non production of damaged push cart, wooden log and non examination of independent witnesses. Further, there is a delay in sending the documents to the trial Court.

11.In view of the above, this Court finds that there are serious latches in the investigation and there are contradictions in the evidence of PW1 &



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PW2, the projected eye witnesses which does not inspire confidence to sustained the conviction against the appellant. Hence, the prosecution failed to prove its case beyond all reasonable doubt.

12. Accordingly, this Criminal Appeal is allowed setting aside the impugned judgment dated 28.09.2022 in Sessions Case No.36 of 2018 passed by the learned Additional District and Sessions Judge, Mayiladuthurai. The appellant is acquitted for all charges. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

07.10.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Internet: Yes/No
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To

1. The Additional District and Sessions Judge,
Mayiladuthurai.
2. The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai – Post,
Nagapattinam – District.



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3.The Central Prison,
Tiruchirapalli.

4.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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