



WEB COPY



Crl.A.No.1274 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1274 of 2022

Subash

... Appellant

Vs.

1.State represented by
The Deputy Superintendent of Police,
Arakkonam Sub Division,
Nemili Police Station,
Vellore District.

2.The Sub Inspector of Police,
Nemili Police Station,
Vellore District.
[Crime No.355 of 2012].

... Respondents

Prayer: Criminal Appeal filed under Section 14A(2) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 to set aside the order of conviction dated 09.11.2022 passed in Spl.S.C.No.48 of 2020 on the file of the learned Sessions Judge, Special Court for trial of Cases under SC/ST (POA) Act, Vellore, Vellore District and acquit the appellant.

For Appellant : Ms.M.Jisriga
for Mr.S.Ganeshkumar

For Respondent s : Mr.L.Baskaran
Government Advocate [Crl. Side]
Assisted by Ms.M.Sumii Arnica



JUDGMENT

WEB COPY

The appellant/accused was convicted by the Trial Court for the offence under Sections 341 and 352 IPC by imposing a fine of Rs.500/- for each of the offence and sentenced to undergo 15 days simple imprisonment for each of the offence and sentenced to undergo one year simple imprisonment for the offence under Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act [TNPDDL Act]. Against which, the present appeal is filed.

2.The appellant was charged by the Trial Court for the offence under Section 341 IPC r/w. 3(2)(va) of SC/ST (POA) Act, Section 352 IPC, Section 3(1)(s) of SC/ST(POA) Act, Section 506(i) IPC r/w. 3(2)(va) of SC/ST(POA) Act and Section 3 of TNPPDL Act. The Trial Court acquitted the appellant from all the other charges except for the charges he was convicted as stated above.

3.The gist of the case is that the defacto complainant Narasimman who belongs to Adi Dravidar Community lodged a complaint on 14.08.2012 stating that he is the owner-cum-driver of an Auto bearing registration



No.TN-73-Y-2990 and he is making his earnings through the said Auto. He belongs to Duraiyur Colony, Arakkonam Taluk, there was a dispute with the adjoining Village of Uliyanallur with regard to plying of Autos, due to which there was no plying of Autos for the past four days. On 13.08.2012 in the evening hours, the said Narasimman was transporting school students in his Auto. Babu/P.W.1 and Perumal/P.W.2, the other Auto drivers were also transporting school students in their Auto. When they were near Bajanai Koil Street at about 5.15 p.m., the appellant/Subash restrained the said Narasimman, picked up a quarrel and questioned him as to how the defacto complainant and others are operating the Autos in their Village. Thereafter, the appellant assaulted the defacto complainant Narasimman and damaged the wind screen of the Auto and also threatened him not to venture into their Village again. On the intervention of others, the said Narasimman was saved and thereafter, complaint was lodged to the respondent police, who registered a case in Crime No.355 of 2012 on 14.08.2012. On receipt of the complaint, the Sub-Inspector of Police registered a case and finding that investigation to be done by the Deputy Superintendent of Police since the offence involves SC/ST Act, the case was placed before P.W.8 who was authorized by the Superintendent of Police by authorization order/Ex.P9.



Thereafter, P.W.8 visited the scene of occurrence, prepared observation mahazar, rough sketch and recorded the statement of Narasimman/defacto complainant, P.W.1/Babu, P.W.2/Perumal and other witnesses present in the scene of occurrence, seized the broken wind screen and collected the community certificate of the defacto complainant and the appellant. On conclusion of investigation, charge sheet filed. During the trial, P.W.1 to P.W.8 examined, Ex.P1 to Ex.P13 marked and M.O.1 produced on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. The Trial Court on conclusion of trial convicted the appellant as stated above.

4.The contention of the learned counsel for the appellant is that in this case P.W.1, P.W.2, P.W.4 and P.W.7 are projected as eye witnesses. P.W.1, an Auto driver admits that he has not given any statement to the Police. Further the place of occurrence is a four road junction and there were several other persons present in the scene of occurrence but none examined. He further confirms that the defacto complainant Narasimman is his uncle and the other witness, namely, P.W.2/Perumal is his brother by relation. P.W.2 similar to the evidence of P.W.1. P.W.3 and P.W.4 are the witnesses for



observation mahazar. P.W.4 further improves his statement by stating that he was present in the scene of occurrence. In this case the observation mahazar and rough sketch are prepared on the next day of the incident, P.W.3 and P.W.4 admit that their signature was obtained in the Police Station in a white paper. P.W.4 admits that he is a relative to the said Narasimman. P.W.7 further improves by stating that he travelled along with P.W.2/Perumal in his Auto but P.W.2 does not state anything about P.W.7. All the witnesses P.W.1,P.W.2, P.W.4 and P.W.7 are unable to give any details of the said Narasimman's auto. Hence, their presence is highly doubtful. Further, in this case the value of the damage to the public property is attempted to be proved through P.W.5, a Salesman at Ganpat Motors, Perumugai. His evidence is that the said Narasimman on 18.08.2012 purchased a wind screen for his auto but in Ex.P5/Invoice of Ganpat Motors, there is no reference to the Auto number of Narasimman. Further, the signature found in Ex.P5 and the signature of P.W.5 are in variance. Hence, Ex.P5 is a got-up document. Further, even admitting Ex.P5 to be invoice for the purchase of wind screen for Auto, no way it furthers the case of the prosecution.



5.The learned counsel for the petitioner further submitted that Ex.P7/complaint, Ex.P8/FIR, Ex.P10/observation mahazar and Ex.P11/rough sketch marked through the Investigating Officer/P.W.8. P.W.3 and P.W.4 have only identified their signature alone. No witness for the seizure mahazar/Ex.P12 was examined to prove the seizure. In this case, P.W.8 admits that though he had given a requisition to the Junior Engineer, Motor Vehicle Department to assess the value of the damage he had not collected particulars of damages. The Trial Court disbelieved the evidence of P.W.1, P.W.2, P.W.4 and P.W.7 with regard to certain offences but convicted the appellant for the offence of wrongful restraint, threat and damage to the public property. He further submitted that wrongful restraint and threat is caused to the defacto complainant Narasimman but he was not examined as witness. Further, the loss due to damage to the wind screen is not proved in the manner known to law. Hence, prayed for acquittal.

6.The learned Government Advocate (Crl. Side) submitted that in this case on 13.08.2012, one Narasimman along with other auto drivers, namely, P.W.2 and P.W.3, were plying their auto carrying school students in Uliyanallur Village, at that time, the appellant is said to have questioned the



said Narasimman, who operated his Autos in the Village against the boycott of Auto drivers of Uliyanallur village, assaulted the said Narasimman and damaged the wind screen of his Auto. Thereafter, the said Narasimman lodged a complaint to the Sub-Inspector of Police, who registered a case in Crime No.355 of 2012 and thereafter, finding that the offence involves SC/ST Act P.W.8/Deputy Superintendent of Police took up the investigation, who was authorised by the Superintendent of Police through Ex.P9/authorization order. P.W.8 visited the scene of occurrence, prepared observation mahazar, rough sketch, recorded the statement of the defacto complainant and other witnesses who were present in the scene of occurrence, collected the damaged wind screen under the cover of mahazar, Ex.P5/invoice for replacement of wind screen from Ganpat Motors and community certificate of the said Narasimman collected. Thereafter, on conclusion of investigation charge sheet filed. During trial, P.W.1 to P.W.8 examined, Ex.P1 to Ex.P13 marked and M.O.1 produced. The Trial Court on the evidence and materials produced, convicted the appellant as stated above and the judgment needs no interference. Hence, prayed for dismissal.

7.Considering the submissions made and on perusal of the records, it



is seen that the admitted fact is that the appellant is said to have restrained the defacto complainant Narasimman, an Auto driver who entered Uliyanallur Village carrying school students, who was assaulted and damage caused to the wind screen of his Auto which is said to have been witnessed by P.W.2, P.W.3, P.W.4 and P.W.7. The foundational fact is that the defacto complainant Narasimman was attacked and his auto damaged. The evidence of P.W.1, P.W.2, P.W.4 and P.W.7 admit that they are the relatives of Narasimman and their evidence are contradictory. In this case, wrongful restraint and abuse is made on the defacto complainant/Narasimman but he was not examined. Hence, the prosecution failed to prove the foundation fact of the case. No reason or explanation given for not examining Narasimman. As regards the damage caused to the wind screen and the loss incurred, examination of P.W.5, who is a Salesman in Ganpat Motors and production of invoice/Ex.P5 for purchase of wind screen will not be sufficient proof. Though P.W.8 admits that he had given a requisition to the Junior Engineer, Motor Vehicles Department, no report obtained for damage. In the invoice/Ex.P5 there is no reference about the Auto number of the defacto complainant/Narasimman. In view of the above, it cannot be taken that the wind screen was purchased for the Auto of the defacto



Crl.A.No.1274 of 2022

complainant and it was damaged by the appellant. There is variance of P.W.5 signature in Ex.P5. Hence, this Court is of the view that the prosecution miserably failed to prove the case beyond all reasonable doubt.

8.In the result, the Criminal Appeal is allowed setting aside the judgment of the trial Court, dated 09.11.2022 in Spl.S.C.No.48 of 2020. The appellant/accused is acquitted from all the charges levelled against him. The bail bond, if any, executed shall stand cancelled. Fine amount, if any, paid, shall be refunded to him.

9.This Court appreciates Ms.M.Jisriga, learned counsel for the appellant in rendering her sincere efforts in this regard.

06.02.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

1.The Deputy Superintendent of Police,

Page No.9 of 11



Crl.A.No.1274 of 2022

Arakkonam Sub Division,
Nemili Police Station,
Vellore District.

WEB COPY

- 2.The Sub Inspector of Police,
Nemili Police Station,
Vellore District.
- 3.The Sessions Judge,
Special Court for trial of Cases
under SC/ST (POA) Act,
Vellore, Vellore District.
- 4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.1274 of 2022

M.NIRMAL KUMAR, J.

cse

Crl.A.No.1274 of 2022

06.02.2025