

Pandi . Vs. State Rep. By

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Court : Chennai

Decided On : Nov-18-2014

Judge : The Honourable Mr.Justice R.Mala

Appellant : Pandi .

Respondent : State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 18.11.2014 CORAM THE HONOURABLE Mr.JUSTICE R.MALA Criminal Appeal(MD)No.270 of 2014 Pandi ..Appellant Vs State rep.

By Inspector of Police, C5, Karimedu Police Station, Madurai District Crime No.1216/2012 ..Respondent Prayer Criminal appeal filed under Section 374(2)of Cr.P.C., to set aside the judgment dated 04.09.2014 made in S.C.No.302 of 2013 on the file of the 1st Additional Sessions Judge, Madurai.

!For appellants : Ms.A.Rajini ^For Respondent : Mrs.S.Prabha, Govt.Advocate(Crl.

Side) :

JUDGMENT

The Criminal Appeal has been filed against the judgment of conviction and sentence dated 04.09.2014 made in S.C.No.302 of 2013 on the file of the 1st Additional Sessions Judge, Madurai, wherein, the appellant/accused was

convicted for the offence under Section 3(1) of Tamil Nadu Property (Prevention of Damages and Loss) Act 1992, (T.N.Act No.59 of 1992) and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.

2.

The case of prosecution briefly is as follows: (i)P.W.1 Duraipandi/defacto complainant is the owner of car bearing registration No.TN58x 8887and residing at Madurai Town Puttuthope main road at Kattunaickan Colony and the appellant/accused is also residing in the same area and there was a quarrel between some of the persons of their street and the accused due to distributing the Deepavali find, which was collected by the appellant/accused and the defacto complainant informed the same to the police Control Room and the police came there and brought the accused to the police station and hence, there was an enmity between the defacto complainant and accused.

When P.W.1 parked his car near his residence, he found that the tyres of the car were damaged by somebody and hence, P.W.1 installed a CCTV camera in the upstairs of P.W.6, Sundarapandian's house to monitor his car, after obtaining permission from P.W.6.

(ii)On 26.11.2012, at about 6.00 houRs.he went to clean the car and found that the rear side glass of the car was broken.

When he enquired P.W.2 Rajendran and P.W.3 Krishnakumar, he came to know that the appellant/accused, due to previous enmity, with an intention to cause damage to the car, pelted stones on the glass of the car and caused damage to the tune of Rs.6,400/- and P.W.1 and P.W.6 saw the CCTV footage and enquired the accused about the same and the accused replied that he would break the same like that and criminally intimidated him.

Therefore, P.W.1 lodged a compalint Ex.P1 before P.W.7 Mr.Parthasarathi, Special Sub Inspector of Police, Traffic Police Station.

(iii) On 26.11.2012 at about 13.00 hours P.W.7 received Ex.P1 complaint and registered a case in Cr.No.1216 of 2012 for the offence under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 and 506(i) of I.P.C. and prepared Ex.P.4 and despatched the same to Court.

(iv) On 26.11.2012, P.W.9 Seetharaman, Inspector of Police, took up the investigation and he visited the scene of occurrence and prepared Ex.P.2, Observation Mahazer and Ex.P.6, Rough Sketc.in the presence of P.W.6 Sundarapandian and Thisaipandian and recorded their statements and he seized the stone and broken glass pieces under seizure mahazer Ex.P3.

Thereafter, he recorded the statement of P.W.8 Vimalkumar, who repaired the vehicle and obtained the receipt, Ex.P.5.

He arrested the accused at 16.00 hours on the same day sent him for judicial custody and after completing his investigation, he filed a charge sheet against the accused for the offences under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 and 506(i) of I.P.C.3.

The learned trial Judge after following the procedure framed necessary charges against the accused.

Since the accused denied the same in toto and pleaded not guilty, to prove the charges, P.Ws.1 to 9 were examined and Exs.P.1 to 7 and M.Os.1 and 2 were marked on the side of the prosecution.

On completion of the examination of witnesses on the side of the prosecution, the accused was questioned under Section 313 of Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied them as false.

No witness was examined on the side of the defence.

4. On considering the oral and documentary evidence, the learned I Additional Sessions Judge, Madurai found the accused not guilty and acquitted him from the charge under Section 506(i) of I.P.C., however, found guilty and convicted him for

the offence under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months simple imprisonment.

5.Challenging the conviction and sentence passed by trial Court against the accused/appellant for the offence under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992, the learned counsel for the appellant would submit that there is a delay in preferring the complaint Ex.P1 and the CCTV footage and the rexine car cover have not been recovered by the prosecution.

She would further submit that P.Ws.2 and 3 are close relatives and their evidence cannot be looked into and there are contradictions between the evidence of P.Ws.1,5 and 7 in respect of the investigation and hence, she prayed for setting aside the conviction and sentence.

6.Resisting the same, the learned Government Advocate (criminal side) would submit that there is a motive for the commission of offence and the delay in preferring the complaint has been properly explained and the evidence of P.W.6 Sundarapandian has clearly proved the guilt of the accused.

She would further submit that even though the trial Court has acquitted the appellant for the charge under Section 506(i) of I.P.C., convicted him for the charge under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992, , and hence she prayed for the dismissal of the appeal.

7.Considering the rival submissions made by both sides and perusal of the typed set of papers now, this Court has to decide as to whether the conviction and sentence imposed against the accused for the offence under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 is sustainable?.

8.The learned counsel for the appellant would submit that there is motive for giving a false complaint against the appellant/accused.

She would further submit that the appellant/accused had preferred a writ petition, wherein the Investigating Officer was also one of the party and hence, they were having enmity towards the appellant/accused and that factum was not considered by the trial Court.

Admittedly, nothing has been suggested by the defence, when P.Ws.1 to 9 were in the witness box.

It is pertinent to note that no copy of writ petition has been filed to show that P.W.1 Duraipandi and P.W.9, Investigating Officer were the respondent in the writ petition and hence, the argument advanced by the learned counsel for the appellant that there is motive for the complainant for giving false complaint does not merit acceptance.

9.Per contra, the prosecution has proved the motive that the appellant, who is working as Sweeper in the Municipality, has collected Deepavali fund, which was not distributed by him to the subscribers and hence, there was a quarrel between P.W.5 and the appellant and there was a fight and immediately, P.W.1 intimated the same to the police control room and the police came to the place of occurrence and arrested the appellant/accused and hence, the appellant/accused taken a revenge against P.W.1 and caused damages to his car and that factum has also been deposed by P.W.1 and that has been corroborated by P.W.5 Mahalingam and there is no evidence to discard the evidence of P.Ws.1 and 5.

In such circumstances, I am of the view that the prosecution has proved the enmity for the commission of offence.

10.The evidence of P.W.1 has also been corroborated by P.W.5 Mahalingam, who has stated that the appellant/accused was arrested by the police in respect of chit transaction and hence, the appellant/accused got wild and damaged the car and hence, P.W.1 got permission from P.W.6 and fixed CCTV camera on his house, to ascertain as to by whom the damages are causing to the vehicle of P.W.1.

On the fateful day i.e.on 26.11.2012, when P.W.1 came to the place, where his car was parked, he came to know the damages and he witnessed the footage of

CCTV camera along with P.W.6 and then only, he found that the damage had been caused by the appellant/accused and since he wanted to settle the matter, immediately, he intimidated the same to others and when they questioned the appellant/accused, he made threat and hence, P.W.1 gave a complaint at 1'0 clock and hence, the delay in preferring the complaint has been properly explained.

Therefore, the argument advanced by the learned counsel for the appellant that the delay in preferring the complaint is fatal to the case of prosecution does not merit acceptance.

11.It is true that P.W.2 Rajendran is brother-in-law of P.W.1 and P.W.3 Krishnakumar is the brother-in-law of P.W.1 and brother of P.W.2.

Even though, they are cited as witnesses, the activities of P.W.2 and P.W.3 itself are falsified their evidence.

Hence, the evidence of P.Ws.2 and 3 is not reliable and discarded.

P.W.4 Sivakumar is only a hearsay witness and hence his evidence also is not reliable and discarded.

12.The learned counsel appearing for the appellant would mainly harping upon the time of visiting the place of occurrence by P.W.9, which is different from the evidence of P.Ws.1,6 and 7, However, I am of the view that the discrepancies in time will no way affect the case of prosecution.

Because, the case in crime No.1216 of 2012 has been registered only at 1.00 p.m.on 26.11.2012 and naturally, thereafter only, Ex.P2 Observation Mahazer and Ex.P6 Seizure Mahazer would have to be prepared.

Therefore, the argument advanced by the learned counsel for the appellant that the discrepancies in time for preparation of observation mahazer and seizure mahazer is fatal to the case of prosecution does not merit acceptance.

13.As already stated, the evidence of P.Ws.1,5 and 6 would clearly prove that the footage of CCTV camera has not been recovered either in pen drive or in C.D.by

the prosecution.

Admittedly, there is no enmity between P.W.6 Sundarapandian and the appellant.

In such circumstances, it was proved that in his house only, CCTV camera has been fixed and after the incident, P.W.6 witnessed the occurrence and then only, they came to know that the appellant/accused caused damage to the car and hence, I am of the view that non seizure of CCTV footage and also rexin cover will no way affect the case of the prosecution.

14.The learned counsel appearing for the appellant would submit that P.W.8 Vimalkumar, who has given a receipt Ex.P5 stating that the damage is worth about Rs.6,400/- is not a competent person to assess the value of damage.

In Ex.P5, receipt, P.w.8 has stated that the value of Tail Door Glass is Rs.4,000/- and the value of DGX Kit is Rs.1,200/- and the labour cost to renew the windshield glass is Rs.1,200/-.

But, it is not a case for claiming compensation for damages.

In such circumstances, the argument of the learned counsel for the appellant that the value of damage is excessive does not merit acceptance.

15.Now,the only point to be decided in this appeal is as to whether the ingredients of Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992, has been made out or not?.

Admittedly, the evidence of P.Ws.1 and 6 have proved that the appellant/accused has damaged the glass of the car, belonging to P.W.1 and the value of damage is more than Rs.100/- as per Ex.P5 and the evidence of P.W.8.

In such circumstances, I am of the view that the trial Court has rightly held that the appellant is guilty for the charge under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992.

16.Now, the learned counsel appearing for the appellant would submit that the appellant/accused has been suspended for more than 20 months and he had been

already in judicial custody for 10 days and he has paid the damage of Rs.6,000/- and hence, the sentence imposed against the appellant/accused may be reduced.

17.At this point, it is pertinent to note that the appellant/accused is a Sweeper in Madurai Municipality.

As per Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 imprisonment is not mandatory.

Therefore, I am of the view that the period already undergone by the appellant/accused is treated as imprisonment for the offence under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 and the fine imposed against the appellant/accused is hereby confirmed.

18.In the result, the criminal appeal is dismissed with modifications of sentence.

The conviction under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992 is hereby confirmed and the period already undergone by the appellant/accused is treated as sentence and the fine amount imposed on the appellant/accused is also hereby confirmed.

The bail bond, if any executed by the appellant, shall stand cancelled.

To 1.The I Additional Sessions Judge, Madurai.

2.The Inspector of Police, C5, Karimedu Police Station, Madurai District 3.The Additional Public prosecutor, Madurai Bench of Madras High Court, Madurai.

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