



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.06.2012

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.32 of 2004

1.Balamurali
2.Ramalingam
3.Ramesh

.. Appellants/A1 to A3

v.

State by Inspector of Police
Oomangalam Police station
Cuddalore District.

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment of conviction dated 31.10.2003, made in S.C.No.196 of 2001 on the file of the Additional District and Sessions Court, Fast Track Court No.III, Virudhachalam.

For Appellants
For Respondent

: Mr.A.Arasu Ganesan
: Mr.C.Emalias
Govt. Advocate (Crl.side)

J U D G M E N T

The criminal appeal arises out of the judgment of conviction dated 31.10.2003, made in S.C.No.196 of 2001 on the file of the Additional District and Sessions Court, Fast Track Court No.III, Virudhachalam, whereby the accused A1 to A3 were convicted for the offence under Section 341 IPC and imposed a fine of Rs.300/- each in default in payment to undergo one month simple imprisonment.

2.The respondent police has filed a final report against the accused herein along with ten others under Sections 147, 448, 323 and 506(i) IPC and Section 3(1) of Tamil Nadu Public Properties (Loss and damage) prevention Act read with Section 149 IPC, stating that on 29.05.2000, around 8.35 a.m., the appellants and ten others, who are belonging to Dalit Panther Party, were holding wooden sticks, stones and dangerous weapons without any permission trespassed into the



complainant's premises and stopped the work of the workers at work spot and all those persons threatened the workmen with dire consequences and damaged glass windows and glass pans of the building of the sub-contractor namely M/S.Simplex Company and trespassed into the Officer's premises and caused damage to the doors and windows and then restrained P.W.7/Sunilkamath, a Civil Engineer, who was proceeding towards the entrance and he was prevented by the accused from going to the work site and assaulted him with hands and caused loss to the tune of Rs.7,00,000/- and thereby committed the aforesaid offences.

3.The learned Magistrate had taken cognizance of the aforesaid offences and committed the matter to the Principal District and Sessions Court, Cuddalore, after furnishing the copies. The learned Principal Sessions Judge after following the procedure made it over to the Additional District and Sessions Court/Fast Track Court No.III, Virudachalam. The learned Sessions Judge after following the procedure, framed necessary charges against the accused and the accused pleaded not guilty. The Sessions Court examined P.W.1 to P.W.10 and marked Exs.P1 to P7 on the side of the prosecution.

4.The case of the prosecution let in by the prosecution witnesses is as follows:

(i) The appellants/accused 1 to 3 along with 10 others, who were the members of D.P.I. on 29.05.2000, around 8.35 a.m., trespassed into the firm namely, Alston Power Private India, where P.W.1/Srinivasan was working as a Site Manager and P.W.2/Sivaraj was working as an Administrative Officer, with wooden log & deadly weapons and made criminal intimidation and prevented the workers to do their work and caused damage to the glass windows and glass pans of the building of the sub-Contractor namely, M/S.Simplex company. When P.W.7 Sunil Kamath, who was working as Civil Engineer, proceeding to his office, at the time, the accused were wrongfully restrained him and made criminal intimidation. Balamurali/A1 assaulted on his cheek and back.

(ii)Immediately, P.W.1 intimated the above occurrence to Virudhachalam Tahsildar over phone and on his instruction, P.W.2 gave Ex.P1 complaint before P.W.8/Selvam, Sub-Inspector of Police, Oomangalam police station, who received the same at 5.00 p.m. and registered a case in Crime No.136/2000 under Sections 147, 341, 336, 448, 427 and 506(i) IPC, 193 read with Section 3 of Tamil Nadu Public Properties (Loss and Damage) Prevention Act. He prepared the printed F.I.R. Ex.P4 and then he sent P.W.7/Sunil Kamath to the Government Hospital, Virudhachalam, for taking treatment along with medical memo.

(iii) P.W.9/Mangaiyarkarasi, who is the Doctor, treated P.W.7 at 6.00 p.m. on 29.05.2000 and issued Ex.P5 Accident Register Copy, stated that no injuries found.

(iv) One Emmanuel Selvanayagam, who was working as an Inspector of Police, received F.I.R. copy from P.W.8 and conducted



investigation and examined witnesses and recorded their statements. He prepared Ex.P7 Observation mahazar and drew Ex.P6 rough sketch in the presence of P.W.5 Gopalakrishnan and one Selvamani. He took steps to take photographs through P.W.6 and the photographs were marked as Ex.P3.

(v) On 04.09.2000, one Madiarasu, Inspector of Police, investigated the matter and arrested Ramesh/A3 & Kamalakannan/A5 and remanded them to judicial custody.

(vi) On 09.02.2001, P.W.10 Noorulla khan took up the matter for further investigation and examined P.W.9/Doctor and recorded her statement. He also examined other witnesses and recorded their statements. Thereafter, Mr.Doss, Inspector of Police, after completing the investigation, filed a charge sheet against the accused.

5.The trial Court placed the incriminating evidence before the accused and the accused denied the same in toto. After considering the oral and documentary evidence, the trial Court acquitted all the other accused from the charges levelled against them, except A1 to A3 and convicted them only for the offence under Section 341 IPC and imposed fine of Rs.300/- each, in default in payment, to undergo one month simple imprisonment.

6. Challenging the conviction and sentence passed by the trial Court, Mr.A.Arasu Ganesan, learned counsel for the appellants/A1 to A3 submitted that during the examination of the accused, no charge under Section 341 IPC has been framed and explained to the accused. Except the official witnesses namely, P.W.1, P.W.2 and P.W.7, other independent witnesses were turned hostile. Since the appellants and other accused were acquitted from all the other charges, the trial Court ought to have acquitted the appellants herein for the offence under Section 341 IPC, since no charge has been framed. He would take me through para-20 of the Judgment and submitted that without properly appreciated the evidence, the trial Court convicted the appellants under Section 341 IPC, which is against law. Hence, he prayed for allowing of this appeal. To substantiate his arguments, he relied upon the judgments reported in (i) 1993 Cri.L.J. 248 (The State of Gujarat v. Keshavlal Maganbhai Jogani and others) (ii) AIR 2001 SC 921(1) (Shamnsaheb M.Multtani v. State of Karnataka).

7.Resisting the same, Mr.C.Emalias, learned Government Advocate (CrI. Side) submitted that it is true, no charge under Section 341 IPC has been framed against the accused. But the evidence of P.W.1, P.W.2 and P.W.7, who are the official witnesses, would establish that the accused were wrongfully restrained P.W.7 entered into the office premises and stopped the workers, who are doing their work. The incriminating evidence has been placed before the accused at the time of questioning under Section 313 Cr.P.C. and the trial



Court is correct in convicting the accused under Section 341 IPC. Hence, he prayed for dismissal of the appeal.

8. Considered the rival submissions made on both sides and the materials available on record.

9. On perusal of the record, the charges have been framed against the accused 1 to 7, 9 and 10 under Sections 148, 448, 506(i) IPC and 3(1) of Tamil Nadu Public Properties (Loss and Damage) Prevention Act, against A1 under Section 323 IPC. In Ex.P1 complaint, it was specifically mentioned as follows:

“ வேலை செய்து வந்தவர்களை பாழறுத்தி வேலையை தடுத்து நிறுத்தி வெளியில் அனுப்பினார்கள். மேலும் எங்களது sub-contractor M/S. Simplex Company அலுவலகத்தில் அனுமதியின்றி புதுநது ஜன்னல் கண்ணாடி கதவுகளை அடித்து நொறுக்கினார்கள். மேலும் எங்கள் company-ல் Civil Engineer ஒரு பணிபுரிந்து வருகின்ற திரு.சுனில் காமத் என்பவர் company/யின் main gate-ல் வருகின்றபோது அவரை தடுத்து நிறுத்தி site/யி்ந்து உள்ளே போகக்கூடாது என்று பாழறுத்தி கையால் பலமாக அடித்துள்ளனர். ”

Admittedly, no charge has been framed against the accused under Section 341 IPC. At the time of questioning under Section 313 Cr.P.C., in question No.5, the trial Court placed the incriminating evidence against the accused and questioned that atleast 10 to 15 members were standing in front of the main gate and restrained P.W.7/Sunil kamath, who came to the office, but they denied the same and stated that it is a false evidence.

10. P.W.7/Sunil Kamath, in his chief examination, he stated that on 29.05.2000, at 8.40 a.m., when he came to his office in front of the main gate, 10 to 15 persons were standing with wooden log and they restrained him to enter into the office. Those persons were stated that they are not having work as to why P.W.7 is doing his work. Furthermore, one Balamurali, assaulted on his cheek and back. But P.W.7 did not say anything about the other accused. In such circumstances, there is no evidence to show that A1 to A3 were wrongfully restrained P.W.7 to go to the work. In para-20 of the Judgment, the trial Court has given a reason for convicting A1 to A3 under Section 341 IPC. But the reasoning given by the trial Court is unsustainable. So I am of the view, the prosecution has not proved the guilt of the accused A1 to A3 under Section 341 IPC.

11. At this juncture, it is appropriate to consider the decisions relied upon by the learned counsel for the appellants reported in (i) 1993 Cri.L.J. 248 (The State of Gujarat v. Keshavlal Maganbhai Jogani and others) in which, it was mentioned as wrongful confinement. But whereas, in the case on hand, it was mentioned as wrongfully restrained. Therefore, the above decision is not



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applicable to the facts of the present case.

(ii) AIR 2001 SC 921(1) (Shamnsaheb M.Multtani v. State of Karnataka) in which, it is held as follows:

"As regards in instant case the composition of the offence under Section 304-B, IPC is vastly different from the formation of the offence of murder under Section 302 IPC and hence the former cannot be regarded as minor offence vis-a-vis the latter. However, the position would be different when the charge also contains the offence under Section 498-A IPC (Husband or relative of husband of a women subjecting her to cruelty). So when a person is charged with an offence under Sections 302 and 498-A IPC on the allegation that he caused the death of a bride after subjecting her to harassment with a demand for dowry, within a period of 7 years of marriage, a situation may arise, as in this case, that the offence of murder is not established as against the accused. Nonetheless, all other ingredients necessary for the offence under Section 304-B IPC would stand established. In such a case the accused can be convicted for offence under Section 304-B IPC without the said offence forming part of the charge, but the conviction would be valid only if it did not occasion a failure of justice in view of Section 464(1) of Cr.P.C."

But the above decision is not applicable to the facts of the present case.

12.Considering the facts and circumstances of the case along with the evidence, there is no evidence to show that the accused 1 to 3 alone wrongfully restrained P.W.7 in front of the office gate. In my opinion, the judgment of conviction passed by the trial Court that the accused 1 to 3 are guilty for the offence under Section 341 IPC without any basis, is liable to set aside.

13.In fine,

- (1) Criminal Appeal is allowed.
- (2) The Judgment of conviction passed by the trial Court is hereby set aside.
- (3) The fine amount paid by the appellants/A1 to A3 are ordered to be refunded.

Sd/

Asst. Registrar

/True Copy/

Sub Asst.Registrar

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To

1.The Inspector of Police
Oomangalam Police station
Cuddalore District.

2.The III Additional District and Sessions Judge
Cuddalore at Virudhachalam.

3.The Public Prosecutor
High Court, Madras.

Criminal Appeal No.32 of 2004

SKD (CO)
JV / 23.08.2012