

(2007) 08 MAD CK 0064

In the Madras High Court

Case No : Criminal A. No. 563 of 2000

Gurusamy and Others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 03-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 313

Penal Code, 1860 (IPC) — Section 147, 149, 430

Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3

Citation : (2007) 08 MAD CK 0064

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : AR. L. Sundaresan for M.K. Vijayaraghavan, for the Appellant; V.R. Balasubramaniam, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

A.C. Arumugaperumal Adityan, J.—This appeal has been preferred against the judgment in S.C. No. 31 of 2000 on the file of the Principal

Sessions Judge, Erode. The accused, who have been charged and convicted u/s 147 IPC and u/s 3(ii) of Tamil Nadu Public Property (Prevention

of Damages and Loss) Act, 1992, (herein after referred to as "TNPPD Act") by the trial Court, are the appellants herein.

2. The short facts of the prosecution case is that on 12.3.1999 at about 11.00 pm to show their displeasure in raising the water tax from 35 paise

to Rs. 1/65 per 1000 litres to the Lakkampatti panchayat union on the date of occurrence, the accused formed themselves into an unlawful

assembly in front of Karattadipalayam junction at Erode-Senthamangalam main road, and damaged the gate-valve of the water pipe leading from

Gobichettipalayam panchayat union to Lakkampatti panchayat union and also

filled the tank, in which the water is being collected, with sand and stone thereby causing a loss of Rs. 5000/- to the Lakkampatti panchayat union.

3. The case was taken on file by the learned trial judge and after furnishing copies u/s 207 of Cr.P.C., to the accused, had framed the charges u/s

147 IPC and u/s 3(ii) of TNPPD Act and when questioned the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.8 were examined,

Ex.P.1 to Ex.P.7 were exhibited and M.O.1 was marked.

4. P.W.1 is the president of Gobichettipalayam Panchayat Union. According to him, he was informed by the employee of the panchayat union viz.

Rajendran on 13.3.1999 that about 6.00 am he found the gate valve of the pipe leading from Gobichettipalayam panchayat union to Lakkampatti

panchayat union was damaged and the tank for filling water was also closed with sand and stones and immediately he rushed to the place of the

occurrence and preferred a complaint Ex.P.1 with the police.

5. P.W.2-Rajendran is the informant of P.W.1 about the damages caused to the gate valve and to the tank. He would corroborate the evidence of

P.W.1 to the effect that when he went to the place of occurrence on 13.3.1999 at about 6.00 am he found the gate valve of the pipe leading from

Gobichettipalayam panchayat union to Lakkampatti panchayat union was found broken and the tank intended for collecting the water was filled up

with sand and stones and the water reading meter was also found broken and that he had immediately informed this to P.W.1.

6. P.W.3 would depose that on 12.3.1999 at about 11.00 pm while he went near the place of occurrence for attending to the call of nature he had

seen M.O.1-tractor with stones and A5 & A6 were indulging in causing damage to the lid of the tank and filled up the tank with sand and stones

with the help of other accused.

7. P.W.4 is also a chance witness. According to him, on 12.3.1999 at about 10.30 pm while he was proceeding from Bangalaputhur to

Gobichettipalayam he saw a crowd near the place of occurrence and saw M.O.1-tractor parked near the place of occurrence loaded with stones

and sand. He has also identified that A5 & A6 broke open the lock and damaged the water tank with the help of iron rod along with 10 or 20

persons and they have also caused damage to the gate valve.

8. P.W.7 is the then Sub-Inspector of Police, Gobichettipalayam Police Station. According to him, P.W.1 came to the police station on 13.3.1999

at about 1.30 pm and preferred Ex.P.1-complaint, which was registered by him under Gobichettipalayam Police Station Cr. No. 88/1999 u/s 430

IPC and u/s 3(ii) of the TNPPD Act. Ex.P.6 is the FIR.

9. P.W.8 is the investigating officer, who had visited the place of occurrence on 14.3.1999 at 5.30 pm and prepared observation mahazar-Ex.P.2

in the presence of P.W.5 and had drawn Ex.P.7-rough sketch. He has examined the witnesses and recorded their statements. He had arrested the

A1 on 14.3.1999 at 5.30 pm near Nallagoundanpalayam village and recorded the voluntary confession statement of A1 in the presence of P.W.5.

The admissible portion of the confession statement of A1 is Ex.P.3. On the basis of Ex.P.3-confession statement, he had seized M.O.1-tractor,

which was parked within the premisses of Lakkampatti panchayat Union office under Ex.P.4-mahazar in the presence of P.W.5. He has made

arrangements to assess the value of the damage caused by the accused. Ex.P.5 is the valuation report submitted by P.W.6.

10. P.W.6, the then Health Inspector of Gobichettipalayam, as per the letter of requisition made by the Investigating Officer dated 28.7.1999, has

assessed the value of damages caused to the gate valve and the lid of the tank as Rs. 5000/- including labour charges and the supervision charges.

Ex.P.5 is his valuation report, which was marked subject to objection by otherside.

11. After completing the investigating, P.W.8 has filed the charge sheet against the accused.

12. When incriminating circumstances were put to the accused u/s 313 of Cr.P.C, the accused would deny their complicity with the crime. After

going through the oral and documentary evidence, the learned trial Judge has held that the accused are guilty u/s 147 IPC and u/s 3(ii) of TNPPD

Act and sentenced them to undergo six months RI u/s 147 IPC and 4 years RI u/s 3(ii) of TNPPD Act, which necessitated the accused to prefer

this appeal.

13. Heard the learned senior counsel Mr. AR.L. Sundaresan appearing for the appellants and learned Additional Public Prosecutor Mr. V.R.

Balasubramaniam and considered their respective submissions.

14. Now the point for determination in this appeal is whether the findings of the learned trial judge in holding that A1 to 3 and A5 to A9 are guilty

u/s 149 and u/s 3(ii) of TNPPD Act is sustainable for the reasons stated in the memorandum of appeal?

15. The Point:-According to the prosecution on the date of occurrence ie. on 12.3.1999 at about 11.00 pm the accused to show their anguish in

respect of the increase of water tax from 30 paise to 1.65 paise per 1000 litres in the year 1968, formed themselves into an unlawful assembly and

caused damage to the public property like gate valve, water tank to the tune of Rs. 5000/-. P.W.1, who had preferred Ex.P.1-complaint, is not an

eye witness to the occurrence. According to him, P.W.2 has informed about the damages to the public property like gate valve and water tank.

The case of the prosecution hinges upon the evidence of P.W.3 and P.W.4, who are chance witnesses. According to P.W.3 & P.W.4, A5 & A6

broke open the lid and with the assistance of the other accused, have filled up the water tank with sand and stone and also damaged the water

reading meter. But unfortunately in this case not even in the observation mahazar Ex.P.2 the alleged damage to the gate valve, water tank and

water reading meter were mentioned. Further the alleged damaged articles like gate valve, water reading meter or the lid of the water tank were

also not seized and produced by the Investigating Officer in this case. The prosecution relied on Ex.P.5, the report for assessing the damages

produced by P.W.6-Health Officer of Gobichettipalayam Municipality. According to P.W.6, he visited the place of occurrence as per the letter of

requisition made by the Investigating Officer on 28.7.1999. He has also referred about the letter dated 28.7.1999 in Ex.P.5 under the reference

column. In the cross-examination P.w.6 would admit that Ex.P.5-certificate was issued by him on 3.8.1999. He would say that he prepared

Ex.P.5 even on 13.3.1999 itself. But he would admit that he has not mentioned in Ex.P.5, that Ex.P.5 was prepared on 13.3.1999 itself. He would

further admit that there are Engineers available in the Gobichettipalayam Municipality to assess the damages and that the Commissioner has got

powers to direct any Engineer, Health Officer or Town Planing Officer, to assess the value of the damages. There is no authorisation letter of the

Commissioner of the Municipality authorising P.W.6 to assess the damages in this case was produced by him. Under such circumstances, there is

absolutely no evidence on record to warrant conviction u/s 147 IPC and u/s 3(ii) of TNPPD Act against the accused. Point is answered accordingly.

16. In fine the appeal is allowed and the conviction and sentence u/s 147 IPC and u/s 3(ii) of TNPPD Act passed by the trial Court in S.C. No.

31 of 2000 on the file of the Principal Sessions Judge, Erode, is set aside and the accused are acquitted from all the charges levelled against them.

Bail bonds shall stand cancelled.