

(2003) 02 MAD CK 0154

In the Madras High Court

Case No : Criminal Appeal No. 627 of 1996

Nagarajan, Muthu Visayan, Perumal, Vadivel, Rasapillai,
Chettan and Murugan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 114
Madras Prohibition Act, 1937 — Section 4(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 224, 225
Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3(1)

Citation : (2003) 02 MAD CK 0154

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : S. Ashok Kumar, for N. Mohideen Basha, for the Appellant; K.V. Jayaprakash Narayanan, Government Advocate (Crl. Side), for the Respondent

Judgement

P.D. Dinakaran, J.—This appeal is directed against the judgment dated 23.7.1996, convicting and sentencing the appellants herein, viz., A1, A2, A3, A4, A8, A14 and A16 in S.C. No. 36 of 1996 on the file of the Principal Sessions Judge, Kamarajar District at Srivilliputtur. One Nallaperumal, who was arrayed as A15, died even before framing of the charges and therefore, the charges framed against him got abated. All the other accused, viz., A5 to A7, A9 to A13 were acquitted.

2. For the purpose of convenience, the parties are arrayed as per their rank before the trial Court in S.C. No. 36 of 1996.

3.1. The case of the prosecution, as unfolded by the evidence of P.W.1, is stated in brief as follows:

(i) P.W.1, the Sub-Inspector of Police at Paralachi Police Station, while conducting

a prohibition ride in the Melaiyur-Salaiyur Main Road at 8.15 p.m. on 16.2.1995, found three persons, viz., Chettan (A14), Nallaperumal, the deceased accused (A15) and Murugan (A16), were selling brandy in their respective petty shops without any license, in violation to the provisions of the Tamil Nadu Prohibition Act. P.W.1, therefore, arrested A14 to A16 for the offence u/s 4(1)(i) of the Tamil Nadu Prohibition Act in Crime Nos. 17, 18 and 19 of 1995 respectively, and took them to the police station at about 8.30 p.m. under police custody. Immediately thereafter, viz., at about 8.45 p.m., Perumal (A3) Nagarajan (A1) Muthu Visayan (A2), Vadivel (A4) Perumal, Gurusamy (A5) with about 12 others, armed with stick, aruval and stones, attacked the police station to rescue A14, A15 and A16 and took A14, A15, and A16 along with them. At the time of the attack, Police Constables viz., Sankaraiah, Anthoni (P.W.2) and Ramasubbu were present in the Police Station.

(ii) P.W.1 further deposed that the accused persons A1 to A13, during the said attack, caused damage to the mirror frame (M.O.1), mud water pot (M.O.2) and mirror (M.O.3) in the Police Station.

3.2. The accused, viz., A1 to A16, accordingly, were charged as follows:

(i) A1 and A2 were charged for the offence u/s 148 I.P.C., alleging that they, with a common intention, attacked the police station, armed with aruval, along with A3 to A13;

(ii) A3 to A13 were charged for the offence u/s 147 I.P.C., alleging that they attacked the police station by pelting stones, along with A1 and A2, with a common intention of rescuing A14, A15 and A16 from the custody of the police;

(iii) A1 to A13 were charged for the offence u/s 506(ii) I.P.C., alleging that they threatened to cause death and/or grievous hurt on P.W.1 and other Police Constables in the police station with the deadly weapon, viz., aruval;

(iv) A4, A5, A7 and A8 were charged for the offences u/s 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992 alleging that they damaged the mirror frame (M.O.1), mud water pot (M.O.2) and mirror (M.O.3);

(v) A1 to A3, A6 and A9 to A13 were charged for the offence u/s 225 I.P.C., alleging that they rescued A14, A15 and A16, who were lawfully detained by P.W.1 and other Police Constables;

(vi) A4, A5, A7 and A8 were charged for the offence u/s 225 read with 149 I.P.C., alleging that they intentionally offered to rescue A14, A15 and A16 from the custody of the police;

(vii) A14 and A16 were charged for the offence u/s 224 I.P.C., alleging that even though they were in police custody in Crime Nos. 17 and 19 of 1995 respectively, they escaped from the custody of the police; and

(viii) A1 to A3, A6, A9 to A13, A14 and A16 were charged for the offence u/s 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992 read

with Section 149 I.P.C. alleging that they caused damages to the properties of the complainant.

4.1. To substantiate the charges, the prosecution examined five witnesses viz., P.W.1 to P.W.5; marked five documents viz., Ex.P1 to Ex.P5; and produced three material objects viz., M.O.1 to M.O.3.

4.2. P.W.1-Sundar Rajan was the Sub Inspector of Police, who found A14, A15 and A16 selling brandy, arrested and took them to the Paralachi police station under police custody at 8.30 p.m. on 16.2.1995 for the offence u/s 4(1)(i) of the Tamil Nadu Prohibition Act. P.W.2-Anthony Joseph was the Head Constable, who was present in the Police Station at the time when the occurrence took place. P.W.3-Ramakrishnan, is a Police Constable and a mahazar witness. P.W.4-Paramasivam was the Inspector of Police, who conducted investigation and enquired P.Ws.1 and 2, through whom five documents, viz., Exs.P1 to P5, were marked.

4.3. Ex.P1 was the complaint given by P.W.1, based on which the First Information Report (Ex.P4) was registered and rough sketch (Ex.P5) relating to the scene of occurrence was prepared by P.W.4.

4.4. During the investigation, three material objects were produced viz., broken mirror frame (M.O.1), broken mud water pot (M.O.2) and broken mirror (M.O.3).

5.1. On being questioned in the trial u/s 313 Cr.P.C., all the accused denied the charges.

5.2. Accepting the case of the prosecution, by judgment dated 23.7.1996 made in S.C. No. 36 of 1996, the learned Principal Sessions Judge, Kamarajar District at Srivilliputtur, convicted

(i) A1 and A2 for the offences punishable u/s 148 I.P.C., Section 225 I.P.C. and Section 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992, and sentenced them to undergo three months, six months and one year rigorous imprisonment, for the said offences respectively;

(ii) A3 u/s 147 I.P.C., Section 225 I.P.C. And Section 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992, and sentenced him to undergo three months, six months and one year rigorous imprisonment, for the said offences respectively;

(iii) A4 and A8 for the offences punishable u/s 147 I.P.C. and Section 225 r/w 149 I.P.C. and sentences them to undergo three months and six months rigorous imprisonment, for the said offences respectively;

(iv) A14 and A16 for the offences punishable u/s 224 I.P.C. and Section 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992, and sentenced them to undergo six months and one year rigorous imprisonment, for the said offences respectively;

and ordered the said sentences to run concurrently. All other accused were acquitted of the respective charges framed against them.

5.3. Aggrieved by the aforesaid decision of the trial Court, this appeal has been filed.

6.1. Mr. S. Ashok Kumar, learned counsel appearing for the appellant, inviting my attention to the evidence of the eye-witnesses viz., P.Ws.1 and 2, and the Investigating Officer (P.W.4), points out that the only motive for the alleged crime as set forth by the prosecution witnesses was to rescue A14, A15 and A16, who were claimed to be arrested and taken to the police station under police custody by P.W.1 for the offence u/s 4(1)(i) of the Tamil Nadu Prohibition Act in Crime Nos. 17, 18 and 19 of 1995 respectively, at about 8.30 p.m. on 16.2.1995, for having found them selling brandy in their respective petty shops at the Melaiyur-Salaiyur Main Road, even though A14, A15 and A16 were in lawful detention.

6.2. Mr. S. Ashok Kumar, learned counsel for the appellant, inviting my attention to the testimony of P.Ws.1, 2 and 4, both in the chief and cross examinations, argues that the prosecution had miserably failed to prove the case beyond all reasonable doubts for not having produced any relevant material before the Court that A14, A15 and A16 were shown as accused in Crime Nos. 17, 18 and 19 of 1995 respectively, on the file of the Paralachi Police Station for the offence u/s 4(1)(i) of the Tamil Nadu Prohibition Act; nor the respondent/prosecution produced any material evidence, such as arrest card for having arrested A14, A15 and A16 in Crime Nos. 17, 18 and 19 of 1995 respectively, or the Police Diary or any other incriminating documentary evidence with reference to the said Crime Nos. 17, 18 and 19 of 1995. Hence, the learned counsel contends that once the motive itself is not proved by the prosecution, it may not be safe to convict the accused persons for any of the offences charged.

7.1. Per contra, Mr. K.V. Jayaprakash Narayanan, learned Government Advocate (Crl. Side), appearing on behalf of the respondent, placing reliance on the ocular evidence of P.Ws.1 and 2 and the testimony of the Investigating Officer (P.W.4) contends that P.Ws.1, 2 and 4, being Public Authorities, their action and testimony are presumed to be valid in law as per Illustration (e) to Section 114 of the Indian Evidence Act, and therefore, the case of the prosecution need not be rejected merely for want of production of the records, i.e., either the Police Diary, arrest card or the First Information Report relating to Crime Nos. 17, 18 and 19 of 1995, in which A14, A15 and A16 were booked respectively for the offence punishable u/s 4(1)(i) of the Tamil Nadu Prohibition Act.

7.2. It is also contended that the production of material objects M.O.1 broken mirror frame, M.O.2, broken mud water pot, and M.O.3 broken mirror, in the light of the testimony of P.Ws.1 and 2, would, by themselves, substantially prove the common intention of the accused persons to rescue A14, A15 and A16 to attack the police station and to cause damage to the properties of the

complainant attracting Sections 147, 148, 149, 224, 225 I.P.C. and Section 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992 against which the accused-appellants are rightly charged and convicted, and therefore, no interference is sought for in the judgment of conviction.

8. I have given careful consideration to the submissions of both sides, and the sole question that falls for decision in this appeal is whether the judgment of conviction dated 23.7.1996 made in S.C. No. 36 of 1996 of the Principal Sessions Judge, Kamarajar District at Srivilliputtur is justified in law.

9. The specific case of the prosecution is that P.W.1 arrested A14, A15 and A16 in Crime Nos. 17, 18 and 19 of 1995 respectively, on the file of the Paralachi Police Station for an alleged offence u/s 4(1)(i) of the Tamil Nadu Prohibition Act at about 8.30 p.m. on 16.2.1995 and took them to the police station under police custody, and therefore, A1 to A13, with a common intention to rescue A14, A15 and A16, attacked the police station, caused damage to the properties of the complainant, viz., M.Os.1 to 3, and during the course of the occurrence, A14, A15 and A16 escaped from the custody in which they were lawfully detained for the offence u/s 4(1)(i) of the Tamil Nadu Prohibition Act.

10. Concededly, no documentary evidence relating to the arrest of A14, A15 and A16, viz., Police Diary, arrest card, much less the First Information Report relating to Crime Nos. 17, 18 and 19 of 1995 on the file of the Paralachi Police Station for having arrested A14, A15 and A16 u/s 4(1)(i) of the Tamil Nadu Prohibition Act, were produced.

11. Of course, Mr. K.V. Jayaprakash Narayanan, learned Government Advocate (Crl. Side), would contend that P.W.1 is a public servant and his testimony with reference to his official act cannot be doubted, particularly when the testimony of P.W.1 corroborates with that of the ocular evidence of P.W.2, who was also present at the scene of occurrence. But, I am unable to appreciate the above submission of the learned Government Advocate in this regard, because, P.Ws.1 and 2, being police officials are expected to know the procedure relating to the investigation and the standard of proof required to prove the charges. P.W.1, Sub Inspector of Police, has stated that he prepared the First Information Report in Crime Nos. 17, 18 and 19 of 1995 against A14, A15 and A16 respectively, and also the arrest card for the arrest of A14, A15 and A16, but the same were not recovered by the Investigating Officer (P.W.4), nor marked on behalf of the prosecution during the trial by P.W.1. The failure to recover the records relating to the entry of the First Information Report in Crime Nos. 17, 18 and 19 of 1995 was accepted by the Investigating Officer (P.W.4) in his cross-examination. Even though an act done by a public officer (P.W.1) is presumed to be done in a lawful manner, in my considered opinion, such presumption cannot be made without any piece of evidence.

12. The Apex Court, in *Sone Lal and Others Vs. The State of U.P.*, : interpreting Illustration (e) to Section 114 of the Indian Evidence Act with reference to the

presumption of due performance of official duties and acts on the part of the police officials, held that once the prosecution had shown that regular entries were made in public document, namely, the general diary regarding the registration of the case and the forwarding of the special report to the higher authorities and of the return of the person, who had taken the special report to the police station, the legal presumption would be that official acts must have been duly performed. The Apex Court further observed that it would have been better if the prosecution would have completed the link in the chain by examining the person who had taken the special report to show the exact time when the First Information Report was received by the Magistrate or the Superintendent of Police, but even if it did not do so that was not sufficient to put the prosecution out of Court. In the said case, the prosecution had proved the documentary evidences, viz., with reference to the regular entries that were made in the public document relating to the registration of First Information Report showing the arrest of the accused, by issuing arrest card, etc. However, no oral evidence was let in, to complete the link in the chain whether regular entries were made in the public documents and forwarded to the Magistrate and to the higher authorities.

13. The case on hand is one of reverse. Even though P.W.1 speaks about such entries, there is absolutely no evidence on record to show that those entries have been made in the public documents. The prosecution, having failed to show the regular entries made in the public documents, such as registration of First Information Report in Crime Nos. 17, 18 and 19 of 1995, police diary or arrest card with reference to the arrest of A14, A15 and A16 in the said crime numbers to show that they were arrested and took to the police station, the respondent/prosecution, in my considered opinion, is not entitled to take shelter under Illustration (e) to Section 114 of the Indian Evidence Act. The mere submission made by the learned Government Advocate that the testimony of P.Ws.1 and 2 are expected to be trustworthy to prove the motive on the part of the accused to commit the offence would not be sufficient to prove the case of the prosecution as against the accused persons. Once the basis for the alleged motive has not been established, and P.Ws.1 and 2, the eye-witnesses to the occurrence, admitted that the documentary evidence relating to regular entries in the public document with reference to the offence in Crime Nos. 17, 18, and 19 of 1995 were not recovered by P.W.4, the Investigating Officer it leads to a serious doubt as to what extent the testimony of P.Ws.1 and 2 could be relied upon, for want of such material evidence to substantiate the presumption relied upon by the prosecution under Illustration (e) to Section 114 of the Indian Evidence Act.

14. It is settled law that the prosecution should prove the arrest of the accused u/s 224 I.P.C. even to charge A14 and A16 for the offence u/s 224 I.P.C. In the instant case, according to the prosecution, the arrest of the accused A14, A15 and A16 was lawful. But, the prosecution had failed to establish that the very apprehension of A14, A15 and A16 was lawful or that they were lawfully detained. Under the above facts and circumstances of the case, the charge

framed against A14, A15 and A16 for the offence u/s 224 I.P.C. are not attracted and consequently, the charges framed against A1 to A13 for the offences under Sections 225 read with 149, I.P.C., are also not attracted, as the prosecution has failed to prove the link in the chain of their case.

15. The other point that arises for my consideration is as to what extent the charges against the accused with respect to causing of damage to the properties u/s 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992, is sustainable.

16. The ocular evidence of P.Ws.1 and 2 with regard to causing of damage to the properties in the police station, viz., M.Os.1 to 3, is very vague. They only say that the accused, while going out from the police station, damaged mirror and the mud water pot. In Ex.P1, viz., the complaint, P.W.1 has stated that the accused persons pelted stones. Even though the prosecution has produced M.Os.1 to 3 as material objects, not even a single stone was recovered and marked as a material object to substantiate the charge. In the absence of any corroborative evidence, viz., recovery of stones said to have been used for the commission of offence, it may not be safe to convict the accused u/s 3(1) of the Tamil Nadu Properties (Prevention of Damage & Loss) Act, 1992. This aspect of the case was not properly appreciated by the learned Principal Sessions Judge, Kamarajar District at Srivilliputtur in his judgment dated 23.7.1996 made in S.C. No. 36 of 1996, which requires this Court to interfere with the same.

Hence, for the aforesaid reasons, holding that the respondent/prosecution had failed to prove charges beyond all reasonable doubts against the accused/appellants, this appeal is allowed, the judgment of conviction dated 23.7.1996 made in S.C. No. 36 of 1996 of the learned Principal Sessions Judge, Kamarajar District at Srivilliputtur is set aside and the accused are acquitted. The bail bonds executed by them gets discharged.