

BAIL SLIP

The Appellant/Accused was directed to be enlarged on bail made in M.P.NO.1/2007 in CrI.Appeal No.402/2007 dated 23.04.2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CrI.A.No.402 of 2007

Karnan ... Appellant/accused
(Amended as per order dated
13.06.2007 in M.P.No.2 of 2007)

...Vs...

The State
Rep. by Inspector of Police,
Dharapuram police station
Erode District.
Crime No.556 of 2006. ... Respondent

Prayer:- Appeal filed under Section 374 of Cr.P.C. against the Judgment of conviction and sentence dated 09.04.2007 made in S.C.No.4 of 2007 on the file of the Principal District and Sessions Court, Erode.

For Appellant : Mr.D.Selvaraju

For Respondent : Mr.V.Arul

Government Advocate (CrI.side)

JUDGMENT

This Criminal appeal arises out of the Judgment of conviction and sentence dated 09.04.2007 made in S.C.No.4 of 2007 on the file of the Principal District and Sessions Court, Erode, whereby the appellant/accused was convicted and sentenced as follows:

offence under Section	Sentence
3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act	To undergo one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default in payment to undergo six months rigorous imprisonment.
3(5) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act	To undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default in payment to undergo three months rigorous imprisonment.
323 IPC	To undergo six months rigorous imprisonment.
The sentences are ordered to be run concurrently.	

2.The case of the prosecution is as follows:

(i) On the side of the prosecution, P.W.1 to P.W.11 were examined and Exs.P1 to P9 and M.O.1 to M.O.5 were marked.

(ii) On 21.07.2006, at about 2.50 p.m., P.W.2/Kalimuthu was travelling from Manakadavu to Dharapuram in a private bus. Some passengers were getting down at Upputhurai palayam. When the bus was proceeding near Amaravathy river bridge, a person came across the road and made quarrel with the bus driver namely Sakthivel/P.W.1. At that time, the accused had pelted a stone on the right side, due to which, the driver Sakthivel sustained injury on his forehead and left hand. Then the accused had pelted another stone on the left side, due to which, P.W.2 sustained injury on his head. Then P.W.3/conductor informed the same to the relative of P.W.2. After intimating the same to his house, P.W.2 was admitted in the Dharapuram Government Hospital.

(iii) P.W.1/Sakthivel deposed that 50 persons came across the road and pelted stones on the front side mirror of the bus, due to which, he sustained injury. Then he went to Dharapuram Government Hospital for treatment and gave Ex.P7 complaint to the police and his signature in the complaint was marked as Ex.P1.

(iv) On information, P.W.10/Murugan, Sub-Inspector of Police, Dharapuram Police Station, went to Dharapuram Government Hospital, and received Ex.P7 complaint from P.W.1 and registered a case in Crime No.556 of 2006 under Sections 3 and 4 of TNPPDL Act and Section 323 IPC and prepared Ex.P8 printed F.I.R.

(v) On 21.07.2006, at about 6.00 p.m. P.W.11/Sivakumar, Inspector of Police, took up the case for investigation and prepared Ex.P2 observation mahazar and drew rough sketch Ex.P9 in the presence

of P.W.7/Karthikeyan and one Rajasekaran. Then he seized material objects M.O.3 to M.O.5. He sent the bus bearing Registration No.T.N.33 AY2772 for inspection to the Motor Vehicle Inspector. On 22.07.2006, P.W.11 examined the owner of the bus P.W.5/Palanisamy. He arrested the accused near Aindhumukku bus stop and sent him to judicial custody.

(vi) P.W.9/Udayakumar, Motor Vehicle's Inspector, Perundurai inspected the bus and gave Ex.P6 Inspection report, in which, it was stated as follows:

"1.Front windscreen glass broken
2.Front head light two numbers, front indicator two numbers (front right, front left indicator one number broken.
3.Driver backside glass 1 number broken."

(vii) P.W.8/Dr.Rathnasamy, who treated P.W.1/Sakthivel and P.W.2/Kalimuthu gave Exs.P4 and P5 wound certificates and opined that the injuries sustained by them are simple in nature.

(viii) On 04.08.2006, P.W.6/Karthikeyan took photographs and the same were marked as M.O.1 series and M.O.2/C.D.

(ix) P.W.11 examined all the witnesses and recorded their statements. After completing investigation, on 11.08.2006, he filed a charge sheet against the accused for offences under Sections 3(1) and (5) of TNPPDL Act and 323 IPC.

3.The Trial Court placed the incriminating evidence before the accused persons under Section 313(1)(b) of Cr.P.C. and the accused denied the same in toto. On the side of the defence, no oral and documentary evidence were let in. After considering the oral and documentary evidence on the side of the prosecution, the trial Court convicted and sentenced the accused as stated above.

4.Challenging the conviction and sentence passed by the trial Court, the learned counsel for the appellant/accused raised the following points:

(i) Evidence of P.W.1 clearly proved that no such occurrence was taken place.

(ii) There is a contradiction between the evidence of P.W.1/Driver of the bus and P.W.8/Doctor.

(iii) There is a contradiction between Ex.P6/Motor Vehicle's Inspector's report and M.O.1/photographs of the bus.

(iv) Since the appellant/accused is belonging to one political party, taking vengeance against him, a false case has been foisted against him.

(v) As per the evidence of P.W.1 to P.W.3, a mob has caused damage to the bus, but whereas the trial Court has wrongly found that the appellant is guilty for the said offences.

Therefore, he prayed for allowing the appeal.

5. Resisting the same, learned Government Advocate (Crl. side) submits that the trial Court after considering all the aspects in proper perspective, rightly convicted and sentenced the appellant/accused. Therefore, he prayed for dismissal of the appeal.

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

7. The case of the prosecution is that on 21.07.2006 at about 2.50 p.m., when the private bus bearing Registration No. TN33 AY 2772 was proceeding to Dharapuram and after reaching Upputhurai palayam, near Amaravathy river bridge, the accused on seeing the bus, was standing in front of bus and pelted two stones on the bus and caused damage to the bus, due to which, P.W.1/driver and P.W.2/Kalimuthu were sustained injuries.

8. Now this Court has to be decided that whether the conviction and sentence passed by the trial Court in respect of offence under Section 323 IPC is sustainable? P.W.1/Sakthivel is the driver of the bus; P.W.2/Kalimuthu is the passenger; P.W.3/Maniyan is the Conductor and they are the eye witnesses of the occurrence. Admittedly, on the basis of Ex.P7 complaint, Ex.P8 F.I.R. was registered. But P.W.1/Sakthivel, who is the defacto complainant, has turned hostile and he has not corroborated the averments in Ex.P7 complaint.

9. It is well settled dictum of the Apex Court that F.I.R. is not a substantial piece of evidence and it can be used for corroboration and contradiction.

10. In the case on hand, P.W.1/defacto complainant himself has not supported the averments in the complaint. Hence, no reliance can be placed on Ex.P7 complaint. To prove the same, P.W.10/Murugan, Sub Inspector of Police, who registered the case, was examined, but he is not an author of Ex.P7. सत्यमेव जयते

11. Furthermore, the appellant/accused was convicted for offences under Section 323 IPC for causing injuries to P.W.1 and P.W.2. P.W.2/Kalimuthu was first seen by P.W.8/Dr. Rathnasamy, who gave Ex.P5 wound certificate, in which, it was stated as P.W.2 was assaulted by five persons with hand and stone and he sustained following injuries:

- "1. 3 X 5 cm contusion with $\frac{1}{2}$ X $\frac{1}{2}$ cm abrasion right parietal area of the head.
2. Pain in the chest"

12. P.W.2 in his cross-examination, deposed that while nearly 50 persons were coming across the road, P.W.1 immediately stopped the

bus. In his cross-examination, he deposed that he has not stated before the Doctor that he was assaulted by fifteen persons with hand and stone. It shows there is contradiction between the oral evidence of P.W.2 and medical evidence of P.W.8.

13. In a criminal jurisprudence, it is the duty of the prosecution to prove the guilt of the appellant/accused beyond all reasonable doubt and conviction cannot be based on inference and presumption.

14. As already stated supra, there is contradiction between the evidence of P.W.2 and evidence of P.W.8/Doctor and Ex.P5/wound certificate. In such circumstances, I am of the view, the prosecution has failed to prove that the appellant/accused is guilty for offence under Section 323 IPC beyond reasonable doubt and the conviction under Section 323 IPC for causing injuries to P.W.1 and P.W.2 is unsustainable. Therefore, the conviction and sentence passed by the trial Court in respect of offence under Section 323 IPC are hereby set aside.

15. Now this Court has to decide whether conviction and sentence passed by the trial Court for offences under Sections 3(1) and 3(5) of the TNPPDL Act is sustainable? As already stated that P.W.1/Sakthivel is the driver of the bus and he is the complainant. In his chief-examination, he deposed that a mob consisting of 50 persons came across the road and pelted stones, which caused damage to the bus, but he turned hostile.

16. It is well settled dictum of the Apex Court that evidence of hostile witness can be relied upon provided it must be corroborated by other witnesses on facts.

17. P.W.2 in his cross-examination deposed that after seeing the mob consisting of 50 persons, P.W.1 stopped the bus and then only the occurrence was taken place. P.W.3/Manian, conductor of the bus corroborated the evidence of P.W.2. It is the case of prosecution that the appellant/accused has pelted stones on the bus, which caused damage to the bus. But there is no evidence to show that the appellant/accused alone has pelted stones and caused damage to the bus.

18. It is pertinent to note that P.W.9/Motor Vehicle's Inspector, gave Ex.P6 report, in column 12 under details regarding damage sustained by the vehicle, damages caused to the bus were mentioned as follows:

- "1. Front windscreen glass broken
2. Front head light two numbers, front indicator two numbers (front right, front left indicator one number broken.

3.Driver backside glass 1 number broken. "

19.Furthermore, M.O.1 series/photographs of the bus shows that front glass, head light and indicator alone were damaged. So it is clearly proved that the evidence of P.W.9 and Ex.P6 are not trustworthy and hence, they are hereby discarded. In such circumstances, I am of the view, the prosecution has failed to prove that the appellant/accused is guilty for offences under Sections 3(1) and (5) of the TNPPDL Act beyond reasonable doubt and the conviction for the aforesaid offences for causing damage to the bus is unsustainable. Therefore, the conviction and sentence passed by the trial Court in respect of offence under Sections 3(1) and (5) of TNPPDL Act are hereby set aside.

20.Considering the aforestated circumstances of the case, I am of the considered opinion, P.W.1 to P.W.3, who are eye-witnesses of the occurrence have not supported the case of prosecution. Therefore, the prosecution has failed to prove that the appellant/accused is guilty for offences under Sections 3(1) and 3(5) of TNPPDL Act and 323 IPC beyond all reasonable doubt. The benefit of doubt is given in favour of the appellant/accused and he is acquitted from the charges levelled against him. The trial Court has committed an error in convicting the appellant/accused for the aforesaid offences and hence, the judgment of conviction and sentence passed by the trial Court is hereby set aside.

21.In fine,

- The Criminal Appeal is allowed by setting aside the Judgment of conviction and sentence dated 09.04.2007 made in S.C.No.4 of 2007 on the file of the Principal District and Sessions Court, Erode.
- The appellant/accused is acquitted from the charges levelled against him and he is set free.
- The fine amount paid by the appellant is ordered to be refunded to him.
- Bail bond executed by the appellant/accused shall stand cancelled.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Court, Erode.

2.The State

Rep. by Inspector of Police,
Dharapuram police station
Erode District.

3.The Public Prosecutor, High Court, Chennai.

4. The Record Keeper, Criminal Section,
High Court, Chennai.

5.The Judicial Magistrate, Dharapuram

6.The Chief Judicial Magistrate, Erode9for information)

7.The Director Gneral of Police, Myalpore, Chennai-4

8.The Disrict Collector, Erode.

9.The Superintendent of Police, Central Prison, Coimabatore.

Copy to:

The Section Officer, Criminal Section, High Court, Madras.

1 cc to Mr.D.Selvaraju ,Advocate, SR.No.15087

AD(co)
pmk.29.4.2015

Cr1.A.No.402 of 2007

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