

Bail Slip

The Appellant/Accused namely Sankar S/o Kuppan was directed to be released or bail by the Order of this Court dated 31/12/2008 and made in Crl.M.P.No.1 of 2008 in Crl.A.No.869 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20-11-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.869 of 2008

Sankar Appellant

Vs.

State Rep. by
Inspector of Police,
Kalavai Police Station
Vellore District
(Crime No.125/2007)

... Respondent

Criminal Appeal under Section 374(ii), Cr.P.C., to call for the entire records in connection with S.C.No.212 of 2008 on the file of the Additional District and Sessions Judge, Ranipet (Fast Track Court-2, Ranipet), Vellore District and set aside the judgment dated 19-12-2008.

For appellant :: Mr. E.Kannadasan

For respondent :: Mr. P. Govindarajan,
Addl. Public Prosecutor

JUDGMENT

The convictions and sentences, dated 19-12-2008 passed in Sessions Case No.212 of 2008 by the Additional District and Sessions Judge, Ranipet (Fast Track Court-2, Ranipet) are being challenged in the present criminal appeal.

2. The case of the prosecution is that on 13-10-2007 at about 8:10p.m., near Jayamurugan Cloth Store, the accused has abruptly stopped the bus bearing Registration No.TN-25-A-2799 and hurled invectives against the driver by using filthy words and also pelted stones on the bus and thereby, caused damage to the tune of Rs.2950/-(Rupees Two thousand nine hundred fifty only). Further the accused has caused simple injury to one person by name Parasuraman. After occurrence, the driver of the bus by name Babu, as defacto complainant has given the complaint in question and the same has been registered in Cr.No.125 of 2007. The complaint given by the defacto complainant has been marked as Ex-P1. On receipt of Ex-P1, the Investigating Officer, P.W.11 has taken up investigation, examined connected witnesses and after his transfer, his successor-in-office viz., P.W.12 has conducted further investigation and laid a final report on the file of the District Munsif cum Judicial Magistrate Court, Arcot and the same has been taken on file in P.R.C. No.2 of 2008.

3. The Judicial Magistrate, Arcot after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court has committed the case to the Court of Sessions, Vellore Division and the same was taken on file in Sessions Case No.212 of 2008 and subsequently, made out to the Trial Court.

4. The Trial Court after hearing arguments of both sides and upon perusing the records has framed the charge against the accused under Sections 341, 323, 294(b) and 506(ii), IPC read with Section 3 of Tamil Nadu Public Property Damages Act ('TNPPDAct' in short) and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

5. On the side of the prosecution, P.Ws.1 to 12 have been examined and Exs-P1 to P9 and M.Os.1 and 2 have been marked.

6. When the accused has been questioned under Section 313 of the Code of Criminal Procedure as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

7. The Trial Court after hearing arguments of both sides and upon perusing the evidence on record has found the accused

guilty under Section 341 and sentenced him to undergo one month simple imprisonment. The Trial Court has also found him guilty under Sections 323 and 294(b) and sentenced him to undergo three months' simple imprisonment each. Further, the accused has been found guilty under Section 3 of the TNPPD Act and was sentenced to undergo one year simple imprisonment with a fine of Rs.5000/-(Rupees Five thousand only), with usual default clause. The Trial Court has acquitted the accused in respect of charge under Section 506(ii), IPC. Against the convictions and sentences passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused, as appellant.

8. The learned counsel appearing for the appellant/accused has contended that the entire case of the prosecution is based on the evidence of P.W.1 and during the course of cross-examination, he has categorically admitted to the effect that he has not seen the accused prior to occurrence and further, he has stated to the effect that on the date of occurrence itself, the Police have arrested the accused. But P.W.11, the Investigating Officer has given evidence to the effect that only on the next day, he has arrested the accused and since material contradictions are available with regard to the date of arrest, the entire case of the prosecution is nothing but false and the Trial Court without considering the vital contradictions found on the side of the prosecution has erroneously found the accused guilty under Sections 341, 323, 294(b), IPC and also under Section 3 of the TNPPD Act and therefore, the convictions and sentences passed by the Trial Court are liable to be interfered with.

9. Per contra, the learned Additional Public Prosecutor has contended that the defacto complainant has been examined as P.W.1 and his specific evidence is that in the place of occurrence the accused has abruptly stopped the bus and also pelted stones towards it and thereby, caused damages. Further, P.W.1 has stated in his evidence that the accused has hurled invectives against him by using filthy words and apart from the evidence given by P.W.1, the injured witness, Parasuraman has also given his evidence and his specific evidence is that due to the overtact of the accused, he has sustained injuries. Further, the evidence given by P.W.2, Doctor also is to the effect that Parasuraman has sustained injuries due to glass pieces and his report is marked as Ex-P2 and the Trial Court after considering overall evidence available on record found the accused guilty under Sections 341, 323, 294(b), IPC and also under Section 3 of the TNPPD Act and therefore, the convictions

and sentences passed by the Trial Court do not warrant interference.

10. As admitted to earlier the entire case of the prosecution is based upon Ex-P1, complaint wherein it has specifically stated about the overtacts alleged to have been committed by the accused. The specific evidence given by P.W.1, the defacto complainant is that in the place of occurrence, the accused hurled invectives by using filthy words. He has also caused damages by way of pelting stones. The injured witness, Parasuraman has also given his evidence and his specific evidence is that due to the overtact of the accused, he has sustained injuries. The Doctor, who examined P.W.6 has given specific evidence to the effect that he found the injuries mentioned in Ex-P2. Apart from the evidence given by P.Ws.1 to 6, the other witnesses have also spoken about the occurrence to certain extent. Therefore, it is quite clear that the prosecution has clearly established the fact that the accused is punishable under Sections 341, 323, 294(b), IPC and also under Section 3 of the TNPPD Act.

11. The learned counsel appearing for the appellant/accused has contended that at the time of occurrence, the accused has attained only 22 years of age and he is also a first offender. Under the said circumstances, some leniency may be shown in awarding sentences under Section 3 of the TNPPD Act. Considering the fact that the accused is a first offender and also considering his age at the time of occurrence, this Court is of the view that three months SI under the said Section would be sufficient to meet the ends of justice. With regard to sentences imposed under Sections 341, 323, 294(b), IPC modification is not required and therefore, this criminal appeal is liable to be allowed in part to the extent mentioned supra.

In fine, this criminal appeal is allowed in part. The convictions and sentences imposed under Sections 341, 323, 294 (b), IPC by the Trial Court are confirmed. However, the quantum of sentences imposed against the appellant/accused under Section 3 of the TNPPD Act is modified as follows:

The appellant/accused is sentenced to undergo three months' SI instead of one year and no modification in respect of fine imposed against him under the said Section by the Trial Court. If the appellant is not in duress, the Trial Court is directed to take appropriate steps to immure him in prison to serve out the remaining period of sentence. The sentences imposed against

the appellant/accused under Sections 341, 323, 294(b), IPC and also under Section 3 of the TNPPD Act shall run concurrently.

Sd/-
Assistant Registrar (CS-III)

True Copy

Sub Assistant Registrar

To

1.The District Munsif Cum,
Judicial Magistrate,
Arcot.

2.The Chief Judicial Magistrate,
Vellore.

3.The Additional District and Sessions Judge,
Fast Track Court No.2,
Ranipet, Vellore.

4.The Superintendent,
Central Prison, Vellore.

5.Inspector of Police,
Kalavai Police Station
Vellore District

6.The Public Prosecutor,
High Court Madras-104.

+1cc to Mr.E.Kannadasan, Advocate Sr.63137

Criminal Appeal No.869 of 2008

nm[co]
srg 10/12/2015

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