

Bail Slip

The petitioner/sole accused Vadivel, S/o. Veerasami, was directed to be released on bail as per order of this court dt. 26.5.2004 and made in Crl.MP.No.6275/04 in Crl.A.No.711/04 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.711 of 2004

Vadivel ... Appellant/Accused

vs.

State by Inspector of Police,
Velagoundanpatti Police Station
Namakkal District (Crime NO.168/2007) ... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment and conviction dated 27.4.2004 made in S.C.No.2 of 2004 on the file of the Additional District and Sessions Judge, (Fast Track Court No.3), Namakkal.

For appellant : Mr.T.Munirathna Naidu

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 27.04.2004 passed in Sessions Case No.2 of 2004 by the Additional District and Sessions Judge, (Fast Track Court No.3), Namakkal are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 24.8.2003 at about 4.10 p.m., the accused has punctured the tires of rear wheels of the bus bearing Registration No.TN 35/N 1377 and thereby caused damage to the tune of Rs.5,600/-. After occurrence, the driver of the said bus, as defacto complainant, has given a complaint and the same has been registered in Crime No.168 of 2003 by the Investigating Officer. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer has taken up investigation, examined connected witnesses and after completing the same, laid a final report on the file of the Judicial Magistrate Court No.I, Namakkal and the same has been taken on file in P.R.C.No.18 of 2003.

4. The Judicial Magistrate No.1, Namakkal , after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Namakkal Division and the same has been taken on file in Sessions Case No.2 of 2004 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed a charge against the accused under Section 3(1) of Tamil Nadu Public Properties (Prevention of Damages and Loss) Act and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 7 have been examined and Exhibits P.1 to P.11 and Material Object-1 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, D.W.1 has been examined.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 3(1) of TNPPDL Act and sentenced him to undergo one year Rigorous Imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has sparingly contended that the occurrence has taken place on 24.8.2003 at about 4.10 p.m., and after occurrence, the defacto complainant has given Ex.P.1 Complaint and the defacto complainant has been examined as P.W.1 and the Conductor has been examined as P.W.2. The Lorry Driver has been examined as

P.W.3. Except P.Ws.1 to 3, no other witnesses have been examined for the purpose of proving the alleged guilt of the accused and the trial court, without considering the lack of evidence on the side of the prosecution, has erroneously found the appellant/accused guilty under section 3(1) of TNPPDL Act and therefore, the conviction and sentence passed by the trial court are liable to be interfered with.

10. Per contra, the learned Additional Public Prosecutor appearing for the respondent has contended that in the instant case, before occurrence, the accused has travelled in a lorry and the concerned lorry driver has been examined as P.W.3 and his specific evidence is that the bus driven viz., P.W.1 has dashed against the Lorry and thereby caused damage and suddenly the accused has punctured the tires of the rear wheels of the bus and apart from his evidence, the Driver as well as Conductor of the bus have been examined as P.Ws.1 and 2 and their specific evidence is that the accused has committed the offence and the trial court, after considering the evidence available on record has rightly found the accused guilty under section 3(1) of TNPPDL Act and therefore, the conviction and sentence passed by the trial court do not warrant interference.

11. The specific case put forth on the side of the prosecution is that on 24.8.2003 at about 4.10 p.m., the accused has punctured the tires of rear wheels of the bus bearing Registration No.TN 35/N 1377 and thereby caused damage to the tune of Rs.5,600/-.

12. For the purpose of proving the alleged guilt of the accused, the driver of the bus has been examined as P.W.1 and the bus Conductor has been examined as P.W.2 and both of them have consistently stated about the alleged overtact alleged to have been committed by the accused. Apart from their evidence, the Driver of the Lorry has been examined as P.W.3 and his specific evidence is that before occurrence, the accused has travelled in the Lorry, which has been driven by him and the bus driven by P.W.1 has dashed against the Lorry and immediately the accused has punctured the tires of the rear wheels of the bus.

13. Considering the evidence given by P.Ws.1 to 3, the Court can easily come to a conclusion that in the place of occurrence, the accused has punctured the tires of the rear wheels of the bus bearing Registration No.TN 35/N 1377 and thereby caused damage. Therefore, it is needless to state that on the side of the prosecution, abundant evidence is available for the purpose of proving the guilt of the accused. Under the said circumstances, the argument advanced on the side of the appellant/accused cannot be accepted.

14. The learned counsel appearing for the appellant/accused has advanced his residual argument to the effect that at the time of occurrence, the accused has attained only 19 years of age and already he has undergone 45 days of imprisonment and therefore, some leniency may be shown in awarding sentence against him.

15. Considering the age of the appellant/accused and also considering the fact that he has already undergone 45 days of imprisonment, this Court is of the view to award three months rigorous imprisonment instead of one year rigorous imprisonment and the same would be sufficient to meet the ends of justice. To that extent, the Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction passed against the appellant/accused under section 3 (1) of TNPPDL Act in Sessions Case No.2 of 2004 by the trial court is confirmed. However, the quantum of sentence imposed against him by the trial court is modified as follows:-

"The appellant/accused is sentenced to undergo three months Rigorous Imprisonment instead of one year Rigorous Imprisonment and no modification with regard to fine amount imposed by the trial court. If the appellant/accused is not in duress, the trial court is directed to take appropriate steps so as to imprison him to serve out the remaining period of sentence."

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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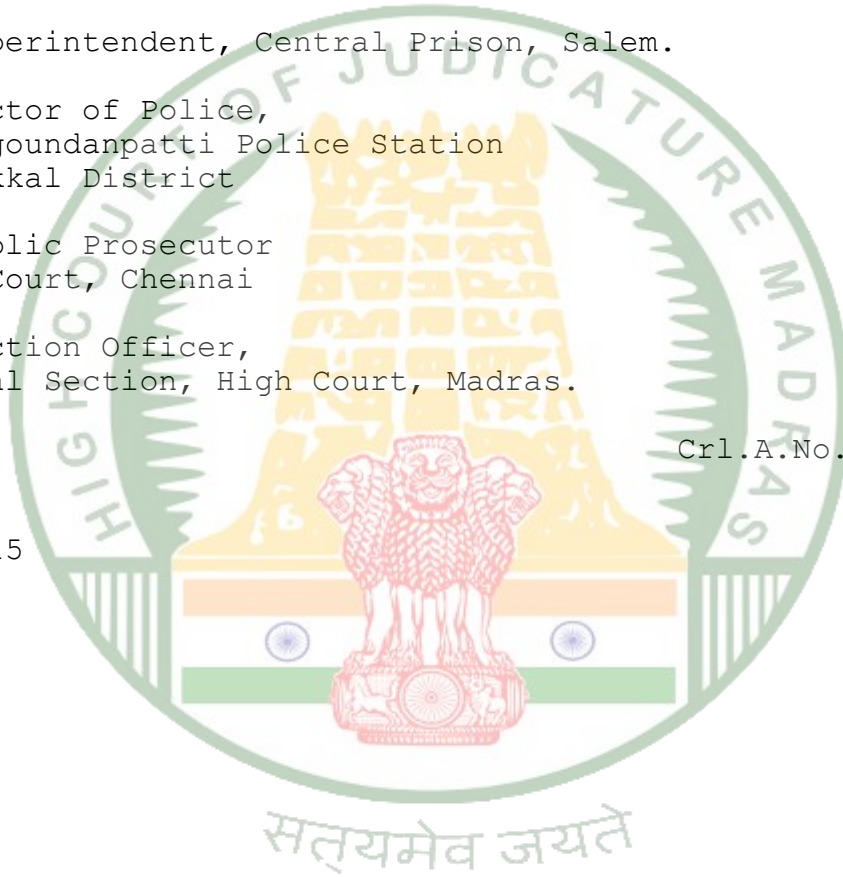
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To :

1. Judicial Magistrate No.I, Namakkal.
2. -do- Thro' The Chief Judicial Magistrate, Namakkal.
- 3.The Additional District and Sessions Judge,
(Fast Track Court No.3), Namakkal.
4. -do- Thro'The Principal Sessions Judge, Namakkal.
5. The Superintendent, Central Prison, Salem.
6. Inspector of Police,
Velagoundanpatti Police Station
Namakkal District
7. The Public Prosecutor
High Court, Chennai
8. The Section Officer,
Criminal Section, High Court, Madras.

Cr1.A.No.711 of 2004

SKV(CO)
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