



BAIL SLIP

The Appellants/Accused 1 & 2 namely Mohammed Ali (A1) s/o. Basha and Abuthakir (A2) were directed to be released on bail as per the order of this court dated 20.08.2010 and made in Crl MP.1/10 in Crl A.496/10 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Crl.A.No.496 of 2010

1. Mohammed Ali (A-1)

2. Abuthakir (A-2) ... Appellants/Accused 1 & 2
versus

State by

Inspector of Police,

B-14, Kuniamuthur Police Station,

Coimbatore,

... Respondent/Complainant

Prayer: This criminal appeal is filed under Section 374 of Criminal Procedure Code praying to call for the records in S.C.No.233 of 2009 on the file of Additional District and Sessions Court cum Fast Track Court III, Coimbatore and set aside the judgment of conviction dated 29.06.2010.

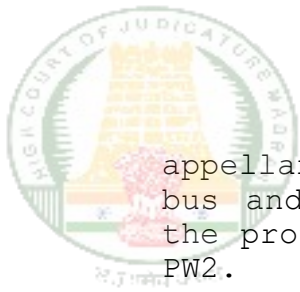
For Appellants : Mr. K.Mohan Raj

For Respondent : Mr.K.Mathan,
Govt.Advocate (Crl.side)

J U D G M E N T

Being aggrieved over the judgment rendered by the Additional District and Sessions Court cum Fast Track Court III, Coimbatore in S.C.No.233 of 2009 the accused/appellants herein preferred this appeal for set asiding the conviction and sentence awarded against them.

2. In the trial Court, the respondent police laid a final report in which it is alleged that on 18.01.2009 at about 4:05 p.m., PW1-Nagaraj, the Government Bus driver and PW2-Selvaraj being the conductor of that Bus bearing Registration No.TN-38-N-0931 drove the bus near to Sunnambu Kaalvaai Petrol Bunk, the appellants herein came in the opposite direction in TVS XL bearing Registration No.TN37AZ2934. Thereafter, the first



appellant/accused threw a stone towards the front glass of the bus and caused damage to the tune of Rs.3,000/-, due to which the protection glass broken into pieces and caused injury to the PW2.

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3. Thus, the appellants/accused herein restraining PW1 and PW2 from doing their duty and caused damage to the property belonging to Tamil Nadu State Transport Corporation, thereby both appellants committed offences. The first appellant committed offence under Section 332 IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992; second accused committed offence under Section 332 IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 r/w Section 34 IPC and hence charge sheet has been filed.

4. During the time of trial on the side of prosecution, 17 witnesses were examined as P.W.1 to P.W.17 and 11 documents were marked as Ex.P.1 to Ex.P.11. Further, four material objects were marked as M.O.1 to M.O.4. After concluding the trial, the learned District Judge came to the conclusion that the first appellant/accused herein is found guilty for the offence under Section 332 IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and the second accused found guilty for the offence under Section 332 IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 r/w Section 34 IPC.

5. In the above circumstances, the learned counsel appearing for the appellants submitted that in the trial Court, the witnesses who were all examined on the side of the prosecution had not identify the accused in accordance with law. Further, he contended that identifying the appellants in the police station is not relevant in order to accept the case of prosecution. But without considering these aspects, the learned District Judge came to the conclusion that the charges framed against the appellants are proved and awarded punishment.

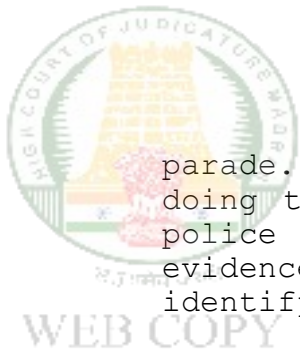
6. On the other hand, the learned Government Advocate (Criminal Side) submitted that the witnesses are doing small business near the occurrence place and some of them are residing near the residence of appellants. In the Court they clearly identified the accused during the time of trial. Accordingly, the prosecution clearly proved the identification of the accused and made submission that the arguments advanced by the appellants not at all having any reliance for allowing this appeal.

7. Considering the submissions made on either side, it would appear that as per the evidence of PW12 who is the Deputy



Director in the Tamil Nadu Motor Vehicle Maintenance Department, Government Autonomous Depot, Salem, the property worth about Rs.3,000/- was damaged. Further in respect of the damages, he issued a certificate the same was marked as Ex.P.7; as per the evidence of PW11. Dr.Karuppusamy, Assistant Surgeon attached with CMC, PW2 Selvaraj, in this case sustaining the simple injury, for which he issued an Accident Register which was marked as Ex.P.6. The contents of those documents and the evidence of the above witnesses are not disputed on the side of the appellants. Accordingly before the trial Court, the prosecution proved that due to the alleged incident PW2 sustained simple injury and the property owned by the Tamil Nadu State Transport Corporation worth about Rs.3,000/- was damaged.

8. Secondly, on going through the evidences of prosecution, it reveals that PW1 and PW2 has not identified the appellants/accused before the trial Court. Especially PW2 has not supported the prosecution case entirely. So he was treated as hostile witness. Even during the time of cross examination by the learned Additional Public Prosecutor, he does not say anything about in support of the case of prosecution. So the evidence given by PW1 and PW2 is not at all helpful in accepting the case of prosecution. On the other hand, on going through the judgment rendered by the learned District Judge he believed the evidence of PW3, PW4, PW9 and PW10 and came to the conclusion that the accused alone committed the said offence. It is true that PW3 who is the person standing near the occurrence place at the time of occurrence stated in his evidence that, both the accused came to the place of occurrence in TVS XL bearing Registration No.TN37AZ2934 and the first accused alone threw a stone towards the front side of the bus; in the same way, the remaining witnesses also supported the evidence given by PW3. In this aspect, as per the evidence of the Investigating Officer, no identification parade was conducted during the time of investigation. Further after completing the alleged offence, the appellants herein ran away from the place of occurrence. PW16, who is the Investigating Officer stated in his evidence as P.W.1 Nagaraj identified the accused on 19.01.2009 at about 7:30 A.M. and thereafter arrest was made. In order to corroborate the above evidence the said PW1 Nagaraj has not stated anything about the identity of the accused and also with regard to the arrest made by PW16. So the evidence given by the Investigating officer with regard to the arrest of the appellants is doubtful one. Further the witnesses, who are all supported the case of prosecution identified the accused only in the Court, they are all had stated in their evidence that the alleged occurrence was happened near the bus stand. But they have not stated anything about the date and time on which they identified the accused before the Police Officer. In this aspect, nothing is prevented the Investigating Officer in conducting the identification



parade. Further more, PW3, PW4, PW5 are all the petty merchants doing their business in the platform, hence the support of the police is necessary for doing their business. Accordingly the evidence given by PW3, PW4, PW9 & PW10 with respect of identifying the accused is not wholly reliable one.

9. Further as per the evidence of PW7 Thangamani and as per the evidence of PW16 Ramachandiran both the appellants herein were arrested on the next day of alleged occurrence and thereafter based on the confession given by the first accused, the vehicle TVS 50 which was marked as MO.4 was recovered, but in the cross examination, they have stated that they do not know the officer who got the signature in the paper and the contents of the document in which they signed as witnesses. So recovery of material object also has not been proved by the prosecution beyond reasonable doubt.

10. Accordingly, for the foregoing above reasons, this Court came to the conclusion that the identity of the accused before the trial Court and the recovery of the Material Object are not proved beyond reasonable doubt. Those aspects are very much necessary for connecting the appellants with the alleged crime. Without looking into those aspects, the trial Court came to the conclusion that the accused are found guilty of the alleged offences, which is liable to be set aside.

11. In fine, this criminal appeal is allowed. The conviction and sentence passed in Sessions Case No.233 of 2009 by the Additional District and Sessions Court cum Fast Track Court III, Coimbatore are set aside. The appellants/ accused are acquitted. Bail bond, if any executed by them shall stand cancelled. Fine amount, if any paid by them are ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. the Judicial Magistrate NO.VII, Coimbatore
2. the Chief Judicial Magistrate, Coimbatore



3. The Additional District and
Sessions Court cum Fast Track Court III,
Coimbatore

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4. to thro the principal sessions judge, coimbatore.

5. The Inspector of Police,
B-14, Kuniamuthur Police Station,
Coimbatore.

6. The Public Prosecutor
High Court, Madras.

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

Crl.A.No.496 of 2010

skv(CO)
TR(22/01/2018)