

**BAIL SLIP**

The Appellant/Sole Accused Viz Name K.Sahul Hameed @ Sahul Bhava was released on bail as per the Order of this Court dated 30.03.2016 and made in CrI.MP(MD)No.2527 of 2016 in CrI.A(MD) 97 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**Dated : 10.10.2017****CORAM :****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL.A(MD)No.97 of 2016**

K.Sahul Hameed @ Sahul Bhava ... Appellant/Sole Accused

Vs.

The State rep. By
The Inspector of Police,
B1-Vilakuthoon Police Station,
Madurai City, Madurai.
(Crime No.847/2010)

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 Criminal Procedure Code, to set aside the Judgment and conviction of the appellant / Accused in S.C.No.5 of 2013 on the file of the VI Additional District Sessions Judge, Madurai dated 19.01.2016.

For Petitioner : No appearance

For Respondents : Mr.C.Mohan,
Addl. Public Prosecutor.**J U D G M E N T**

This Criminal Appeal filed under Section 374 of Criminal Procedure Code is directed against the Judgment dated 19.01.2016 made in S.C.No.5 of 2013 on the file of the VI Additional District Sessions Judge, Madurai convicting the appellant herein for the offence under Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and sentencing him two years rigorous imprisonment and also levying a fine of Rs.3,000/- and default sentence of six months has been also given in the event of failure to remit the fine amount.

2.The appellant was charged with having committed the offence under Section 3(1) of TNPPDL Act, 1992. The charge was to the effect that on 29.06.2010, the appellant throw stone on the rear windshield of the bus bearing Registration No.TN 58 - N 1714 belonging to the Tamil Nadu State Transport Corporation. The said



bus bearing route No.14 B was plying between Maattuthavani to Thirunagar. At 06.20 p.m, when it was about to start after the passengers alighted at Nelpettai bus stop, the appellant herein was alleged to have caused the said damage.

3. In support of the said charge, the prosecution examined PWs 1 to 10 and marked Exs.P1 to P6. M.O.1 stone and M.O.2 broken glass pieces were also marked. PW.1 was the conductor of the said bus. He deposed that when the bus was in Nelpettai bus stop, he heard a sound and he saw that the rear windshield of the bus was broken. He got down from the bus. The appellant herein ran from the spot. The said PW.1 and few others chased the appellant. They succeeded in catching hold of the accused. He was taken to Vilakuthoon Police Station. Information was lodged with regard to the occurrence. The same was marked as Ex.P1. The value of the windshield would be around Rs.35,000/-. The evidence of the said PW.1 has not really been shaken in the cross examination. It has however been elicited that the value of the broken windshield would be around Rs.3,000/- to Rs.4,000/-. However, the said witness was very firm in his deposition that the appellant was chased and caught. PW.2 was the driver of the vehicle. He also joined in the chase. He identified the appellant in the Court as the person who was apprehended by them on the said date. His testimony could also not be shaken during cross examination. It is also on the same lines as that of PW.1. PW.3 was the Head Constable attached to the Nelpettai Outpost. The appellant on being chased by PW.1, 2 and few other members of the general public had run towards the said Outpost. PW.3 who was on duty stopped the appellant and that is how the appellant was apprehended. PW.4 constable was with PW.3 on duty in the Outpost. PW.5 was the witness in the seizure mahazar and he turned hostile. PW.6 is also a witness in observation mahazar. But, he also turned hostile. PW.7 was the Motor Vehicle Inspector. PW.8 gave the valuation report Ex.P2. PW.9 registered Ex.P3, F.I.R. He also examined some of the witnesses. On account of his transfer, he handed over further investigation to the Inspector of Police. PW.10 is the Inspector who took up the investigation and also filed the final report. Even though, all the witnesses were cross examined, the defence could not elicit anything useful or substantial. The learned Trial Judge believed the testimony of PWs.1 to 4 and found the accused guilty of the charge. Aggrieved by the said judgment dated 19.01.2016, this Criminal Appeal has been filed.

4. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent / State.

5. None appeared for the appellant. But in the grounds it has been urged that the appellant was not even present at the time of occurrence and that Ex.P1 was lodged against him at the instance of the local police. It is not possible to believe that the appellant after committing offence in question, would run towards the police outpost. Independent witnesses PWs.5 and 6 turned hostile.



Since the recoveries namely stone and broken glass pieces could not been proved, considerable doubt is thrown on the very occurrence itself. The passengers who travelled in the bus and who also allegedly chased the appellant were not examined. The appellant therefore prays for setting aside the judgment passed by the Sessions Court.

6.I carefully went through the records. I am not able to accept any of the contentions urged in the grounds of appeal. It is not the case of the appellant that the staff of Tamil Nadu State Transport Corporation were inimically disposed towards the appellant. PWs.1 and 2 have no motive against the appellant. The bus in question did not proceed further and its journey was interrupted. The appellant was apprehended immediately after the occurrence and after a hot chase. I do not want to attach any significance to the fact that the mahazar witnesses turned hostile. They are the residents of the locality and the Court below has observed that since they co-religionists, they have chosen to oblige the accused. The reason for their turning hostile need not be gone into. The facts remains that they turned hostile. Even though they did not support the case of the prosecution, that would not make any material difference. The Court below has given convincing and acceptable reasons for finding the appellant guilty. I sustain the said finding and conviction. The issue now this whether the quantum of sentence imposed on the appellant is justified. The appellant has been convicted and sentenced to a term of two years rigorous imprisonment. He was enlarged on bail by orders of this Court. If I confirm the sentence, the appellant will have to go back to jail. Of course, section 3(1) of TNPPDL Act provides for punishment upto five years. It also prescribes a minimum sentence of one year. However, the Court may, for any adequate and special reason to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year. Even though the case of the prosecution is that the value of damage caused by the appellant is Rs.35,000/-, the evidence of PW.1 is that the value may not be more than Rs.4,000/-. The appellant is aged about 36 years. He has a family to support. The motive for the occurrence is also not known. He is not having any other bad antecedent. He had already spent 188 days in prison i.e from 29.06.2010 to 24.08.2010 and from 20.11.2015 to 30.03.2016. Interest of justice would be served by reducing the sentence to the period already undergone by him.

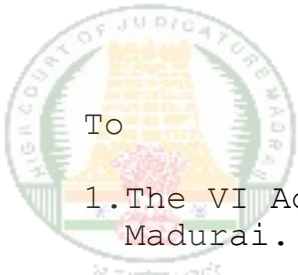
7.This Criminal Appeal is partly allowed as indicated above.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar



To

1.The VI Additional District Sessions Judge,
Madurai.

2.-do-Thro' District Munsif Court, Madurai.

3.The Judicial Magistrate No.I, Madurai.

4.The Superintendent of Central Prison,
Madurai.

5.The Inspector of Police,
B1-Vilakuthoon Police Station,
Madurai City, Madurai.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to : The Section Officer, V.R Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.A.P.MUTHU PANDIAN Advocate in SR. No. 82678

SKM

JS/KK/SAR.1/23.10.2017/4P-9C

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10.10.2017