

BAIL SLIP

The Appellants 1 to 8/ Accused 1 to 8 were endorsed on bail and in by the order dated 27/01/2011 made in Crl.M.P.1/2011 in Crl.A No.51/2011 on the file of this High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 04.09.2018]

[Pronounced on : 01.11.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.51 of 2011

1.Ilayarasu
2.Murali
3.Thennarasu
4.Vinothkumar
5.Prabakaran
6.Udayakumar
7.Rafeeq
8.Johnson

...Appellants/Accused

.. Vs ..

State rep by
The Inspector of Police,
Tirupattur Town Police Station,
Tirupattur
Vellore District
(Crime No.668 of 2008)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., against S.C.No.159 of 2010, dated 06.01.2011 on the file of the Additional District Judge, Fast Track Court, Tirupattur.

For Appellants : Mr.R.Anbukarasu
For Respondent : Mrs.V.Sarathadevi,
Government Advocate (Crl.Side)

JUDGMENT

The convicted accused A1 to A8 are the appellants herein.

2. This Criminal Appeal is preferred against the judgment of conviction passed by the learned Additional District Judge, Fast Track Court, Tirupattur dated 06.01.2011 in S.C.No.159 of 2010 for the offence under Sections 147, 341 of I.P.C and Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The appellants were sentenced to pay a fine of Rs.300/- (Rupees Three hundred only) each, in default to undergo three months Simple Imprisonment for offence under Section 147 of I.P.C and the appellants were sentenced to pay a fine of Rs.100/- (Rupees one hundred only) each, in default to undergo one week Simple Imprisonment for offence under Section 341 of I.P.C and also the appellants were sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1000/- (Rupees One thousand only) each, in default to undergo three months Simple Imprisonment for offence under Section 3 of Tamil Nadu Property (Prevention of Damages and Loss) Act, 1992. Already A1 to A8 were in prison from 24.06.2008 to 04.07.2008 and that period has been set off, total fine amount is Rs.11,200/- and accused 9 to 13 were acquitted.

3. The respondent-police has filed a final report against the accused A1 to A13, alleging commission of offence under Sections 147, 341 of I.P.C and Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act 1992. In support of the charges, the prosecution examined P.W.1 to P.W.13 and marked as Exhibit P1 to P9 and also marked M.O.1.

4. On consideration of both oral and documentary evidence, the trial Court has held that the prosecution has not proved the charges as against accused A9 to A13 and accordingly, acquitted them, however, convicted the accused A1 to A8 in respect of charges under Sections 147, 341 of I.P.C and under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act 1992.

5. The learned counsel for the appellants would submit that on 23.06.2008, due to attack on A9, who is a leader of a political party by unknown persons, at around 9.30p.m on the Tirupattur to Chennai Main Road at Tirupattur Town opposite to New Cinema Theatre, while the informant Tamilselvan, who being the driver of Tamil Nadu State Transport Bus bearing registration Number TN 23 N 1813 was proceeding towards Tirupathur Bus stand, at the same time, the witness Saravanan being the driver of the Tamil Nadu State Transport Corporation Bus bearing registration of TN 29 N 1554 was proceeding towards

Mandala Nainagunta Village from Tirupattur Bus stand at that juncture, the marginally noted accused A1 to A13, formed themselves into an unlawful assembly with the common object of causing damage to the above said buses and they wrongfully restrained both the buses from proceeding further and after that, all the accused mischievously threw stones on the front wind screen glass and side glass of the said buses and caused total damage to the tune of Rs.30,000/- (Rupees Thirty Thousand only) to the Tamil Nadu State Transport Corporation Buses. The above said act of the accused constitutes offence punishable under Sections 147, 341 IPC and Section 3 of Tamil Nadu Property (Prevention of Damages and Loss) Act.

6. The learned trial Judge erred in believing the evidence of the interested witnesses P.W.9 to P.W.11, who are the Head Constables in the respondent police and working under the Investigation Officer for convicting the appellants/accused.

7. The Lower Court ought to have seen that not even one passenger was examined by the Investigation Officer, since at the time of occurrence, several passengers were travelling in the buses.

8. Points for determination are that:

i) Whether the conviction as laid under Sections 147, 341 IPC and Section 3 of Tamil Nadu Property (Prevention of Damages and Loss) Act against the appellants 1 to 8, is sustainable in law?

ii) Whether the sentences awarded for the above offences are excessive?

9. Heard both sides and perused the records.

10. P.W.1, the Driver of the Government bus could depose that his vehicle was injured and damaged, however, he failed to identify the accused. So also P.W.3-conductor, P.W.4 and P.W.5 who are the Bus Driver and conductor of another bus which was said to have been damaged during the agitation conducted by the A1 to A9. P.W.6, another private car owner has spoken about the damage done to his car and damage caused to two Government Buses. However, he also has not identified the accused in the trial, the other independent witness P.W.8 turned 'hostile' and thus, the prosecution solely stated upon the evidence of P.W.9, P.W.10 and P.W.11 who are working as Head-constables in the Police Station and according to them, while they were discharging their duty near the Tirupathur Bus Stand, the accused A1 to A9 came and protested for the alleged assault on one of his political leaders and accordingly, thrown the

stones on the two Government buses and also one private car, thereby, caused injury and the said driver and conductor of the two Government buses were examined as P.W.1, P.W.3 to P.W.5 respectively.

11. It remains to be stated that the private prosecution witnesses P.W.1, P.W.3 and P.W.4 to P.W.6 have spoken about the damage caused to their vehicles and some person have thrown the stone on the car and the respective vehicle. But they have not identified the accused during the time of trial. The accused have been identified by the prosecution witnesses P.W.9 to P.W.11 who happened to be standing near by the shop of the scene of the crime namely Tirupathur Bus stop. P.W.12 and P.W.13 are the Sub-Inspectors of Police and Investigation Officers who laid the charge sheet.

12. At this juncture, it remains to be stated that P.W.12 is the Motor vehicle Inspector who has given a report regarding damage caused to the vehicle under Exhibit P2 in relation to Government bus No.TN 29 N 1559. While his report under Exhibit P3 relates to damage caused to Bus bearing registration No.TN 23 N 1813, his report under Exhibit P4 is with regard to the private car and thus, it is seen from the evidence of P.W.1, P.W.3 and P.W.4 to P.W.6 that the two Government buses and one private car have been damaged by throwing of stones by some mob consisting of 8 people and as a result of the stone throwing, their respective vehicles have been damaged, as could be seen from the evidence of Motor Vehicle Inspector P.W.2 coupled with Exhibits P2 to P4.

13. Now the point for consideration is whether A1 to A8 have caused such damage and their conviction is sustainable under the above said sections?

14. The learned counsel for the appellants would further submit that there is no clear evidence against the appellants to commit the offences. According to the evidence of P.W.1, P.W.3 and P.W.6, who are all the independent eye witnesses, they have not spoken anything about or against the appellants. P.W.1, P.W.3 to P.W.6 were all eye witnesses to the offence. P.W.7 and P.W.8 who were independent witnesses to the observation Mahazar and Recovery Mahazar, did not support the prosecution and they were treated as hostile witnesses. The prosecution did not examine any of the passengers who were travelling in the said buses and further, neither the prosecution witness nor the general public got injured in the said scene of occurrence.

15. Hence, it is very clear that the prosecution failed to prove their case beyond reasonable doubt. For improving the prosecution case, the Investigation Officer had examined P.W.6, who is a professor in Sacred Heart College and he deposed that his Indica car bearing Regn.No.TN 02 No 9625 was also damaged on the same date of occurrence by unknown persons and he has also not identified any of the appellants before the trial Court and further, he had lodged a complaint before the respondent police and the same was not registered as FIR nor was the complaint marked as document before the Court. This corroboration of the police especially P.W.9 to P.W.13 failed to substantiate their claim that they were on the spot when the crime took place and arrested the accused. P.W.13 has deposed before the Court that all the accused were arrested by him with the help of P.W.9 to P.W.12 at the place of occurrence. It is contradictory to P.W.9 to P.W.13 whereas, P.W.12 admitted in his evidence that he was not present at the place of occurrence and the evidence of other witnesses who have deposed regarding the arrest of the accused is contradictory to P.W.13. Hence, it is very clear that arrest of the accused at the scene of occurrence is totally false. That the case is foisted only due to political vendetta and the respondent police foisted a false case against the appellants as they are innocent and they have not committed any offence and prayed for acquittal.

16. Per contra, the learned Government Advocate (crl.side) has relied upon the evidence of P.W.9, P.W.10 and P.W.11, who have stated that they are witnesses standing in the respective traffic junctions near the Tirupathur bus stand at the relevant point of time and they are chance witnesses. While, they were discharging their duty, these incidents have taken place and as such, merely because they are working in the Police Department, their evidence should not be eschewed from consideration on the sole ground.

17. This Court has given its anxious consideration to the contentions raised by both the counsels. As stated supra, a crowd consisting of more than 5 persons have caused damage to two Government buses and one private car was damaged as per Exhibits P2 to P4. Now, whether the accused/appellants A1 to A8 have any nexus with the crime and whether the prosecution has proved the connection between the alleged incident with that of the accused, is the point for determination.

18. Admittedly, P.W.1, P.W.3 to P.W.6 have never identified these accused. Per contra, P.W.9, P.W.10 and P.W.11 are the Head constables who are the Traffic Regulation duty at the Tirupathur bus stand have clearly identified the accused and also immediately these accused A1 to A8 are said to have been

arrested and remanded to judicial custody. This Court is of the considered view that P.W.9 to P.W.11 are working in very same Police station and it is unsafe to believe the police witness without corroboration from independent witness. To my dismay, none of the private prosecution witnesses and independent witnesses who are examined before the trial Court, never identified the accused and also when there are more passengers in the bus stand none seems to have been examined by the prosecution and hence, this Court finds that the non-examination of the independent witnesses or private witnesses is fatal to the case of the prosecution.

19. In this view of the matter, this Criminal Appeal is allowed and the conviction and sentence passed in S.C.159 of 2010 on the file of learned Additional District Judge (Fast Track Court), Tirupatthur are set aside and the appellants 1 to 8/accused are set at liberty and exonerated from all the charges. The fine amount paid is ordered to be returned and bail bonds executed by them shall stand cancelled.

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Sd/
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
(Fast Track Court) Tirupattur
2. Thro:The Principal District Judge,
Tirupattur,
3. The Inspector of Police,
Tirupattur Town Police Station,
Tirupattur
Vellore District
(Crime No.668 of 2008)
4. The Public Prosecutor,
High Court, Madras.
5. Judicial Magistrate No-I,
Tirupattur.

6. Thro: The Chief Judicial Magistrate,
Vellore.

7. The District Collector,
Vellore.

8. The Director General of Police,
Mylapore, Chennai.

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

+1cc Mr.R.Anbukarasu, Advocate SR.NO.75602

order in
Crl.A.No.51 of 2011

AK(CO)
KAK(30/11/2018)