

Bail slip

CRL.A.285/2011

The Appellant herein/ Accused viz Murali S/O Rajendran was directed to be released on bail as per order of this Court, dated 29/04/20211 made in MP.No.1/2011 in Crl.A.285/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2018

PRONOUNCED ON : 03.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.285 of 2011

Murali

... Appellant

Vs

The State rep by
The Inspector of Police,
Thiruthani Police Station,
Thiruvallur District.
Crime No.675 of 2006

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment of the learned Principal Sessions Judge, Thiruvallur, convicting the appellant under Section 3(1) of Tamil Nadu Public Properties (Prevention and Damages and Loss) Act and sentencing him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- with default sentence of six months rigorous imprisonment by a judgment dated 21.03.2011 in S.C.No.97 of 2009.

For Appellant : Mr.A.M.Rahamath Ali

For Respondent : Mr.R.Ravichandran
Government Advocate

J U D G M E N T

This appeal has been filed as against the judgment dated 21.03.2011 made in S.C.No.97 of 2009 on the file of the learned Principal Sessions Judge, Thiruvallur thereby convicting and sentencing the appellant to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to

undergo six months rigorous imprisonment for the offence under Section 3(1) of Tamil Nadu Public Properties (Prevention and Damages and Loss) Act (herein after referred to as "TNPPDL Act").

2. The case of the prosecution is that P.W.1 Murugesan/ defacto complainant, who is the conductor of a bus bearing registration No.TN23N1065, lodged a complaint on 01.12.2006 alleging that the appellant/accused threw stone on the left side rear window minor of the bus and broke down the glasses. When questioned the same, the accused replied that the defacto complainant/P.W.1 charged for his luggages, therefore he threw stone on the bus. Immediately, P.W.1 informed to P.W.2, the Branch Manager of Thiruvallur Transport Corporation.

3. On instruction from P.W.2, P.W.1 lodged a complaint before P.W.4, the Sub Inspector of Police under Ex.P.1 and on receipt of the same, P.W.4 registered a case in Crime No.675 of 2006 for the offences under Section 341 of IPC and Sections 2 and 3 of TNPPDL Act. She went to the place of occurrence and prepared observation mahazar and rough sketch. Thereafter examined the witnesses and sent the requisition to assess the value of the broken mirror. She seized the broken glass pieces and produced them before the Court under Form 95. P.W.5, the Investigating Officer filed charge sheet for the offences under Section 341 of IPC and Sections 2 & 3 of TNPPDL Act. On committal of the case, the charges were framed for the offence under Section 3(1) of TNPPDL and the appellant pleaded not guilty and claimed for trial.

4. The prosecution in order to bring home the guilt of the accused, examined P.W.1 to P.W.5 and marked Ex.P.1 to Ex.P.6 and produced M.O.1. During the examination under Section 313 of Cr.P.C., the appellant denied all the incriminating circumstances appeared against him in the evidence of the prosecution witnesses. But the appellant did not choose to lead any defence witness. After hearing both sides and on assumption of oral and documentary evidence the trial Court convicted and sentenced the appellant as stated above. As against the said conviction, the present appeal.

5. The learned counsel for the appellant contended that the conviction is highly perverse and illegal, since the trial Court convicted the appellant only on the basis of the evidence given by P.W.1/complainant and no independent witness was examined. Further the only independent witness P.W.3 also turned hostile. Even P.W.1 deposed that after hearing the noise, he got down from the bus and when he saw the backside of the bus, the accused was standing and as such he presumed that the accused would have thrown the stone on the bus and only on assumption he lodged the complaint, as such the accused is liable to be

acquitted.

6. Further the learned counsel appearing for the appellant would contend that the First Information Report was registered by P.W.1 on 01.12.2006, whereas the said FIR reached the Magistrate Court only on 07.12.2006. The prosecution did not explain the delay and as such it is fatal to the case of the prosecution and prayed for acquittal of the appellant.

7. Per contra, the learned Government Advocate (Crl. Side) appearing for the State would contend that the judgment does not suffer from any perversity or illegality warranting interference from this Court. He would further submit that P.W.1 sole eye witness is enough to convict the accused and as such prayed for dismissal of this appeal.

8. Heard the arguments advanced by Mr.A.M.Rahamath Ali, learned counsel appearing for the appellant and Mr.R.Ravichandran, learned Government Advocate (Crl. Side) appearing for the State and perused the available records.

9. It is seen from the records, the conductor of the bus has been examined as P.W.1 and he deposed that at the time of occurrence, there were forty passengers were boarded on the bus, but no one was examined by the prosecution. When P.W.1 was issued tickets to the passengers, the accused had thrown the stone on the rear back side window mirror of the bus. Immediately, P.W.1 got down from the bus and had seen the accused. As such his evidence is vague and not specific. Further he categorically admitted that the accused was boarded on the bus on the same day, and he refused to pay the luggage charges and got down from the bus. Therefore, the prosecution failed to prove the case beyond any doubt.

10. P.W.2, the Branch Manager of Thiruvallur Transport Corporation deposed that he received a phone call from P.W.1 and came to understand that the accused threw stone and broke down the bus glasses. He issued valuation certificate for the damage caused by the accused. Therefore, he is only a hear-say witness and he is not an eye witness. P.W.3, the only person who deposed as eye witness and he also turned hostile. The prosecution did not examine any independent witness, though forty passengers were boarded on the bus at the time of occurrence. It is fatal to the case of the prosecution, when P.W.1 has also not deposed that as if he had seen the accused, when he threw the stone on the bus.

11. It is also pertinent to note that the First Information Report was registered on 01.12.2006 by P.W.4, the Sub Inspector of Police, but it was sent to the Judicial

Magistrate Court only on 07.12.2006 and the other documents and properties were sent only on 28.12.2006. Admittedly the prosecution did not explain the delay in sending the First Information Report to the Judicial Magistrate Court. This delay definitely would have caused prejudice to the accused and it clearly shows that the prosecution failed to prove the charge, levelled against the accused. In view of the above discussion this Court is of the opinion that the prosecution failed to prove the case beyond any doubt and the benefit of doubt goes in favour of the accused.

12. In the result, the conviction and sentence imposed by the learned Principal Sessions Judge, Thiruvallur in the judgment dated 21.03.2011 in S.C.No.97 of 2009 is hereby set aside and the appellant/accused is acquitted of all the charges. Fine amount, if any paid, shall be refunded to the appellants forthwith. Bail bonds, if any executed, shall stand cancelled.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
The Principal Sessions Judge,
Thiruvallur.
2. The Inspector of Police,
Thiruthani Police Station,
Thiruvallur District.
3. The Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate,
Thiruthani.
5. The Chief Judicial Magistrate,
Thiruvallur.

CRL.A.285 OF 2011

GP(CO)
GSP(29/08/2018)