

Bail Slip

The Appellant herein/Accused namely S. Subramanian, was ordered to be released on bail by order of this court dated 1.10.2010 and made in CrI.M.P.No.1 of 2010 in CrI.A.590/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.590 of 2010

S.Subramanian

.. Appellant/Accused

Vs

State, rep. by
The Inspector of Police,
B14, Kuniamuthur Police Station,
Coimbatore,
Crime No.101 of 2009

..Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., praying to set aside the order passed by the Hon'ble Additional District Sessions Judge, Fast Track Court No.3, Coimbatore in S.C.No.101 of 2010 dated 04.09.2010.

For Appellant : Mr.K.Sivakumar

For Respondent : Mr.G.Ramar
Government Advocate (CrI.side)

J U D G M E N T

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The appeal is directed against the conviction and sentence awarded to the appellant in S.C.No.101 of 2012 dated 04.09.2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.3, Coimbatore.

2. The case of the prosecution is as follows :- P.W. 3 Lakshmanan is residing at Pillaiyarpuram, Coimbatore, and all the prosecution witnesses, except the Investigating Officer, are residing in the same village. On the date of occurrence at about 3.00 a.m., when P.W.3 went to his field, the present appellant by using stone, damaged the statue of Gandhi. Thereafter, on the next day on 27.09.2009, P.W.1 Selvaraj lodged a complaint under Ex.P.1, before P.W.9, the Sub Inspector of Police, B14 Kuniyamuthur Police Station. Before the alleged occurrence, the present appellant quarrelled with the people who are residing in the occurrence village with regard to the fixing of the said statute. After receiving the complaint, P.W.9 registered a case in Cr.No.104 of 2009 for the offence under Section 3(1) TNPPDL Act under Ex.P.5.

3. After registration of the case, he handed over a copy of the FIR to P.W.10 the then Inspector of Police, B14 Police Station. After receiving First information report, the Inspector of Police went to the scene of occurrence and in the presence of witnesses he prepared observation mahazar and Rough Scketch under Ex.P.3 and Ex.P.6. Further, he recovered a stone, which was used by the appellant to damage the statute, in the presence of the same witnesses under the recovery mahazar, marked as Ex.P.4. Thereafter, he examined the witnesses and recorded their statements. Subsequently, on the same day at about 2.00 p.m., he arrested the accused/appellant and recorded the confession statement given by the appellant. After concluding investigation, he laid charge sheet for the offence, for which the case has been registered.

4. In the trial Court ten witnesses were examined on the side of prosecution, besides six exhibits were marked. The learned Additional District Sessions Judge, Fast Track Court No.3, Coimbatore, came to the conclusion that the appellant was found guilty for the offence punishable under Section 3(1) of TNPPDL Act, thereby he convicted the appellant to undergo one year rigorous imprisonment and to pay a fine amount of Rs.1000/- failing which to undergo further period of three months rigorous imprisonment.

5. Heard Mr.K.Sivakumar, learned counsel appearing for the appellant and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent and perused the entire materials available on record.

6. The first and foremost contention raised by the appellant is that before the trial Court, only one witness (P.W.3) was examined as eye witness to the alleged occurrence and

the evidence deposed by the said witness is not in the form of cogent and convincing. Apart from the said witness (PW.3), no other witness has been examined, on the side of the prosecution and nobody spoke about the alleged occurrence. Hence, he contended that a bare reading of the evidence given by P.W.3 would go to show that the appellant is falsely implicated in this case.

7. On considering the said submission made by the learned counsel for the appellant, it is true that except P.W.3, no other witness examined on the side of the prosecution and no one has stated anything about the offence committed by the appellant.

8. In this regard, P.W.2, who designed and fixed the said statue, in the cross-examination has stated that the height of the statue is 6 feet and without holding, nobody can lift on the statue. On the other hand, P.W.3 has stated in the chief examination that at the time, when he saw the occurrence, the present appellant was standing on the statue and damaging the head of the statue by using stone. So, prima facie on comparing the evidence of P.W.2 with P.W.3, it may not be appropriate to hold that the present appellant climbed up to the statue and damaged the same.

9. Further, on going through the complaint lodged by the P.W.1, he has stated in his evidence that the complaint was written by him. For which, he deposed that for lodging complaint, he went to the police station along with one Subramani. But the said Subramani, in his evidence stated that he went to the police station along with one Kalidoss and the alleged complaint was written by the said Kalidoss. More over, he deposed that the alleged complaint was lodged by him. Hence, there is reasonable doubt arose over the lodging of complaint.

10. Next, on coming to the point of arrest, the Investigating Officer stated in his evidence that the accused was arrested at 2.00 p.m., on the date of the registration of case. But, as per the particulars available in the records, it is seen that the case was registered at 10.00 a.m., on 27.09.2009, for which P.W.1, who is the de-facto complainant in this case, stated in his cross-examination that at the time of lodging the complaint in the police station, the appellant was also present in the police station. So, according to the evidence of P.W.1, the appellant was arrested before the registration of the case. This aspect also creates doubt over the case of the prosecution.

11. In the said circumstances, the prosecution story projected by the Investigation Officer with regard to the registration of the case and arrest of the accused create doubts.

The said doubt goes in favour of the appellant. The trial Court, without considering those aspects, convicted the appellant thereby the order passed by the trial Court is liable to be set aside.

12. In the result, the Criminal Appeal shall stand allowed. The conviction and sentence imposed by the learned Additional District and Sessions Judge, Fast Track Court No.3, Coimbatore in S.C.No.101 of 2010, dated 04.09.2010, is hereby set aside. Appellant/accused is acquitted of all charges. Fine amount, if any, paid shall be refunded to the appellant forthwith. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Additional District Sessions Judge,
Fast Track Court No.3, Coimbatore.
2. The The Inspector of Police,
B14, Kuniamuthur Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

Copy to: The Section Officer,
Criminal Section, High Court, Madras.

CRL.A.No.590 OF 2010

SV(CO)
EU(10/07/2018)

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