

Bail Slip

The Petitioner/Accused Viz Mahalingam was released on bail as per order of this Court dated:23/06/2011 in CRL.MP.No.1/2011 in CRL.A.No.347 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.357 of 2011

Mahalingam

.. Appellant

Vs.

The State represented by
Inspector of Police,
Kundadam Police Station,
Tiruppur District.

... Respondent

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 26.05.2011 passed in S.C.No.120 of 2010 on the file of the Additional Sessions Court (FTC No.3), Dharapuram.

For Appellant : Mr.N.Umapathi

For Respondent : Mr.G.Ramar
Government Advocate (Crl. Side)

JUDGMENT

This criminal appeal has been preferred seeking to set aside the conviction made by judgment dated 26.05.2011 in S.C.No.120 of 2010 on the file of the Additional Sessions Court (FTC No.3), Dharapuram.

2 The facts in brief leading to the filing of this criminal appeal are as under:

2.1 It is the case of the prosecution that Selvaraj (PW1) is the driver and Kadhirvel (PW2) is the conductor of the bus belonging to Balaselvakumar Transport Bus Service plying between Dharapuram and Erode; on 31.01.2010, around 8.00 a.m., when the bus was proceeding from Dharapuram to Erode, the appellant intercepted the bus with his Tata Sumo Car (MO2) bearing registration No.TN 38 X 4959 and stopped the car in front of the

bus; seeing this, Selvaraj (PW1) stopped the bus; the appellant came out of his car and abused Selvaraj (PW1) and assaulted him with a wooden log (MO1); when Kadhirvel (PW2), the conductor, intervened, he was also assaulted by the appellant; thereafter, the appellant damaged the right side glass of the bus; Selvaraj (PW1) and Kadhirvel (PW2) were admitted to the Government Hospital, Udumalai, where they were examined by Dr.Sivabalan (PW8) around 9.30 a.m. who noted the injuries suffered by them and issued Accident Register copies (Exs-P7 and P8).

2.2 On intimation from the hospital, Gopalan (PW7), the Head Constable of Police, went to the hospital and obtained written complaint (Ex-P1) from Selvaraj (PW1), based on which, he registered a case in Crime No.95 of 2010, on 31.01.2010, around 12.00 noon, under Sections 341, 294(b), 324 and 506(II) IPC and under Sections 3 and 5 of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992, (for brevity "the TNPPDL Act" against the appellant. The FIR and the complaint reached the jurisdictional Magistrate on 31.01.2010, at 12.15 hours as could be seen from the endorsement thereon.

2.3 The investigation of the case was taken over by Thannachi Pandian (PW9), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P3) and rough sketch (Ex-P9) in the presence of witnesses Karthikeyan (PW6) and Rathnamoorthy (not examined). He seized the wooden log (MO1) and Tata Sumo Car (MO2) bearing Registration No. TN 38 X 4959 and broken glass pieces (MO3) under the cover of Mahazar (Ex-P4) in the presence of Karthikeyan (PW6) and Rathnamoorthy (not examined) and the Investigating Officer arrested the appellant at 5.45 p.m. on 31.01.2010.

2.4 After examining witnesses and collecting medical records from the hospital, he completed the investigation and filed final report on 09.06.2010 in PRC.No.12 of 2010 before the Judicial Magistrate, Dharapuram, for the offences under Sections 341, 294(b), 324 and 506(II) IPC and under Sections 3(1) and 5 of the TNPPDL Act.

2.5 On the appearance of the appellant, he was furnished with the relied upon documents under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.120 of 2010 and was made over to the Additional District and Sessions Court (FTC No.3), Dharapuram, for trial.

2.6 The Trial Court framed charges for the offences under Sections 341, 294(b), 324 and 506(II) IPC and under Sections 3 (1) and 5 of the TNPPDL Act against the appellant and when questioned, the appellant pleaded "not guilty".

2.7 To prove the case, the prosecution examined nine witnesses and marked nine exhibits and three material objects.

2.8 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On behalf of the appellant, no witness was examined nor any document marked.

2.9 After considering the evidence on record and hearing either side, the Trial Court, by judgment dated 26.05.2011 in S.C.No.120 of 2010, acquitted the appellant of the offence under Sections 294(b) and 506(II) IPC but convicted and sentenced him as follows:

Provision under which convicted	Sentence
Section 341 IPC	Fine of Rs.500/-, in default to undergo one week simple imprisonment.
Section 324 IPC (2 counts)	Two years rigorous imprisonment
Section 5 of the TNPPDL Act	Three years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo one month simple imprisonment

2.10 Challenging the aforesaid conviction and sentence, the appellant is before this Court.

3 Heard Mr.N.Umapathi, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl. Side) for the respondent/State.

4 Before advertng to the submissions made by the learned counsel on either side, it may be necessary to recount the deposition of the witnesses.

5 Selvaraj (PW1), in his examination-in-chief, has stated that he was working as driver in Balaselvakumar Transport Bus Service; on 30.01.2010, he took the bus bearing Registration No. TN 56 Z 4977 from Dharapuram and was proceeding to Erode; while the bus was proceeding via Kulaipalayam mango grove, a TATA Sumo car bearing registration No. TN 38 X 4959 overtook and stopped in front of the bus on the main road; the appellant came out of the car with a wooden log in his hand; he came near him and abused him in Tamil (it may not be necessary to extract the abusive portion); he belaboured him with the wooden log on his right knee and right chest; on hearing the commotion, Kadhirvel (PW2), the conductor, got down from the bus and intervened; the appellant assaulted him (PW2-Kadhirvel) on his left thigh; two passengers by name Kadhiresan (PW3) and Shaik Abdulla (PW4) also

intervened and questioned the appellant as to why he was assaulting Selvaraj (PW1) and Kadhirvel (PW2) for which, the appellant said "I will kill you"; thereafter, the appellant hit the right side glass adjacent to the driver's seat and damaged it; unable to withstand the pain, he (PW1) went to the Government Hospital in a passing vehicle for treatment along with Kadhirvel (PW2); at the hospital, he (PW1) gave a written complaint (Ex-P1) to the police; he (PW1) identified the wooden log and it was marked as MO1.

6 In the cross-examination, he was asked various questions about his driving licence, etc., which are not germane to the issue at hand. He has further stated that there were about fifty seven passengers in the bus; his bus has power steering, audio and video facility, eight speakers and was driven at 50 km/hr speed; when the appellant overtook the bus and parked his TATA Sumo car in front of the bus, the gap between the bus and the TATA Sumo car was around five to six feet; he did not stop the engine of his bus; television was not playing at that time, but, music was being played; Kadhirvel (PW2), the conductor, was in the front foot board which is about three and a half feet away from the driver's seat; there is a grill to separate the driver's seat from the passengers' seat; there is a half door on the right side for the driver to use; he did not notice whether there was any other passenger in the TATA Sumo car ; the car did not have any party flag but in the back side of the car, he saw the sickle and hammer emblem; he wrote the complaint (Ex-P1); when the complaint (Ex-P1) was given to the police, Kadhirvel (PW2) and the Manager of the bus were there. Ultimately, it was suggested to him that he was driving the bus recklessly at a very high speed; the appellant asked for way but he did not give way for the appellant; therefore, the appellant overtook the bus and parked it in front of the bus; when the appellant questioned him, he (PW1) tried to assault the appellant and at that time, he (PW1) sustained injuries, which suggestion, he (PW1) denied.

7 Kadhirvel (PW2), in his examination-in-chief, has stated that he was working as conductor in the private bus service and Selvaraj (PW1) was the driver; on 31.01.2010, he was going in the bus TN 56 Z 4977, driven by Selvaraj (PW1) towards Erode; when the bus neared Kulaipalayam mango grove, a TATA Sumo car TN 38 X 4959, overtook the bus and stopped in front of the bus; from the TATA Sumo car, the appellant came out with a wooden log and asked the driver, "Is this the way to drive the bus?" and abused him (the Tamil epithets used by the appellant to abuse Selvaraj (PW1) as deposed by Kadhirvel (PW2) are left out); the appellant assaulted Selvaraj (PW1) on his right chest and right forearm; he got down from the bus and asked the appellant as to why he is assaulting the driver; the appellant

assaulted him (PW2) also on the right thigh; on seeing this, passengers got down from the bus and amongst them, two persons intervened; at that time, the appellant damaged the side glass on the right side; he (PW2) and the driver (PW1) went by a car to the Government Hospital, Dharapuram, for treatment; at the hospital, the Inspector came and obtained the complaint (Ex-P1) from Selvaraj (PW1); he identified the appellant in the dock and the wooden log (MO1), while deposing.

8 In the cross-examination, Kadhirvel (PW2) has stated that around 11.00 a.m., he was examined by the police in the Police Station and the driver (PW1) was also there. He has further stated that he was working as conductor for seven years; he has conductor licence and the police did not ask for it; he was in the hospital for one day; there were about 52-55 passengers in the bus; ladies were sitting in the front portion of the bus; audio music was playing at that time; when the appellant overtook and stopped his TATA Sumo car TN 38 X 4959 in front of the bus, the time was 8.10 a.m. He denied the suggestion that he was in the foot board of the bus at the time when the bus stopped. He also denied the suggestions that he could not have heard the alleged

abuse by the appellant amidst the audio sound; after the appellant assaulted the driver, he got down from the bus; the gap between the bus and the car was about four to five feet; the appellant damaged the glass, only after he (PW2) got down from the bus; he did not notice the TATA Sumo car overtaking the bus. It was ultimately suggested to him that the driver was driving the bus at a very high speed and therefore, the appellant overtook the bus and stopped the TATA Sumo car in front of the bus; when the bus stopped suddenly, the driver and the conductor suffered injuries; the appellant did not assault them but only damaged the bus. These suggestions were denied by Kadhirvel (PW2).

9 Kadhiresan (PW3) and Shaik Abdulla (PW4) who were passengers in the bus have generally corroborated the evidence of Selvaraj (PW1) and Kadhirvel (PW2) by stating that the bus suddenly stopped; they saw a car parked in front of the bus and saw the appellant coming out with a wooden log; since the bus stopped, the driver and the conductor got down from the bus to enquire; the appellant attacked the driver; they (PW3 and PW4) immediately got down from the bus and went near the driver and saw the appellant damaging the right side plain glass; they (PW3 and PW4) identified the appellant as the person who attacked the driver and the conductor and damaged the bus.

10 In the cross-examination, Kadhiresan (PW3) and Shaik Abdulla (PW4) have admitted that tickets were not collected from

them by the police. Kadhiresan (PW3) has further stated that before he could get down from the bus, the appellant had attacked. It was not suggested to them that they did not travel in the bus. However, it was suggested to them that the driver of the bus did not give way to the TATA Sumo car and the bus was over speeding, which suggestion, they denied.

11 Balasubramaniam (PW5), Regional Transport Officer, has stated that at the time of occurrence, he was working as Motor Vehicles Inspector and inspected the transport bus TN 56 Z 4977 and noted damage to the glass and estimated the damage at Rs.430/-. He issued the inspection report (Ex-P2) wherein he has noted as follows:

"12. Details regarding damages sustained by vehicle or vehicles due to accident: 1. Front right quarter glass broken."

12 In the cross-examination, it was suggested to him that the damage to the glass will be Rs.100/-, which suggestion, he denied.

13 Karthikeyan (PW6) was the Mahazar witness, in whose presence the observation mahazar (Ex-P3), rough sketch (Ex-P9) and seizure mahazar (Ex-P4) were prepared by the Investigating Officer.

14 In the cross-examination Karthikeyan (PW6) has stated that he was working in the lodge belonging to the owner of the damaged bus. He denied the suggestion that the Mahazars were not prepared in his presence.

15 Dr.Sivabalan (PW8) has stated that on 31.01.2010, while he was on duty at the Government Hospital, Udumalai, he examined Kadhirvel (PW2) at 9.30 a.m. and Selvaraj (PW1) at 9.35 a.m. and issued Accident Register copies (Exs-P7 and P8). He has further stated that both of them told him that they were attacked by a known person at 8.10 a.m. on 31.01.2010. On Kadhirvel (PW2), he noted a contusion measuring 6cm x 4cm on the left thigh and admitted him (PW2) as in-patient. On Selvaraj (PW1), he noted the following injuries:

"1. 3cm x 3cm contusion on the right elbow.
2. Pain in the right chest."

and admitted him as in-patient. They both were admitted as in-patients for a day. Dr.Sivabalan (PW8) in his evidence as well in the Accident Register copies (Exs-P7 and P8) has stated that the injuries suffered by them were simple in nature.

16 The learned counsel for the appellant (appellant) took this Court through the draft charges and contended that the appellant was charged for having damaged the right front wind screen of the bus, whereas all the witnesses have uniformly stated that the appellant had damaged the glass on the right side of the driver seat. Therefore, he submitted that the conviction and sentence slapped on the appellant for the offence under Sections 3 and 5 of the TNPPDL Act, stand vitiated. It is true that all the witnesses have clearly stated that the appellant had damaged the right side glass of the bus. However, on reading of the original charges which have been framed by the Trial Court, against the appellant, it is clearly stated that he had damaged the right side glass of the bus. Therefore, the reference to the front wind screen in the draft charge has no relevance at all. Even in the complaint (Ex-P1) as well in the inspection report (Ex-P2) issued by the Motor Vehicles Inspector, it is clearly stated that the front right quarter glass of the bus was broken. All these documents were furnished to the appellant under Section 207 Cr.P.C. and the witnesses have also deposed that the right side glass next to the driver's seat was damaged. Hence, this Court does not find any irregularity in the charges as contended by the learned counsel for the appellant.

17 Be that as it may, under Section 465 Cr.P.C., an error in framing charge cannot vitiate the conviction, unless a failure of justice has, in fact, been occasioned thereby. In this case, there is no material to infer that there had been a failure of justice, on account of the reference to the front wind screen in the draft charge prepared by the Court. At the risk of repetition, the charge that has been framed and put to the appellant very clearly states that the right side glass was damaged by him. The appellant has affixed her signature beneath in the original final charge.

18 The learned counsel contended that Kadhiresan (PW3) and Shaik Abdulla (PW4) could not have been eye-witnesses because the police have failed to collect their bus tickets. It is true that the police had not collected their bus tickets, but, that, by itself, cannot lead to the inference that they were planted by the police subsequently, because, their names have figured even in the complaint (Ex-P1) that was given by Selvaraj (PW1). The complaint reached the Magistrate on the very same day as noted above. He further contended that Selvaraj (PW1) has stated that Kadhiresan (PW3) and Shaik Abdulla (PW4) intervened in the quarrel and only thereafter, the appellant damaged the bus, but, Kadhiresan (PW3) has stated in the cross-examination that even before he got down from the bus, the attack was over.

19 In the opinion of this Court, witnesses to a crime

cannot be expected to depose like trained parrots. There will be some discrepancies in the evidence of eye-witnesses. Only when witnesses depose in a parrot-like fashion, a suspicion may arise in the mind of the Court as to whether they have been tutored. Even assuming for a moment that Kadhiresan (PW3) and Shaik Abdulla (PW4) had not witnessed the offence, the learned counsel for the appellant contended that since Selvaraj (PW1) has categorically stated that Kadhiresan (PW3) and Shaik Abdulla (PW4) had intervened and questioned the appellant but Kadhiresan (PW3) has stated that by the time he got down from the bus, the attack was over, the evidence of Selvaraj (PW1) becomes suspect.

20 While appreciating the evidence of a witness, the Court should bear in mind that the witness deposes in the Court of law about past transaction. He does not speak about the contemporaneous affairs. There are bound to be some embellishments here and there. The Court is required to read the entire evidence of all the witnesses in toto and thereafter come to a conclusion as to whether the facts have been proved within the parameters laid down in the definition of the word "proved" in Section 3 of the Evidence Act.

21 In this case, the appellant has not denied his presence at the place of occurrence. He has taken a defence that he overtook the bus because the bus was not giving him way. It is not the case of the appellant that there was previous motive for Selvaraj (PW1) to foist a case on him.

22 Selvaraj (PW1) and Kadhirvel (PW2) have suffered injuries and they were admitted to the Government Hospital at 9.30 a.m. for treatment. The broken pieces of glass have been recovered by the Investigating Officer and have been marked as MO3.

23 The learned counsel for the appellant (appellant) contended that Kadhirvel (PW2) has stated in the cross-examination that the police examined him in the station at 11.00 a.m. and Selvaraj (PW1) was also there and therefore the prosecution version becomes doubtful. On reading of the cross-examination of Kadhirvel (PW2) on this aspect, he has not stated that the police examined him at 11.00 a.m. on 31.01.2010. In the cross-examination, he has stated that he was admitted in the hospital and was taking treatment in the hospital for a day. In the absence of the witness saying that he was examined by the police at 11.00 a.m. in the Police Station on the date of incident, this Court cannot draw an inference as suggested by the learned counsel for the appellant. The evidence of the injured witnesses Selvaraj (PW1) and Kadhirvel (PW2) does not suffer from any infirmity for this Court to hold that the case has been foisted on the appellant. The injuries suffered by them have been corroborated by the evidence of Dr.Sivabalan (PW8) and

Accident Register copies (Exs-P7 & P8). The damage to the side glass of the bus spoken to by Selvaraj (PW1) and Kadhirvel (PW2) has been corroborated by the evidence of Balasubramaniam (PW5) and the seizure of broken glass pieces (MO3) from the place of occurrence.

24 The learned counsel for the appellant contended that the conviction under Section 324 IPC cannot be sustained because Selvaraj (PW1) and Kadhirvel (PW2) had suffered only simple injuries and in this regard, reliance was placed on the judgment, of this Court dated 25.10.2017 in M.Nagaraj vs. The State in CrI.A.No.341 of 2009. On reading of the said judgment, it is seen that the appellant therein and the injured witness were known to each other and the appellant therein had allegedly assaulted the injured with a wooden log. In such circumstances, this Court held as follows:

"11.....Considering all the materials available on record, it is seen that the appellant/appellant attacked P.W.1 with a wooden log and there is no serious injuries and the injuries are simple in nature and only swelling on his face and lips and contusion around eyebrow. In the above circumstances, I

am of the considered view that the appellant/appellant is liable to be punished only for the offence under Section 323 IPC."

25 The above finding of this Court was in the facts and circumstances of that case and the same cannot be used as a precedent to hold that a wooden log is not a weapon of offence within the meaning of Section 324 IPC which uses the expression "or any instrument which, used as a weapon of offence is likely to cause death". It is common knowledge that death can be caused to a person with a wooden log. In this case, the appellant has used a wooden log to attack Selvaraj (PW1) and Kadhirvel (PW2) and also caused damage to the bus. Under such circumstances, the conviction of the appellant under Section 324 IPC cannot be said to be illegal.

26 In the ultimate analysis, this Court does not find any illegality or infirmity in the conviction of the appellant for the offence under Section 324 IPC and Sections 3 and 5 of the TNPPDL Act. However, the sentence for the offence under Section 5 of the TNPPDL Act is reduced from three years rigorous imprisonment to two years rigorous imprisonment, and the same shall run concurrently with the sentence for the offence under Section 324 IPC.

This criminal appeal stands disposed of accordingly. The Trial Court is directed to secure the appellant for undergoing the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Kundadam Police Station,
Tiruppur District.
2. The Additional Sessions Judge,
(FTC No.3),
Dharapuram.
3. The Public Prosecutor,
High Court, Madras.
4. The Deputy Registrar (Crl. Side),
Madras High Court,
Chennai 600 104.
(with a direction to return the original
records to the Trial Court)
- 5.The Judicial Magistrate,
Dharapuram.
- 6.The Chief Judicial Magistrate,
Coimbatore.

सत्यमेव जयते

Crl.A.No.357 of 2011

NRL (CO)
GSP (21/02/2019)

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