

BAIL SLIP

- The Appellant herein/Accused Nos.1 to 7 viz.,
1. Sathyaraj, aged 29 years, S/o.Arjunan
 2. Thangadurai, aged 26 years, S/o.Soman.
 3. Thangavel, aged 32 years, S/o.Kittusamy.
 4. V.T.Rangasamy, aged 49 years, S/o.Thimmaiyan.
 5. Mariappan, aged 37 years, S/o.Pazhani.
 6. Vadivel, aged 41 years, S/o.Raman.
 7. Murugan, S/o.Palanichamy.

Were directed to be released on bail vide order of Court dated 28.09.2011 made in MP Nos.1,1,1 of 2011 in CRL A Nos.597 to 598 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.03.2019	Pronounced on: 03.04.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran
Criminal Appeals Nos.597 to 599 of 2011

1. Sathyaraj,
S/o.Arjunan.
2. Thangadurai,
S/o.Soman.
3. Thangavel,
S/o.Kittusamy.
4. V.T.Rangasamy,
S/o.Thimmaiyan.
5. Mariappan,
S/o.Pazhani.
6. Vadivel,
S/o.Raman.
7. Murugan,
S/o.Palanichamy.

... Appellants/Accused 1 to 7
in all cases.

/versus/

The State Represented by:
The Station House Officer,
Nambiyur Police Station,
Erode District.

... Respondent/Complainant
in all cases.

Prayer in C.A.Nos.597 to 599 of 2011: Criminal Appeals are filed under Section 374 (2) of Cr.P.C, against the conviction and sentence passed by the Learned Additional Sessions Judge, (Fast Track Court No.2), Gobichettipalayam made in S.C.No.127 of 2009, S.C.No.128 of 2009, S.C.No.129 of 2009 respectively, convicting the Appellants/accused 1 and 2 for under Section 3(1) of Tamil Nadu Public Properties Damages Act, 1992 and sentenced them to undergo R.I for one year and fine amount of Rs.1,000/- in default one month S.I and convicting the appellants/accused 3 to 7 for under Section 3(1) of Tamil Nadu Public Properties Damages Act 1992 r/w 120(B) of Indian Penal Code and sentenced them to undergo R.I for one year and fine amount of Rs.1,000/- in default one month Simple Imprisonment by its judgment dated 08.09.2011.

C.A.Nos.597 to 599 of 2011

For Appellants : Mrs.S.Deepika

For Respondent : Mrs.Kritika Kamal.
Government Advocate

C O M M O N O R D E R

Three cases were registered by the respondents on 04.02.2009 against the appellants in Crime.Nos.30, 31 and 32 of 2009. On committal, the Additional Sessions Court, Fast Track Court No.II, Gopichettipalayam took up the case for trial under S.C.Nos. 127 of 2009, 128 of 2009 and 129 of 2009.

2. Aggrieved by the judgment of conviction, these three appeals are preferred. The crime was the outcome of criminal conspiracy resulting in three different incidences of damages to three Government buses and causing hurt to one of the driver in the stone pelting, on the same day but at different point of time and place committed by the same accused. Since the facts and law to be considered are common, this court passes the common judgment as below:

3. The appellants are members of a political party called "Viduthalai Chiruthai". To voice their support to the tamilians in Srilanka and to condemn the inaction of the Central and State Government, their party and others under the banner "Tamils Protection Movement "called for a bandh on 04.02.2009.

4. To cause fear in the minds of the public the

appellants joined together and decided to damage public property namely government public transport buses. Therefore, they hatched a criminal conspiracy. Pursuant to the said conspiracy, on 04.02.2009, at about 11.00 am, the 7th appellant claimed the Aircel tower at Iyer garden, Nambiyur. The appellants 3 to 6 were shouting slogans and drawing the attention of police towards them. The police force which was present moved towards the cell tower. Meanwhile, after diverting the attention of the police force, the 1st and 2nd appellants took the motorcycle owned by the 3rd appellant and at about 12.55 p.m, near Nachipalayam threw stone at the Government bus bearing registration No. TN 33 N 1033, Route No.11-B proceeding towards Nambiyur. They broke the front wind shield of the bus and caused damage to a tune of Rs.2,581.75/- Thereafter, 1st and 2nd appellants proceeded to Nambiyur to Kudakarai road, near Kumaran Salai at about 13.15 hrs threw stones on the Government passenger bus bearing registration No.TN 33 N 1138. Damaged the front wind shield worth Rs.2,581.75/-. Then they both went to Nambiyur to Puliyampatti road, at about 14.00hrs near Lantex Mill, pelted stones at the Government bus bearing registration No.TN-33-N-1961 proceeding towards Mettupalayam via., Nambiyur and damaged the front wind shield worth about Rs 2,854.10/-. Thus, the bus driver Sivakumar sustained injury in the stone pelting.

5. For the above three incidents, cases were registered against seven persons who are the appellants herein.

(i). Based on the complaint given by M.Subramaniam driver of the bus bearing Registration No.TN 33 N 1033 case was registered for offences under section 120-B IPC and Section 3(1) and 5 of Tamilnadu Property (Prevention of Damage and loss) Act, 1992 in Crime number 30/2009. (SC 127/2009).

(ii). Based on the complaint given by G.S.Muthukumar driver of the bus bearing registration No.TN 33 N 1138 case was registered for offences under section 120-B IPC and Section 3(1) and 5 of Tamilnadu Property (Prevention of Damage and loss) Act, 1992 in Crime No. 31/2009. (SC 128/2009).

(iii). Based on the complaint given by K.Sivakumar driver of the bus bearing TN 33 N 1961 case was registered for offences under section 120-B IPC, 323 IPC and Section 3(1) and 5 of Tamilnadu Property (Prevention of Damage and loss) Act, 1992 in crime number 32/2009. (SC 129/2009).

6. The respondent police took up the investigation. From the statements of the crew members and the passengers travelling the respective bus, the identification of the appellants 1 and 2 were ascertained. They were arrested on the next day at about 6.30 am under the tamarind tree near Nambiyur Bus stand. Based on their confession statement, the motor cycle of the 3rd accused used by them to move from one place to another and pelt stones on the buses, the cool drink bottles filled with petrol to use as bombs were recovered from the houses of the appellants. Other appellants were arrested on the same day near Kedarai bus stop.

7. In the prison, identification parade was conducted by the Judicial Magistrate. The witnesses have identified the first and appellants as the persons who came in two wheeler on that day and threw stone at the bus.

8. Before the trial court, the prosecution in each case examined the witness who gave the complaint and a passenger who travelled in the bus to speak about the manner in which the incident occurred. The recovery of broken wind shield pieces from the scene of occurrence spoken by the witnesses to the respective recovery mahazar. The village Administrative Officer Mr. Kandasamy has deposed about the recovery of material objects from the respective scene of occurrence, the confession statement of accused, the recovery of two wheeler and petrol bombs from the residence of the accused and the disclosure of their conspiracy.

9. The Judicial Magistrate Connoor (Mr. Ramanathan) who conducted the identification parade in the prison was examined and his report was marked. The Traffic Inspector of the Transport Corporation, Nambiyur Branch, Mr. Subramaniam has deposed about the allocation of duty to the crew members of the concern buses. He has deposed that on the date of occurrence (04.02.2009) for the bus bearing registration No. TN.33.N.1033, the driver M. Subramaniam and conductor Balasubramaniam was on duty. For the bus bearing registration No. TN-33-N-1138 driver T.S. Muthukumar and V.K. Maruthachalam was on duty. For the bus bearing registration No. TN.33.N.1961 the driver K. Sivakumar and the conductor S. Murugesan was on duty. The value of the damage caused been spoken by the Motor Vehicle Inspector Mr. Kanagaraj. He has given the valuation certificate of the damage sustained by the three buses.

10. The Dr. Sivakumar who treated the driver K. Sivakumar for the injury sustained in the stone pelting deposed about the

contusion injury on the chest of Sivakumar and lacerated wound of the left forearm. He has opined that the injury sustained by the driver Sivakumar is simple in nature. He was treated as inpatient. The trial court considering the evidence of the ocular witnesses and the other witnesses had held that the prosecution has proved the guilt of the accused in all the three cases S.C.Nos.127 of 2009, 128 of 2009 and 129 of 2009.

11. The sentence imposed in each case is as under:

S.C.No.127 of 2009

A-1 and A-2: For offence u/s 3(1) of TNPPDL Act : One year R.I with fine of Rs.1,000/- in default one month R.I.

A-3 to A-7: For offence u/s 3(1) of TNPPDL Act r/w 120-B IPC: One year R.I with fine of Rs.1,000/- in default one month R.I.

S.C.No.128 of 2009

A-1 and A-2: For offence u/s 3(1) of TNPPDL Act: One year R.I with fine of Rs.1,000/- in default one month R.I.

A-3 to A-7: For offence u/s 3(1) of TNPPDL Act r/w 120 B IPC: One year R.I with fine of Rs.1,000/- in default one month R.I.

S.C.No.129 of 2009

A-1 and A-2: For offence u/s 3(1) of TNPPDL Act :One year RI with fine of Rs.1,000/- in default one month R.I. For offence under Section 5 of TNPPDL Act: 6 months RI with fine of Rs.500/- in default 15 days R.I. For offence under Section 323 IPC : 3 months RI and fine of Rs.300/- in default 15 days R.I.

A-3 to A-7: For offence u/s 3(1) of TNPPDL Act r/w 120 B IPC : One year RI with fine of Rs 1000/- in default one month RI. For offence u/s 5 of TNPPDL Act r/w 120 B IPC : 6 months RI with fine of Rs 500/- in default 15 days RI.

12. Aggrieved by the finding of the trial court the accused have preferred the appeals:

13. The learned counsel for the appellant contented that, the complaints were made after much deliberation and not immediately after the occurrence. The prosecution case is that on that day due to the declaration of bandh by the political parties and others in support of Srilankan Tamils, there was heavy bandbust and police were present at the time of occurrence. However, the FIR was not registered immediately but after much delay. The First Information Report's were also not

sent to the Court immediately. The unexplained delay in registering the F.I.R and delay in forwarding the same to the Court gives suspicion about falsification of complaint.

14. The evidence of the driver, conductor and the persons who alleged to have seen A-1 and A-2 pelting stones on their bus are inconsistent and contradictory to each other. In the cross examination, the witnesses have admitted that they were not aware of the identity of the persons who pelted the stones. They did not tell the names of the accused to the police. While so, when the identification of the persons who pelted stones is not certain, the benefit of doubt should be extended to the accused.

15. The Learned Counsel appearing for the appellant would also submit that, due to previous enmity between two communities, some of the prosecution witnesses are facing criminal prosecution under the SC and ST (Prevention of Atrocities) Act, based on the complaints given by the relatives of the accused persons. Due to the said animosity, the accused persons were falsely implicated in the crime.

16. The learned counsel also submit that the injuries on the accused persons were noted by the Judicial magistrate on the day of remand and same has been elicited through the defence witnesses. The torture and physical injuries on the accused not explained by the prosecution. The alleged confession statement leading to recovery is highly doubtful, in view of the injuries. Hence submitted that the trial court judgment is to be set aside.

17. Per contra the Learned Government Advocate submitted that, on 04.02.2009, due to the announcement of bandh, there was heavy picketing in the area. So to divert the police force and to carry on their destructive activities in order to cause fear in the mind of the public, the accused persons entered into a criminal conspiracy. Since, it was hatched in secrecy, the sequence of events that happened pursuant to the conspiracy are the circumstantial evidence which has been placed before the court and the trial court has rightly held the accused persons guilty of the crime.

18. The 7th appellant along with appellants 3 to 6 gathered near the Aircel tower. The 7th accused unlawfully claimed the tower endangering his own life so, as to attract the attention of the police and draw them towards the cell tower.

For this, the appellants 3 to 6 were assisting. This was the outcome of the conspiracy which hatched earlier in secrecy. After the arrest of first and second accused, the scheme of conspiracy came to light from the information given by them in their confession statement. The recovery of motor cycle of 3rd accused from his residence based on the information given by the other accused and the identification of the accused persons by the witnesses during the identification parade and during the trial undoubtedly establishes the guilt of the accused. The trial court has considered the evidence of the witnesses and the defence theory and concluded that the accused persons have conspired to damage public property to put public into fear and pursuant to the conspiracy they have caused damage to the wind shields of three government buses, while the buses were moving with passengers. In one of the incident the driver has sustained injury in his chest by the hit of stone. The act of crime well proved through cogent and natural witnesses hence the appeals has to be dismissed.

19. The prosecution through Subramaniam the Traffic Controller at Nambiyur Branch of Tamil Nadu Government Transport Corporation has proved that the defacto complainants were the crew members of the bus, which was damaged on the date of occurrence. The public who travelled in the bus had deposed that they saw the first and second appellants carrying their party flag overtook the bus and pelted stones. The broken glass pieces were recovered from the scene of occurrence. The Motor Vehicle Inspector Kanagaraj has deposed about the damage and its value. The overt act of First and Second accused in causing damage to the three buses and the injury sustained by Siva Kumar the driver of the bus bearing registration No.TN.33.N. 1961 is well proved through the ocular witnesses and the medical certificate. Therefore, the finding of the trial Court as against the appellants 1 and 2 is unassailable. The minor discrepancies among the witnesses no way renders the prosecution case doubtful. In fact, the natural way the witnesses have deposed about the occurrence and the overt act of the first and second appellants reflects the truth. The alleged delay in complaint does not any way prejudice the appellants. Since the incident involving Government property, it is quite natural, the crew members are bound to first inform their Higher Officials in the Department. The police though might have arrived at the scene of occurrence earlier, waiting for the written complaint with sufficient details to register the First Information Report is natural. The facts and circumstances under which the crime has committed should be the test for assessing whether the delay is deliberate or otherwise. In this case, the police on the date of occurrence were in alert and patrolling, when serial of information about violence received, their priority will be to

reach the spot and prevent further violence and defuse the situation instead of recording all and sundry information then and there. Hence, this Court does not find any merit in the submission by the appellants on this aspect.

20. Regarding the appellants 3 to 7, it is the case of the prosecution that they all parties to the conspiracy and pursuance to the conspiracy, the 7th accused claimed the Aircel tower the other appellants 3 to 6 who were gathered there diverted the attention of police. This fact is proved by the prosecution through the evidence of Gomathi Sub-Inspector of Police. The confession statements of the first and second appellants have lead to the recovery of the motorcycle used by them to move around and pelt stone from the residence of third appellant. He is the owner of the vehicle and one of the member of the conspiracy team. The presence of the accused together and the information given by the accused to the police unravels the scheme of conspiracy.

21. In this regard, it is appropriate to quote the following passages in the judgments of the Hon'ble Supreme Court:

1). Raja alias Rajinder-Vs- State of Haryana reported in 2015(11) SCC 43.

"It has been propounded that while scrutinising the circumstantial evidence, a Court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straight jacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused."

2) Baliya @ Bal Kishan Versus State of M.P. reported in 2012 (9) 696:

12. The offence of "criminal conspiracy" is defined in Section 120A of the INDIAN PENAL CODE whereas, Section 120-B of the Code provides for punishment for the said offence.

The foundation of the offence of criminal conspiracy is an agreement between two or more persons to cooperate for the accomplishment/performance of an illegal act or an act which is not illegal by itself, through illegal means. Such agreement or meeting of minds create the offence of criminal conspiracy and regardless of proof or otherwise of the main offence to commit which the conspiracy may have been hatched, once the unlawful combination of minds is complete, the offence of criminal conspiracy stands committed.

13. More often than not direct evidence of the offence of criminal conspiracy will not be forthcoming and proof of such an offence has to be determined by a process of inference from the established circumstances of a given case. The essential ingredients of the said offence; the permissible manner of proof of commission thereof and the approach of the courts in this regard has been exhaustively considered by this Court, in several pronouncements of which, illustratively, reference may be made to E.K. Chandrasenan v. State of Kerala [1995 (2) SCC 99], Kehar Singh & Ors. v. State (Delhi Administration) [1988 (3) SCC 609], Ajay Aggarwal v. Union of India [1993 (3) SCC 609] and Yash Pal Mittal v. State of Punjab [1977 (4) SCC 540].

22. This is a case where members and Office bearers of a political party has decided to show their concern for the tamilians in Srilanka. For the said purpose, they have declared bandh. They were aware that the police are at patrol around. We find that 7th accused to draw the attention of police claims the Aircel tower. The accused 3 to 6 are assisting him to do that. At the same time, taking the motorcycle of 3rd accused, the 1st and 2nd accused intercept three buses and pelt stones. The vehicle is later recovered from 3rd accused house based on the confession of 1st and 2nd accused. The meeting of minds between the conspirators is disclosed by the accused in their confession statements. Under section 30 of the Evidence Act, the inculpatory statement of these accused implicating the other accused tried along with them is admissible in evidence. The sequence of event that has happened on 04.02.2009 cannot be

brushed aside as incidents of isolation, without any link with each other. Under section 10 of the Indian Evidence Act, anything said or done by conspirator in reference to common design, is a relevant fact as against the co-conspirators.

23. Here is a case where the prosecution has proved that the accused have devised a scheme to execute their actionable wrong and consequently public properties were damaged. The Government buses in which public were on board has been targeted. In the said circumstances, the finding of the trial Court holding them guilty is justifiable and does not warrants any interference.

24. As a result, the Criminal Appeals Nos.597 to 599 of 2011 are dismissed. Bail bond stands cancelled. The accused are to be secured and committed to prison to undergo the remaining period of sentence. The period of sentence in all the cases shall run concurrently.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Learned Additional Sessions Judge,
(Fast Track Court No.2), Gobichettipalayam.
2. The Station House Officer,
Nambiyur Police Station, Erode District.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.

Copy To: The Section Officer,
Criminal Section (Records), High Court, Madras.

+3 cc's to M/s.S.Deepika, Advocate Sr.No.33008 to 33

judgment in
Criminal Appeals Nos.597 to 599 of 2011

gjii(co)
CSL/06.06.2019