

Bail Slip

The Appellant/Accused viz., namely M.Ponnambalam Sole Accused in SC.NO.146/03 S/o.Munusamy on the file of the Additional District and Sessions Judge, I Fast Track, Ponnammalle was directed to be released on bail as per order of this Court dated 2.01.2012 in MP.NO.1/11 IN CRL A.NO.848/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.848 of 2011

M.Ponnambalam,
S/o.Munusamy,
Ambattur Estate,
Ambattur. ... Appellant/Accused

/versus/

State rep.by
Sub-Inspector of Police,
Ambattur Estate Police Station,
Ambattur,
(Crime No.200/2001) ... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, 1973 praying against the conviction and sentence passed on him by the Additional District and Sessions Judge, I Fast Track Court, Poonamallee in S.C.No.146 of 2003 dated 25.11.2011 convicting the appellant under Section 3(2)(E) of the Prevention of Damages of Public Property Act, 1984 (Act 3 of 1984) and sentenced to undergo rigorous imprisonment for 6 months and also to pay a fine of Rs.5,000/- in default to undergo S.I for 6 months.

For Appellant : Mr.P.R.Dinesh Kumar

For Respondent : Mr.K.Prabakar

Additional Public Prosecutor

J U D G M E N T

Heard the learned counsel for the Appellant as well as the Learned Additional Public Prosecutor for the respondent.

2. It is the case where the Appellant was caught red-handed by the Driver, Conductor and Passenger in the Government bus when he broke the windshield of the bus unprovoked on the night of 07.04.2001. The value of the broken windshield was assessed by the valuer at Rs.1,200/-.

3. To prove the case, the prosecution has examined 4 witnesses PW.1 driver and the defacto complainant, PW.2 Conductor of the bus who is also co-signatory to the complaint, PW.3 Valuer and PW.4 Investigating Officer. 5 Exhibits were marked in support of prosecution and the wooden log used by the accused to break the windshield marked as M.O.1.

4. The trial Court, on appreciating the above evidence and the defence taken by the accused has held the accused guilty for offence under Section 3 (2) (e) of the Prevention of Damages to Public Property Act, 1984 (Act 3 of 1984) sentenced him to undergo 6 months R.I and to pay a fine of Rs.5,000/- in default to undergo two months S.I. From the fine amount, the trial Court has apportioned Rs.1,200/- towards the damages payable to the Metropolitan Transport Corporation as compensation and the balance Rs.3,800/- to be remitted to the State.

5. Aggrieved by the said conviction and sentence, the present Appeal is filed highlighting that the prosecution has failed to prove any motive on the part of the accused/appellant to cause damages to the public property. The learned counsel for the appellant submitted that the complaint Ex.P1 has been given by two persons namely PW.1 and PW.2. There are decisions of this Court which has held that there cannot be a complaint by multiple persons and he would further submit that the recovery of M.O.1 wooden log is highly doubtful. No independent witness to corroborate the recovery of M.O.1 has been examined by the prosecution.

6. It is also submitted by the learned counsel for the Appellant that broken glass pieces were not recovered by the I.O and no proper explanation is given for his failure to collect the broken glass pieces. Submitting that on a cumulative assessment of evidence, the trial Court ought to have acquitted the accused but unfortunately convicted him.

7. The Learned Additional Public Prosecutor would submit that it is a clear case of unprovoked attack on the Government Bus by the Appellant. The Appellant was caught red handed by the PW.1, PW.2 and passengers who were travelling in the bus. The Accused was apprehended and taken in the same bus to the police station and handed over to the police. The prosecution through PW.1 to PW.3 has proved the charges. Therefore, there is no reason to interfere the well considered judgment of the trial Court.

8. Heard the rival submissions of the learned counsel for the Appellant and the learned Additional Public Prosecutor. PW.1 and PW.2 are crew members of the Government Bus bearing TN.01.2458 they both have clearly deposed the incident and involvement of the accused in the crime of causing damage to the public property. Though some

suggestions has been put during the cross examination that the accused was not in drunken mood and he was not the persons involved in the crime, both PW.1 and PW.2 in their deposition, has consistently deposed that the Appellant broke the windshield and he was caught red-handed by them with the help of the passengers in the Government bus. In the light of the above strong evidence against the appellant, this Court finds no reason to interfere the finding of the trial Court.

9. The learned counsel appearing for the appellant would submit that during the pre-trial period the appellant has undergone 25 days imprisonment. After conviction, pending appeal, the appellant was in prison for another 15 days. In the earlier round of litigation before this Court, the conviction was set-aside by the Appellate Court in Crl.A.No.720 of 2004 and remanded the matter back to the trial Court, on the ground that the accused/appellant was not convicted under the correct provision of law. Invoking wrong statute namely Tamil Nadu Public Property (Prevention of Damage and Loss) Act 59 of 1992, the Appellant/accused was sentenced him to undergo 4 years R.I and to pay a fine of Rs.2,000/- by the trial Court which was set aside and remanded back to trial Court to decide the case applying the correct law.

10. The Learned Counsel for the Appellant would submit that after the matter was remanded back to the trial Court, the trial Court has now found him guilty and imposed sentence to undergo 6 months R.I under the provision of Central Act 3 of 1984.

11. The learned Additional Public Prosecutor in response to the submission made by the counsel for the appellant regarding the sentence drew the attention of this Court to the provision of Section 3(2)(e) of the Prevention of Damage of Public Property Act, 1984 and submitted that when the law prescribes punishment of minimum sentence of 6 months imprisonment which may extend to 5 years and with fine, the Court cannot impose less sentence than the sentence prescribed, without recording reason to award a sentence of imprisonment for a term of less than six months.

Section 3(2)(e) of the Act reads as below:-

Mischief causing damage to public property

Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

3 (1) Whoever commits mischief by doing any act in respect of any public property being:-

3 (2) The Prevention of Damage to Public Property Act, 1984

- a.
- b.
- c.
- d.

e. any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith. shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

12. Considering the chequered history of the case resulting in delay of several years, this Court is of the opinion that while confirming the conviction, the period of sentence shall be modified reducing the term less than the minimum sentence prescribed under the law, invoking the power under the proviso to Section 3(2)(e) of the Act. The period of sentence shall be modified. to the effect that the period already undergone instead of 6 months R.I the fine of Rs.5,000/- shall stands confirmed.

13. Accordingly, the Criminal Appeal is disposed of. No costs.

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

bsm
To,

1. The Learned Additional District and Sessions Judge, I Fast Track Court, Poonamallee.
2. The Sub-Inspector of Police, Ambattur Estate Police Station, Ambattur.
3. The Principal Sessions Judge, Chengalpattu.
4. The District Munsif cum Judicial Magistrate , Ambathur.
5. The Chief Judicial Magistrate, Chengalpattu.
6. The Superintendent , Central Prison, vellore
7. The Public Prosecutor, High Court, Madras.
8. The section officer, Criminal Section, High court, Madras

+1cc to Mr.P.R.Dinesh Kumar , Advocate SR.No. 9236

C.A.No.848 of 2011

A.SK(08/03/2019)