



Bail Slip

The Appellant/Single Accused in Crl.A(MD)No.273/2009 viz., Rajendran, Male aged 32/2009, Son of Perumal, was directed to be enlarged on bail vide order of this Hon'ble Court dated 14.09.2009 made in MP(MD)No.1/2009 in Crl.A(MD)No.273/2009.

(The order of the Suspension of Sentence was subsequently revoked by order dated 31.08.2019 made in Crl.A(MD)No.273/2009)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL.A(MD)No.273 of 2009

Rajendran : Appellant/Sole Accused
Vs.

State represented by
The Inspector of Police,
Krishnan Kovil Police Station,
Virudhunagar District.
(in Crime No.54 of 2008)

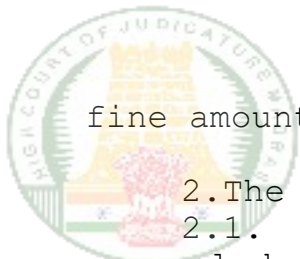
: Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374 of Criminal Procedure Code, against the judgment and conviction passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhoor in S.C.No.171 of 2008, dated 20.08.2009, convicting the appellant for the alleged offence under Section 323 of IPC and sentenced him to undergo 6 months simple imprisonment and convicting him for the offence under Section 341 of IPC and sentenced him to pay a fine of Rs.300/-, in default to undergo one week simple imprisonment.

For Appellant : Mr.S.Balakarthick
For Respondent : Mrs.S.Bharathi,
Government Advocate.

JUDGMENT

This Criminal Appeal is arising out of the conviction and sentence imposed by the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur in S.C.No.171 of 2008, wherein the appellant was found guilty for the offence punishable under Sections 341 and 323 of IPC, convicted and sentenced to undergo six months simple imprisonment for the offence under Section 323 IPC and fine of Rs.300/- for the offence under Section 341 IPC in default of



fine amount one week simple imprisonment was also ordered.

2.The brief facts of the case, in nutshell, are as follows:

2.1. The appellant is a driver of a private bus and he quarreled with P.W.1, who is the driver of Tamil Nadu Transport Corporation bus for having prevented him from over taking his bus. The accused over took the bus near Valayapatti E.B Sub Station and parked the vehicle in front of the transport corporation bus and got down from the bus with wooden log along with another person assaulted the P.W.1/Transport corporation bus driver.

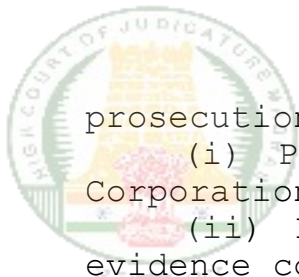
2.2.P.W.1 lodged a complaint before the Krishnankovil Police Station on 12.04.2008 at 10.45.pm and P.W.9/Sub Inspector of Police of KrishnanKovil Police Station received the complaint/Ex.P.1 and registered the same in Crime No.54 of 2008, under Sections 342, 323 and 336 IPC and 3 of TNPPDL Act. The victim/P.W.1 was also referred to the Government Hospital, in Srivilliputhur.

2.3.On 13.04.2008, at about 12.05.am., P.W.1 was taken to the Government hospital, Srivilliputhur and the Doctor/P.W.3 treated the victim/P.W.1 and issued the accident register/Ex.P.2. The Doctor/P.W.3 has noted down the following injuries on the victim (P.W.1):-

1. Parallel Contusion over right shoulder measuring 10 cm * 2 cm in size.
- 2.Parallel Contusion over right upper Arm measuring 5 * 2 cm in size.
- 3.Contusion below over right elbow measuring 3 * 3 cm in size.
- 4.Contusion over right side of forehead measuring 4 cm * 2 Cm in size.
- 5.Tenderness Left rib of the chest.

2.4.On receipt of the complaint, the Inspector of Police, Krishnankovil Police Station/P.W.10 went to the place of occurrence at about 11.30.p.m and prepared the observation mahazar and rough sketch in the presence of P.W.6 and P.W.7. The observation mahazar and sketch are marked as Ex.P.8 and Ex.P.9 respectively. He also examined Pandi/P.W.1, Rathi/P.W.2, Ramar/P.W.6, Rathinam /P.W.7, and one Muthuraman /P.W.8 and others and recorded their statements. He also sent the vehicle for inspection to the motor vehicle Inspector. The accused surrendered before the police on 13.04.2008 and he was arrested by P.W.10 and remanded to judicial custody. Further investigation was taken over by P.W.11 on 14.04.2008 and he obtained the report from the motor vehicle inspector/P.W.5 and also examined the Doctor and collected the wound certificate/Ex.P.2 and damage certificate from P.W.4. In conclusion of the investigation, P.W.11 filed the final report on 08.08.2008.

2.5.In support of the prosecution, 11 witnesses were examined and 9 documents have been marked. The available evidence from the



prosecution witness is as follows:

- (i) P.W.1 is the victim/driver of the Tamil Nadu Transport Corporation bus and he speaks about the occurrence.
- (ii) P.W.2 is the Conductor of the Corporation bus and his evidence corroborates with P.W.1.
- (iii) The Doctor, who treated the victim/P.W.1 was examined as P.W.3.
- (iv) P.W.4 is the Assistant Engineer of the Tamil Nadu State Transport Corporation bus and he was examined for the valuation of damage caused to the bus.
- (v) P.W.5 is the motor vehicle inspector and he was examined for the condition of the bus.
- (vi) P.W.6 and P.W.7 are examined as witness to observation mahazar, but they turned hostile.
- (vii) P.W.8 is the independent witness and has turned hostile.
- (viii) P.W.9 is the Sub-Inspector of Police, who received the complaint.
- (ix) P.W.10 is the investigation officer, who conducted the preliminary investigation.
- (x) P.W.11 is the investigation officer, who conducted the further investigation and filed the final report.

3. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 of Cr.P.C and the accused denied the same. On the side of the accused, no witness was examined and no documents were marked.

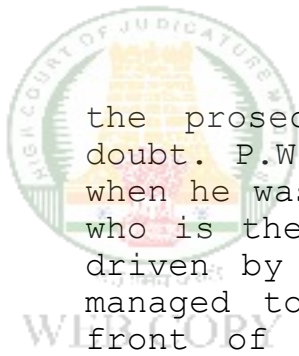
4. In conclusion of the trial, the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur by order dated 20.08.2009 found the appellant guilty and convicted him as stated above. As against the conviction and sentence imposed on the appellant, this appeal is filed.

5. Heard Mr.S.Balakarthick, learned counsel for the appellant and Mrs.S.Bharathi, learned Government Advocate for the respondent.

6. The learned counsel for the appellant submitted that P.W.1 and P.W.2 are interested witnesses and as such, the trial Court ought not to have relied on their evidence to convict the appellant. Apart from the evidence of P.W.1 and P.W.2, no other individual witnesses are available to support the prosecution. In fact, the medical evidence also discloses that the injury is only a contusion injury, but it has been projected by P.W.1 as if an occurrence took place and that the injury was sustained therein.

7. He further submitted that admittedly, there is no motive between the accused and the complainant and the earlier complaint lodged in this case has been suppressed. Therefore, he prays for interference.

<https://hcservices.courts.gov.in/hcservices>, the learned Government Advocate would submit that



the prosecution has established its case beyond any reasonable doubt. P.W.1 /the transport corporation bus driver sustained injury when he was driving his vehicle towards Srivilliputhur. The accused, who is the driver of the private bus, could not over took the bus driven by the victim, on the date of occurrence and thereafter, managed to over took the corporation bus, parked the vehicle in front of the corporation bus and attacked P.W.1/driver of the transport corporation bus, thereby caused injury. This evidence has been corroborated by the evidence of P.W.2/conductor of the corporation bus.

9.Apart from that the evidence of P.W.1 is also corroborated by the medical evidence the Doctor (P.W.3), who treated the victim and issued the Accident Register (Ex.P.2).

10.This Court has paid its anxious consideration to the rival submissions and also perused the records.

11.The occurrence took place on account of over taking the bus between a Tamil Nadu Transport Corporation bus driver and a private transport bus driver. The accused was working as a driver in the private transport. On the date of occurrence, the accused could not succeed in his attempt to overtake the victim and near Valayappati E.B Sub Station, he overtook the corporation bus and parked his vehicle in front of the corporation bus, wrongfully restrained P.W.1 (victim) and also assaulted P.W.1(victim) with a wooden log.

12.P.W.1 sustained injuries and immediately, he lodged the complaint/Ex.P.1 before the Krishnan Kovil Police Station. The complainant/ P.W.1 was also referred to the Government Hospital at Srivilliputhur and he was examined by the Doctor /P.W.3 on 13.04.2008 and he noted the injuries (cited supra) in Ex.P.2.

13.Admittedly, there is no motive between P.W.1 and the accused. The occurrence took place on account of the competition in business. In this regard, the accused assaulted P.W.1 and caused injury. The case of the prosecution is also supported by the evidence of P.W.2 and the Doctor /P.W.3.

14.Upon considering the entire materials placed on record, the trial Court has rightly acquitted the accused for the offence under Sections 324 IPC and 3 (1) of TNPPDL Act. The offence has not been made out beyond any reasonable doubt. However, the trial Court found that the appellant guilty and convicted him under Sections 341, 323 IPC.

15.From the available evidence, this Court does not find any reasons to interfere with the order of the trial Court.

16.However, as an alternative remedy, the learned counsel for the accused prays for modification of sentence. He would submit

court in
considerin

18. In the result, the Criminal Appeal is partly allowed and the sentence imposed by the trial Court is modified to the extent indicated above.

Assistant Registrar (CS-II)

Sub Assistant Registrar (CS)

To

- Copy to: The Section Officer,
Criminal Section Records, (2 Copies),
Madurai Bench of Madras High court, Madurai

CRL.A (MD) No.273 of 2009
24.09.2019