



Bail Slip

Gurusamy (M/18/2015) Appellant/Accused NO.1, S/o.Karuppasamy, Sankar @ Saravana Perumal (M/19/2015) Appellant/Accused No.2, S/o.Petchimuthu Thevar, were released on Bail (not confined in Jail Suspension of Sentence till 22.12.2015) vide Court order dated 15.12.2015 made in MP(MD)No.1 of 2015 in Crl.A(MD)No.371 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	27.01.2020
Date of Judgment	23.03.2020

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.A(MD)No.371 of 2015

1.Gurusamy
2.Sankar @ Saravana Perumal : Appellants/A1 and A2

Vs.

State rep. By
The Inspector of Police,
In-charge of Serakulam Police Station,
Thoothukudi District.
(In Crime No.12 of 2013) : Respondent/Complainant

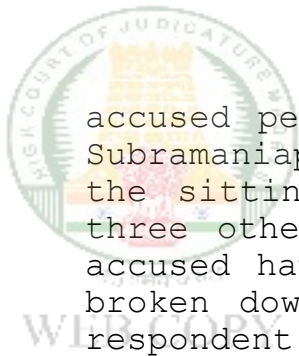
Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the judgment, dated 23.11.2015 passed by the Principal Sessions Judge, Thoothukudi, in SC No.47 of 2014 and allow this appeal and set aside the conviction and sentence passed by the Principal Sessions Court, Thoothukudi.

For Appellant : Mr.A.Anandan
For Respondent : Mr.V.Neelakandan
Additional Public Prosecutor

J U D G M E N T

This criminal appeal is directed against the judgment, dated 23.11.2015 passed by the Principal Sessions Judge, Thoothukudi, in SC No.47 of 2014.

2.The case of the prosecution is that on 25.05.2013 at about 3.30 am, while the de-facto complainant and other three persons, who are the residents of Subramaniapuram Village, returning from Paatukacheri held at Elupaikulam Village temple festival, both the



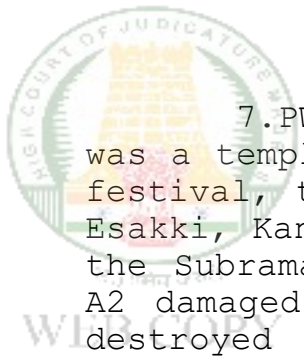
accused persons walked in front of them and while coming near the Subramaniapuram Village bus stop, both the accused persons damaged the sitting cement slab in front of the de-facto complainant and three other persons and in furtherance of such activity, both the accused have forwarded to pull out the Yadava community flag post, broken down and thrown into the nearby well. In this regard, the respondent police registered a case against the accused persons.

3.The trial court, after careful perusal of the entire materials available on record both oral and documentary, found the appellants/A1 and A2 guilty, convicted and sentenced them to undergo each one year rigorous imprisonment and to pay a fine of Rs.6,000/-, in default to undergo four months rigorous imprisonment for the offence under section 3(1) of TNPPDL Act. Aggrieved by the judgment of the trial court, the appellants/A1 and A2 are before this court.

4.Heard both sides and perused the materials available on record.

5.The learned counsel appearing for the appellants/A1 and A2 argued that on the prosecution side, it is stated that the de-facto complainant and a group of people, while walking behind the accused persons, both the accused persons damaged the cement slab without any interruption and then damaged the Yadava Community flag post even without any interruption from the de-facto complainant and other prosecution witnesses, which shows a false case has been lodged against the appellants/A1 and A2 and when the property of Subramaniapuram Village is destroyed in front of the residents of Subramaniapuram Village, by the person from neighbouring village, the de-facto complainant and other prosecution witnesses were remained silent spectator till the disposal of the Community Flag into the well, after broken, which shows that the set of facts laid down in the complaint is utter false and against the natural human behaviour and the de-facto complainant and other prosecution witnesses are belong to Yadava Community, while so they were remained silent spectators at the time of destroying their own community flag post and thrown into the well, creates undefeatable doubt and clearly proves that the fact set out in the complaint is utterly false, flimsical and impleadment of the accused persons and all the prosecution witnesses turned hostile and became a blow to the prosecution even then the trial court convicted the appellants/A1 and A2 are not correct and there was no corroboration between the prosecution witnesses and prays that the appellants/A1 and A2 are entitled to acquittal.

6.PW1 is the complainant and he gave Ex.P1 complaint. PW1 in his complaint stated that on 25.05.2013 at 3.30 am, the appellants/A1 and A2 damaged the bench, which was in the bus stop and further they destroyed the flag stick of their community and put it into the well and he and Kandan, Esakki and another Esakki, ~~the accused persons~~ fled away and he gave Ex.P1 complaint.



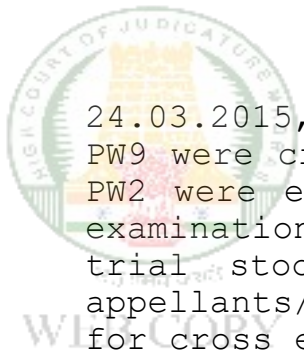
7.PW1 during his evidence stated that on 24.05.2013, there was a temple festival celebrated in Illupaikulam village and in the festival, there was music kachari and on 25.05.2013 at 3.30 am, he, Esakki, Kandan and Mani returned to their home and when they reached the Subramaniyapuram bus stop, they saw that the appellants/A1 and A2 damaged the bench, which was in the bus stop and further they destroyed the flag stick and put it into the well and when they shouted, the appellants/A1 and A2 fled away and he saw the above flag nearby the place of occurrence, with electric light.

8.PW2 Kandan is cited as eye witness. PW2 deposed that on 24.05.2013, there was a temple festival celebrated in Illupaikulam village and in the festival, there was music Kachari and on 25.05.2013 at 3.30 am, he Esakki, Kandan and Mani returned to their home and when they reached Subramaniyapuram bus stop, they saw that the appellants/A1 and A2 damaged the bench, which was in the bus stop and further they destroyed the flag stick and put it into the well. Further, PW2 deposed that he saw the occurrence by way of light burning near the place of occurrence. But PW1 during his cross examination stated that he put his signature in a blank paper in the police station and he has not given any complaint against the appellants/A1 and A2 and when he returned from the temple festival, it was dark and hence, it is not possible for him to see the occurrence and only at the request of police, he stated that the appellants/A1 and A2 damaged the bench and flag stick.

9.The learned Additional Public Prosecutor argued that in a criminal proceeding, if a witness has been cross examined after a long interval from the date of chief examination and circumstances are available for the purpose of believing that he or she might have been won over by other side, such evidence during the cross examination can be disregarded/eschewed and the evidence of PW1 and PW2 stated during their cross examination can be eschewed. For that, the learned Additional Public Prosecutor relied upon the decision reported in **2015(2) LW (Cr1) 458 (Dharmaraj Vs. The Inspector of Police Station, Pudhukottai District)**.

10.The learned counsel appearing for the appellants/A1 and A2 argued that the petition for recalling the witnesses was filed by the defence side at earliest point of time, but the prosecution failed to produce the witnesses is a fault and blow on the part of the prosecution, for which the defence side could not be responsible and the appellants/A1 and A2 could not be convicted.

11.In this case, PW1 to PW5 were examined on 01.09.2014. PW3 to PW5 turned hostile on the same day. But PW1 and PW2 were not turned hostile. On the defence side, petition to recall PW1, PW2, PW7 and PW9 was filed on 07.10.2014 and it was allowed on 13.10.2014 and the appellants/A1 and A2 filed process memo only on 25.11.2014 and then no process fee was paid on the accused side and on



24.03.2015, the accused paid the process fee and PW1, PW2, PW7 and PW9 were cross examined only on 24.04.2015. On 01.09.2014, PW1 and PW2 were examined in chief and no reason was stated for the cross examination of PW1 and PW2 on the same day itself. Even though the trial stood posted to 02.09.2014, on perusal of records, the appellants/A1 and A2 have not taken any steps to recall PW1 and PW2 for cross examining them immediately. Hence, the argument put forth on the side of the appellants/A1 and A2 stating that only due to the prosecution side fault to bring the witnesses within time, it is not possible for the appellants/A1 and A2 to cross examine PW1 and PW2 within time is not at all acceptable.

12.In this case, PW1 and PW2 were examined in chief on 01.09.2014. But PW1 and PW2 were cross examined on 04.04.2015. It is held in **2013(3) (Crl) 63 (Akil alias Javid Vs. State (NCT of Delhi))**, the Hon'ble Apex Court had an occasion to deal with similar factual situation and ultimately held that in a criminal proceeding if a witness has been cross examined after a long interval from the date of chief examination and circumstances are available for the purpose of believing that he or she might have been won over by other side, such evidence can be disregarded/eschewed. As per the dictum given by the Hon'ble Apex Court, the said portion of evidence can easily be disregarded/eschewed. In this case also, PW1 and PW2 were cross examined after a lapse of seven months. Hence, circumstances are available for the purpose of believing that PW1 and PW2 have been won over by other side. Therefore, under these circumstances, the evidence of PW1 and PW2 stated during their cross examination can be eschewed.

13.On careful perusal of the evidence of PW1 and PW2, it reveals that PW1 and PW2 while they were returning from the temple, saw that the appellants/A1 and A2 damaged the sitting bench in the bus stop and the flag stick of their community and put the flag stick into the well. PW3 and PW4 are cited as eye witnesses. But they turned hostile and did not support the case of the prosecution. PW1 and PW2 during their evidence stated that they saw the occurrence in the presence of electric light, which was burning near the place of occurrence. PW5 and PW6 are cited as Magazar witnesses. PW5 during his chief examination stated that on 26.05.2015, the police came to the place of occurrence and prepared the magazar. But PW5 and PW6 turned hostile and did not support the case of the prosecution. Even though PW5 and PW6 turned hostile, their evidence cannot be rejected in toto. PW5 deposed that the police came to the place of occurrence and saw the damaged bench and damaged flag stick. Hence, from the evidence of PW5, it reveals that in the place of occurrence, the bench and the flag stick were found in damaged condition.

14.In this case, the observation magazar and rough sketch were marked as Exs.P2 and P8. On careful perusal of Exs.P2 and P8,

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it is seen that nearby the place of occurrence, one electric light was found burning. Hence, the argument put forth on the side of the appellants/A1 and A2 stating that at the time of occurrence, it was dark and hence, it was not possible for PW1 to PW4 to see the occurrence is not at all acceptable. Further, the learned counsel appearing for the appellants/A1 and A2 during his argument stated that while PW1 to PW4 came behind the appellants/A1 and A2, both the appellants/A1 and A2 have damaged the cement bench and the Yadava community flag even without any interruption from PW1 to PW4 is unbelievable, untrustworthy and against natural behaviour, which clearly shows a false complaint and prays that the appellants/A1 and A2 are entitled to acquittal.

15.In this case, either PW1 in his complaint or PW1 and PW2 during their evidence have not stated that they saw the occurrence, while they came behind the appellants/A1 and A2. But they specifically stated during their evidence that when PW1 to PW4 returned from the temple after the music katcheri, they saw that the appellants/A1 and A2 damaged the cement bench and the flag post. Hence, the argument put forth on the side of the appellants/A1 and A2 stating that when PW1 to PW4 walking behind the appellants/A1 and A2, both the accused damaged the cement bench and flag post without any interruption from PW1 to PW4 is unbelievable and untrustworthy is not at all acceptable.

16.In this case, PW7 was examined to prove the value of damage. PW7 during his evidence stated that the value of the damaged cement bench is Rs.5,500/-. Hence, on careful perusal of the evidence of PW1 and PW2, it reveals that the appellants/A1 and A2 only damaged the cement bench, flag post and thereby destroyed the public property.

17.For all the reasons stated above, this court is of the considered view that the trial court, after proper appreciation of the entire materials on record, had given a correct finding, which according to this court, requires no interference by this court.

18.In the result, the criminal appeal fails and as such the same is **dismissed**.

Sd/-

Assistant Registrar (records)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Sessions Judge,
Tuticorin District.
2. The Judicial Magistrate,
Srivaikundam, Tuticorin District
3. The Inspector of Police,
In-charge of Serakulam Police Station,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Crl.A(MD)No.371 of 2015
23.03.2020**

MK (08.06.2020) 6P 5C