

BAIL SLIP

The Appellant/Accused, namely Settu S/o. Shanmugam was directed to be released on bail as per order of this court dated 01.02.2019 in MP.NO.813/2019 IN CRL A.NO.38/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Crl.A.No.38 of 2019

Settu

... Appellant

-Vs-

State, rep. by The Inspector of Police,
Tharamangalam Police Station,
Salem District.
(Crime No.343 of 2008).

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to allow this appeal to set aside the judgment dated 19.12.2018 in S.C.No.303 of 2010 on the file of the I Additional District & Sessions Judge, Salem.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.K.Madhan,
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the Judgment of conviction and sentence imposed by the learned I Additional District Judge, Salem in S.C.No.303 of 2010, dated 19.12.2018.

2.The respondent Police have registered a case in Crime No.343 of 2008, for offence under Section 3(1) of the Tamil Nadu Public Property (Damager and Loss) Act, 1992 (hereinafter referred to as 'TNPPDL Act') against the appellant/A1 and A2 on the complaint (Ex.P1) given by the defacto complainant (PW.1). After completing investigation, the respondent police laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Omalur and the same was taken on file in P.R.C.No.20 of 2008. Since the offence is triable by the Court of Session, the learned District Munsif-cum-Judicial Magistrate, committed the case to the Principal District and Sessions Judge, Salem and the same was taken on file in S.C.No.303 of 2010 and made over to the learned I Additional

District and Sessions Judge, Salem for disposal in accordance with law.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charges against the appellant, the learned I Additional District and Sessions Judge, framed charge under Section 3(1) of TNPPDL Act.

4.After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the trial Judge found the appellant guilty for offence punishable under Section 3(1) of TNPPDL Act and convicted and sentenced to undergo Simple Imprisonment for 6 months and to pay a fine of Rs.3,000/-, in default to undergo Simple Imprisonment for one month. During the pendency of the trial, the 2nd accused died and therefore, the charge against him was abated.

5.Challenging the above said Judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

6.The learned counsel for the appellant would submit that the damaged property has not been valued in proper manner and the valuation certificate has not been marked by the prosecution during trial. The learned counsel would further submit that PW1 to PW3 are unknown persons to the appellant prior to the occurrence and no identification parade was conducted to identify the appellant in this case. Though the occurrence said to have taken place in the running bus, no independent witness or eye witness was examined by the prosecution. The case of the prosecution is that when the bus was running, the appellant/A1 and his brother/A2 pelted stone on the back side wind screen and damaged the mirror. If at all the alleged occurrence is true, the passengers in the bus would have sustained injury. But none of the passengers sustained injury and none of the passengers who were travelling in the bus at the time of the occurrence was examined in this case. It would go to show that there was no such occurrence had happened and the respondent Police put up a false case against the appellant. Since only the appellant/A1 and his brother/A2 questioned about the activities of the Driver and Conductor (PW1 and PW2), they foisted a false case against them and the trial Court without considering the same, convicted the appellant. Therefore, the judgment of conviction and sentence passed by the trial Court against the appellant, is liable to be set aside.

7.The learned Government Advocate (Crl. Side) appearing on behalf of the respondent Police would submit that on the date of occurrence i.e., on 16.07.2008, at about 08.45 p.m., the Tamil Nadu State Transport Corporation bus bearing registration number TN 27 N 1621 while proceeding to

Tiruchengodu, the appellant and his brother stopped the bus near Kamaraj statue at Tharamangalam. The appellant/A1 and his brother/A2 got into the bus with an intention of going to Salem. Though they were informed by the Conductor (PW2) of the bus that the bus would not go to Salem, both the accused shouted the Driver and Conductor (PW1 & PW2) and the passengers in the bus and also asked the Driver (PW1) to turn the bus to Salem and the passengers in the bus made the accused to alight the bus. Hence, the appellant and his brother/A2 got enmity against the crew of the bus and they accused committed mischief by pelting stones against the bus and damaged the rear wind shield glass on the bus and causing a loss of Rs.3,000/-. In order to prove the case of the prosecution, the Driver of bus was examined as PW1; the Conductor of bus was examined as PW2; one independent witness was examined as PW3 who saw the incident and he has spoken about what he saw regarding the occurrence and the mahazar witness was examined as PW4; The Inspector of Road Transport was examined as PW5 and he has given the Motor Vehicle Inspection Report and the same was marked as Ex.P4; The Senior Assistant Engineer of the Tamil Nadu State Transport Corporation was examined as PW6 and he has given the Damage Value Report of the bus and the same was marked as Ex.P5; The Sub-Inspector who registered the case against the appellant was examined as PW7 and the Investigating Officer was examined as PW8.

8.The learned Government Advocate (Crl. Side) would further submit that in this case, PW1 and PW2 are the Drive and Conductor of the bus to which the accused have caused damage. The accused was identified by PW1 and PW2. PW3 who is stranger to the incident, deposed that the accused has committed the offence as stated by the Driver (PW1). The evidence of PW1 to PW3 are corroborated with each other. Therefore, by examination of evidence and materials, the prosecution has established its case beyond reasonable doubt. The appellant is person without any reason caused damaged to the bus to the tune of Rs.3,000/-. The trial Court rightly appreciated the evidence and materials, had convicted the appellant and there is no merit in the appeal and same is to be dismissed.

9.Heard the learned counsel appearing for the appellant and the learned Government Advocate [Crl. Side] appearing for the respondent and also perused the materials available on record.

10.The case of the prosecution is that on the date of occurrence i.e, on 16.07.2008, at about 08.45 p.m., the bus belongs to Tamil Nadu State Transport Corporation bearing registration number TN 27 N 1621 while proceeding to Tiruchengodu, the appellant/A1 and his brother/A2 stopped the bus near Kamaraj statue at Tharamangalam. The appellant/A1

and A2 got into the bus with intention of going to Salem. They were told by the Conductor (PW.2) of the bus that the bus would not go to Salem, but the accused shouted the Driver and Conductor (PW.1 & PW.2) to turn the bus to Salem and the passengers in the bus made the accused to alight the bus. Hence, the appellant and his brother/A2 got enmity against the crew of the bus and committed mischief by pelting stones against the bus and damaged the rear wind shield glass on the bus and caused loss of Rs.3,000/-. Thereafter, the Driver of the bus (PW.1) lodged a complaint to the respondent Police.

11. Based on the complaint (Ex.P1) given by the Driver of the bus (PW.1) an FIR in Crime No.343 of 2008 was registered for offence under Section 3(1) of TNPPDL Act. After completing investigation, the respondent police laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Omalur and the same was taken on file in P.R.C.No.20 of 2008. Since the offence is triable by the Court of Session, the learned District Munsif-cum-Judicial Magistrate, committed the case to the Principal Sessions Judge, Salem and the same was taken on file in S.C.No.303 of 2010 and made over to the learned I Additional District and Sessions Judge, Salem.

12. During the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 8 witnesses were examined as PW1 to PW8 and 7 documents were marked as Exs.P1 to P7 and one material object was exhibited. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused, he denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

13. After completing trial and hearing the arguments advanced on either side, the learned I Additional District and Sessions Judge, by judgment dated 19.12.2018 in S.C.No.303 of 2010, convicted and sentenced the appellant/A1 as stated above.

14. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

15. In this case, the occurrence is said to have taken place on 06.07.2017, at about 08.45 p.m. As per the evidence of the Driver and Conductor of the bus (PW1 and PW2), they were proceeding with the bus bearing registration number TN 27 N 1621 to Tiruchengode, at that time nearby Kamaraj Statue at Tharamangalam, the appellant and his brother stopped the bus and got into the bus to go to Salem. The Conductor (PW2) told them that the bus will not go to Salem, at that time, the appellant and his brother shouted the Driver to turn the bus to Salem and the passengers made the appellant and his brother

to alight the bus. Subsequently, due to the said motive, the appellant alleged to have pelted stones on bus causing damage to rear wind shield glass and caused a loss of Rs.3,000/-.

16.PW1 and PW2 have clearly deposed the occurrence and PW3 who saw the incident also corroborated the evidence of PW1 and PW2. On receipt of the complaint (Ex.P1), the Investigating Officer (PW8), went to the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P7) and conducted investigation. The colour photo was taken to show the damage caused to the bus and the same was marked as material object (MO1) during trial.

17.Since PW1, PW2, PW4 & PW5 are official witnesses, they may not have any personal enmity or vengeance against the appellant to give false evidence. Further, the evidence of PW1 & PW2 are corroborated by the independent witness (PW3). In this case, the Inspector of Road Transport (PW5) has given the Motor Vehicle Inspection Report to the bus and the same was marked as Ex.P4 and the Senior Assistant Engineer of the Tamil Nadu State Transport Corporation (PW6) has given the Damage Value Report of the bus and the same was marked as Ex.P5.

18.Thus, from the evidence of PW1, PW2, PW3, PW4 and PW5 and the documents Exs.P1, P4, P5, the prosecution has proved its case beyond reasonable doubt and this Court also finds that the appellant has committed the offence under Section 3 (1) of TNPPDL Act. The trial Court has rightly appreciated the evidence and materials produced by the prosecution and passed the well reasoned judgment of conviction which need not be interfered with and the same is, hereby, confirmed.

19.Since only due to sudden wordy quarrel and sudden provocation, the appellant/A1 has committed the offence. Therefore, under these circumstances, this Court is inclined to modify the quantum of sentence alone imposed on the appellant by invoking proviso clause to Section 3 of TNPPDL Act and accordingly, the sentence of imprisonment for six months is modified to three months.

20.With the above modification, this Criminal Appeal is dismissed. The trial Court is directed to secure the appellant for sufferance of the remaining period of sentence if he is outside. The Suspension of Sentence granted by this Court in CrI.M.P.No.813 of 2019 in C.A.No.38 of 2019 is cancelled.

Sd/-
Assistant Registrar(CS VI)

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To

1.The I Additional District and Sessions Judge,
Salem.

2.The Priincipal sessions Judge, Salem.

3.The District Munsif-cum-Judicial Magistrate,
Omalur, Salem.

4.The Judicial Magistrate, No.2 Omalur.

5.The Superintendent of Police, Salm.

6. The Superintendent, Central Prison, Salem.

7.The Inspector of Police,
Tharamangalam Police Station,
Salem District.

8. The Section Officer,
Criminal Section,
High Court, Madras

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Vasudevan, Advocate SR.No.15902

Cr1.A.No.38 of 2019

GPL(CO)
B.VC(14.07.2021)



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