



Bail slip in CrI.A.No.268 of 2019

The Petitioner/Accused Viz.Subburaj S/o.Chinraj was released on bail as per the Order of this Court Dated 09.05.2019 in CrI.M.P.No.6541 of 2019 in CrI.A.No.268 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CrI.A.No.268 of 2019

Subburaj ... Appellant/Accused

Vs.

State represented by
the Inspector of Police,
Veerapandi Police Station
Tiruppur District.
(Crime No.51 of 2018)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to set aside the Judgment dated 22.04.2019 made in S.C.No.119 of 2018, passed by the learned Principal District and Sessions Judge, Tiruppur.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Ms.T.P.Savitha
Government Advocate (Criminal Side)

J U D G M E N T

This Criminal Appeal has been filed against the Judgment of Conviction and Sentence, dated 22.04.2019 made in S.C.No.119 of 2018, on the file of the learned Principal District and Sessions Judge, Tiruppur.

2. According to the appellant, the respondent police registered a case in Crime No.51 of 2018 against him for the offence punishable under Sections 341, 294 (B) of IPC and Section 3 (1) of TNPPDL Act. On completion of the investigation, the respondent police, filed a final report



before the learned Principal District and Sessions Judge, Tiruppur and the same was taken on file in S.C.No.119 of 2018. After framing of charges and on completion of trial, the accused/appellant found guilty under Section 341 of IPC and sentenced him to undergo simple imprisonment for one month and to pay a fine of Rs.500/-, in default to undergo one week simple imprisonment; and also for the offence under Section 3(1) of TNPPDL Act, sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.2,000/- in default to undergo three months simple imprisonment. The accused/appellant was acquitted from the charge under Sections 294(b) of IPC. Challenging the said conviction and sentence, the appellant/accused is before this Court.

3. In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 6 witnesses were examined as P.W.1 to P.W.6 and also marked Exs.P1 to P9, besides, material objects as M.O.1 and M.O.2 were exhibited on its side. On completion of the evidence, on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C and incriminating circumstances found out in the evidence of prosecution witnesses, but, the accused has come with the version of total denial and stated that he has been falsely implicated in this case. On the side of the defence, no witnesses were examined and no documents were marked.

4. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.

5. The learned counsel for the applicant has submitted that the genuineness of the complaint itself has not been proved by the prosecution, which is doubtful and no independent eyewitness was examined. P.W.1- is the defacto complainant/driver and P.W.2- is the conductor, both are interested witnesses. The appellant came along with his wife in a two wheeler [M.O.2], and at that time, P.W.1, has driven the bus in a rash and negligent manner and due to which, the appellant sustained injury, and in order to escape from the clutches of law, P.W.1, the driver of the bus has filed a false case against the appellant.

6. The learned counsel for the appellant would further submit that the prosecution has not explained the injury sustained by the appellant. It is settled proposition of law, if the accused is injured at the time of the occurrence, it is for the prosecution to prove that as to how the accused has sustained the injury, in this case, the prosecution has not stated anything about, which is fatal to the case of the



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prosecution. Further, during cross examination P.W.1 and P.W.2 have admitted that there are about 10 to 20 passengers were boarded in the bus, at the time of occurrence, however, none of the passengers were examined in this case as prosecution witness, in order to prove the genuineness of the complaint and the manner in which, the appellant had broken the side mirror of the bus and further, it is also adduced by them after the occurrence, there was a gathering, but no one was examined. It is further submitted that the damaged bus was not subjected to inspection by the Motor Vehicle Inspector in order to ascertain the damage and to speak about the nature of damage. Therefore, the trial Court failed to appreciate the oral and documentary evidence and erroneously held that the appellant has committed the offence, as referred above, which warrants interference.

7. The learned Government Advocate [Criminal Side] appearing for the respondent-Police would submit that the appellant asked the driver of the bus to stop the bus, and when P.W.1, the driver did not stop the bus, the appellant chased and intercepted the bus, and subsequently abused the driver and broken the right side mirror of the bus and caused damage worth of Rs.1,500/-. The driver and conductor are the eyewitness, both were examined as P.W.1 and P.W.2, and P.W.2, the conductor of the bus has also spoken that the appellant has committed the offence. The Manager of the Transport Corporation was examined as P.W.4 and to support the case of the prosecution, and the damage report was also produced, and based on the oral and documentary evidence, the trial Court, rightly convicted the appellant and hence, prays for dismissal of the Appeal.

8. Heard the learned counsel on either side and perused the materials available on record.

9. The case of the prosecution is that on 22.01.2018, at about 06.25 p.m., when P.W.1 and P.W.2, the driver and conductor of Tamil Nadu Government Bus bearing registration No.TN-58-N-2175, while driving near Velayudasamy Thirumana Mandapam, at Tiruppur Dharapura Road, the appellant was driving the Yamaha bike bearing registration No.TN-39-BU-4574, waylaid the bus and abused the driver and thereafter, damaged the right side of the mirror and caused damage of Rs.1,500/-. Hence, P.W.1, filed a complaint against appellant and based on which, the respondent-Police registered a case against the appellant for the offence under Section 341, 294 (B) of IPC and Section 3 (1) of TNPPDL Act. Subsequently, the Investigating Officer, investigated the matter and laid a charge sheet before the learned Principal District and Sessions Judge, Tiruppur.

10. Since this Court is an Appellate Court and also final Court of fact finding, has to re-appreciate the entire evidence



and come to the independent conclusion.

11. It is to be noted that though the prosecution has stated that the appellant waylaid the bus and damaged the right side mirror of the bus and due to which, the appellant sustained injury, which was also admitted by the Investigating Officer during cross-examination, however, the prosecution has failed to produce any document to show that the appellant was sent to the Hospital for treatment. Therefore, the prosecution has failed to explain as to how the appellant sustained injury and whether the appellant was admitted in the Hospital and given treatment, has not been properly explained.

12. Further, the defacto complainant, the driver of the bus, who was examined as P.W.1 has admitted that there are about 10 to 20 passengers are boarded in the bus at the time of occurrence, but none of the passengers were examined or no independent witnesses were examined to substantiate the case of the prosecution.

13. It is the further case of the prosecution that the appellant damaged the right side mirror of the bus. However, admittedly, the bus was not subjected to inspection by the Motor Vehicle Inspector and though the damage report was filed, the Motor Vehicle Inspector was not examined and no photographs have also been produced to substantiate the case of the prosecution. Further, it the case of the prosecution that the appellant chased the bus and waylaid and attacked the right side mirror of the bus on his hand, and due to which, the right side mirror of the bus was broken, is highly doubtful. If such occurrence would have occurred, definitely, either the driver or the passengers would have come for rescue, but in this case, according to the prosecution, there is no fault on the part of the driver, if a person come and intercepted the vehicle and caused damage to the public transport, certainly, the passengers who are boarded in the bus, should have certainly reacted immediately at the time of occurrence, or, at least they would have come forwarded to stand as a witness and supported the case of the prosecution. However, in this case, no independent witness was examined, despite, independent witnesses were present at the time of occurrence. It is not the case of the prosecution that no passenger was available and no independent witness was available and no independent witnesses had seen the occurrence, however, P.W.1 and P.W.2 have admitted during cross-examination that there are about 10 to 20 passengers were boarded in the bus at the time of occurrence. Further, the accused waylaid the bus and attacked the right side mirror of the bus on his hand, and due to which, it got damaged, is highly unbelievable.



14. Therefore, under the circumstances, the prosecution has failed to prove its case beyond reasonable doubt. There are reasonable doubt arises as to whether the prosecution has proved the charge as projected by them which itself creates a doubt. Therefore, under the circumstances, this Courts extends the benefit of doubt in favour of the appellant and the trial Court failed to appreciate the entire evidence and though independent witnesses were available at the time of occurrence, non examination of the independent witnesses are fatal to the case of the prosecution and also the unexplained injury sustained by the accused is also creates suspicious. Further, the bus was not subjected to inspection by the Motor Vehicle Inspector, which also creates suspicious.

15. Under these circumstances, this Court finds that the trial Court has failed to consider the fundamental criminal jurisprudence that the prosecution has to prove its case beyond all reasonable doubts. This Court finds that there is no cogent and convincing evidence to come to the conclusion that the appellant had committed the offence. P.W.1 and P.W.2 are interested witnesses and their evidence have not been corroborated by examining any independent witnesses particularly, when independent witnesses were very much available at the time of occurrence. Therefore, there is a perversity in the findings of the trial Court.

16. In fine, this Criminal Appeal is allowed. The conviction and sentence passed in S.C.No.119 of 2018, by the learned Principal District and Sessions Judge, Tiruppur, is hereby set aside and the appellant is acquitted. Bail bond executed by them shall stand cancelled. Fine amount paid by them is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District and Sessions Judge,
Tiruppur.
- 2.The Inspector of Police,
Veerapandi Police Station
Tiruppur District.



3.The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate IV,
Tiruppur.

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

+lcc to M/s.C.Ramkumar, Advocate, S.R.No.19282

Crl.A.No.268 of 2019

SSN(CO)
CB(14/07/2021)