

Bail Slip

The Appellant/Accused Viz., Pulsor Kumar @ Krishna Kumar S/o Nataraj aged about 25 years (in S.C.No.87/2016 on the file of I Additional District Judge, Salem dated 04/04/2019) was released on bail as per order of this Court dated 09/05/2019 made in CrI.A No.6555 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.269 of 2019
and CrI.MP.No.6555 of 2019

Pulsor Kumar @ Krishnakumar Appellant/Accused-2

Vs

State rep. by
The Inspector of Police,
Annathanapatty Police Station,
Salem District.
(Crime No.30 of 2015) Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the conviction and sentence imposed on the appellant in S.C.No.87 of 2016 dated 04.04.2019 passed by the learned I Additional District Judge, Salem.

For Petitioner : Mr.S.Jeyakumar

For Respondent : Mr.R.Suryaprakash, Govt. Advocate

O R D E R

This Criminal Appeal is filed against the judgment of conviction and sentence passed in S.C.No.87 of 2016 dated 04.04.2019 by the learned I Additional District Judge, Salem.

2. The respondent Police registered the case against the appellant and other two accused in Crime No.30 of 2015 for the offences under Sections 294(b), 324, 307, 506(ii) of IPC and 3 (i) of TNPPDL Act,1992. After registering the case, respondent police investigated the matter and laid a charge sheet before the learned Judicial Magistrate No.4, Salem. The learned Magistrate had taken the charge sheet on file and since the

offence is triable by the Sessions Court, matter was committed to the Principle Session Judge, Salem. The learned Principal Judge had taken the case on file in S.C.No.87 of 2016 and made over the case to the I Additional District Judge, Salem. The learned I Additional Session Judge, Salem, framed the charge against this appellant for the offence u/s. 324, 506(ii) IPC and Section 3(i) of TNPPDL Act.

3. After framing the charge, during the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 11 witnesses were examined as PW1 to PW11 and 18 documents were marked as Exs.P1 to P18. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant and the other accused and they denied the same as false.

4. After completing the trial and hearing the arguments advanced on either side, the trial Court found the appellant guilty and convicted the appellant for the offences under Section 447, 324 IPC and 3(i) of TNPPDL Act and imposed fine to pay a sum of Rs.1000/-, in default to undergo simple imprisonment for 1 month for offence u/s.324 IPC; imposed to pay fine of Rs.500/-, in default to undergo Simple imprisonment for one month for offence u/s.447 IPC; and sentenced to undergo Rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for one month for offence u/s.3(i) of TNPPDL Act.

5. Challenging the said conviction and sentence passed by the learned I Additional Session Judge, the second accused/appellant has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that though the prosecution version is that the accused attacked the injured witnesses, the bottle was not recovered and no piece of beer bottle was recovered from inside the shop. Further, no Valuation Certificate is produced with regard to the worth of the damaged glass bottles. It is also submitted that even though it is alleged that injuries and damages were caused by the accused, there was no recovery and not even a piece of material is marked and proved by the prosecution witnesses. Therefore, the charges against appellant under Section 3(i) of TNPPDL Act has not been substantiated. There was an inordinate delay in sending the statements of witnesses to the court along with other documents relied on by the prosecution. All the witnesses are interested witnesses in this case and there is no independent witness to speak about the occurrence. PW2 has clearly stated that the witnesses sustained only simple injuries.

7. The learned Government Advocate submits that PW1 and PW2 are injured witnesses and their evidence clearly spoke about the specific overtact against the appellant along with the other co-accused and the demand of money is proved. It is deposed by all the eye witnesses that the accused assaulted the witnesses by beer bottles and subsequently damaged the mirror kept in the shop. In the occurrence, the accused persons thrown the beer bottle on the road and caused annoyance to the witnesses, damaged mirror and the shop and damaged articles worth of Rs.2,500/- and therefore, the trial Court rightly convicted the appellant along with other accused.

8. The case of the prosecution is that the appellant/A-2 along with other accused A-1 and A-3 trespassed into the saloon shop of P.W.1 and demanded money for liquor and when P.W.1 refused, appellant/A-2 abused him with filthy words and also beat him with beer bottle on his head and caused simple injuries. When P.W.2 came for rescue, A-1 beat the P.W.2 with beer bottle on his head and in the occurrence, appellant/A-2 along with A-1 and A-3 committed mischief by causing damage to the mirror kept in the saloon shop, caused loss to the tune of Rs.2500/- and thereby committed offence punishable under Section 3(i) of TNPPDL Act and committed criminal intimidation on the witnesses and thereby, appellant/A-2 is said to have committed offence u/s.324, 506(ii) IPC.

9. This Court, being an Appellate Court, is a fact finding Court, and it has to give its finding independently after re-appreciating the entire evidence. Accordingly, this court has re-appreciated the entire evidence.

10. The trial Court framed the charges against the present appellant for the offences under Sections 324, 506(ii) IPC and 3(i) of TNPPDL Act. The trial Court found the appellant not guilty for the offence u/s.506(ii) IPC and acquitted the appellant and convicted for the offences under Section 324, 447 IPC and Section 3(i) of TNPPDL Act.

11. The evidence of PW1 is that after he sustained injury, he was admitted in the hospital. At that time, intimation was given to respondent police from the hospital. The respondent Police went to the hospital and recorded the statement from PW1 at that time he narrated the incident. Based on the statement of P.W.1, respondent police written the complaint and registered a case and after investigation, laid a charge sheet. Therefore, based on the materials collected from the injured person, the case was registered. In order to substantiate the charge framed against the appellant/A-2 on the side of prosecution, totally 11 witnesses were examined, out of which PW1 is the injured witness

and he is owner of the saloon shop, where the occurrences is said to have taken place. PW2 is also one of the injured witnesses. PW10 is the doctor one who admitted injured witness in the hospital. Exs.P1 and P15 show that P.W.1 and P.W.2 sustained injuries. Ex.P.11 to Ex.P.14 proved that P.W.1 and P.W.2 sustained simple injuries which are caused by the appellant/A-2 along with other accused. The prosecution has proved that the appellant assaulted P.W.1 on his head and caused simple injury and the medical report was marked as Ex.P.12 which shows the injury sustained by P.W.1. The evidence of P.W.1 has been corroborated by the evidence of P.W.2. Therefore, the trial Court convicted the appellant under Section 324 IPC.

12. Though the learned counsel for the appellant submitted that no independent witness was examined, it is the case of the prosecution that injured witnesses were admitted in the hospital. P.W.9 doctor has deposed clearly about the entry made in Accident Register. Ex.P.11 and Ex.P.13 also shows that the information was given at the time of admission in the hospital. The said documents also show that it was entered at 3.55 p.m., itself that is within few minutes of the occurrence. Medical Report of P.W.1 was marked as Ex.P.12 which clearly shows that P.W.1 sustained simple injury and he has deposed that the appellant/A-2 caused the injury with beer bottle and therefore the evidences of PW1 and PW2 are very clear that A-2 caused damage and injuries. P.W.11, Inspector of Police also stated that he recorded the statement, conducted investigation and filed final report against the accused persons.

13. Therefore, a combined reading of the complaint statement recorded from PW1, the evidence of PW1 and the doctor P.W.10 who admitted PW1 in the hospital and the other injured witness on the one hand and the Medical Reports on the other hand, this Court finds that the appellant along with other accused committed the above said offence.

14. Therefore, taking into consideration the entire material placed before it, the trial Court rightly convicted the appellant for the offence u/s.324, 447 IPC and under Section 3 (i) of TNPPDL Act. During the examination before the trial court, the evidence of PW1 is not clear about worth of the damaged goods and they have not produced any Valuation Certificate, but only produced MO.1 bottle piece and M.O.2 Mirror piece which was damaged. In the case on hand, no valuation certificate produced and further no compensation is ordered by the trial court and the material objects produced shows the damage of worth about more than Rs.100/-. Therefore, considering the facts and circumstances of the case and the charges framed against the appellant and also the evidence let

in on the side of prosecution witnesses, it is apparent that PW1 informed to the Police about the occurrence and that there was a wordy quarrel between the accused persons and P.W.1. Considering the facts and circumstances of the case, while confirming the conviction, sentence is modified from one year to 4 months for the offence u/s.3(i) of TNPPDL Act.

15. In the result, this Criminal Appeal is dismissed by modifying the sentence from one year to four months under section 3(i) of TNPPDL Act. The conviction and sentence for the other offences stand unaltered. The trial Court is directed to take steps to secure the appellant to undergo the remaining sentence modified as above. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Judge,
Salem.

2.The Principal Sessions Judge,
Salem.

3.The Inspector of Police,
Annathanapatty Police Station,
Salem District.

(Crime No.30 of 2015)

4.The Public Prosecutor Office,
High Court Madras

Copy to

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

Crl.A.No.269 of 2019

gp[co]
srg 14/06/2021