



BAIL SLIP

The Petitioner/Accused namely Vasu, S/o.Annamalai, aged about 30 years was released on bail as per order of this Court dated 08.11.2019 in Crl.M.P.16159 of 2019 in Crl.A.No. 758 of 2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2021

PRONOUNCED ON : 12.07.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CRL.A.No.758 of 2019

Vasu

.. Appellant/Accused

.Vs.

State by

The Inspector of Police,
Thiruthani Police Station,
Thiruvallur District,
Crime No.132 of 2014.

.. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to set aside the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Thiruvallur, Thiruvallur District in S.C.No.115 of 2017 dated 14.10.2019 and acquit the appellant from the charges.

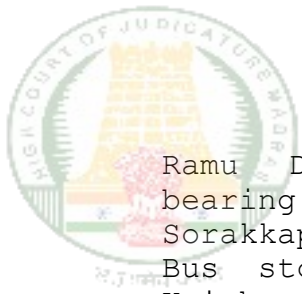
For Appellant : Mr.S.Sasikumar

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

J U D G M E N T

This Criminal Appeal has been filed against the Judgment dated 14.10.2019 in S.C.No.115 of 2017 on the file of the learned Principal Sessions Judge, Thiruvallur, Thiruvallur District.

2.The case of the prosecution is that on 04.03.2014 at 19.45 hours one V.Gopi, the de facto complainant/Conductor and one



Ramu Driver of the Tamil Nadu State Transport Corporation Bus bearing No.TN 21 N 1040 were proceeding from Thiruttani to Sorakkapettai and when the Bus was stopped at Krishnasamuthiram Bus stop, the accused/the appellant herein who belongs to Krishnasamuthiram damaged the back side glass of the Bus with stones and thereby, caused damage to the tune of Rs.16,000/-. Hence, the de facto complainant lodged a complaint/Ex.P1 before the respondent police and registered First Information Report, which was marked as Ex.P7.

3.The respondent police registered a case in Crime No.132 of 2014 against the appellant for the offence punishable under Sections 147, 109 r/w 2 and 3 of Tamil Nadu Properties (Prevention of Damages and Loss) Act 1992 [hereafter 'TNPPDL Act' for the sake of convenience]. On completion of the investigation, the respondent police filed a charge sheet before the learned Judicial Magistrate, Tiruttani for the offence under Section 3(1) of TNPPDL Act and the same was taken on file in P.R.C.No.26 of 2014.

4.After completing the formalities, the learned Judicial Magistrate, Tiruttani found that the offence alleged to have been committed by the accused are exclusively triable by the Court of Sessions, committed the case under Section 209 Cr.P.C to the learned Principal District and Sessions Judge, Tiruvallur. The learned Sessions Judge taken the case on file in S.C.No.115 of 2017 and charges were framed against the appellant for the offence under Sections 3(1) of TNPPDL Act.

5.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 8 witnesses were examined as P.W.1 to P.W.8 and also marked 11 documents as Exs.P1 to P11, besides that two material objects were exhibited as M.O.1 and M.O.2. After completion of the prosecution side evidence, the incriminating circumstances culled out from the prosecution witnesses were put before the appellant/accused and questioned the appellant/accused under Section 313 of Cr.P.C and he has denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

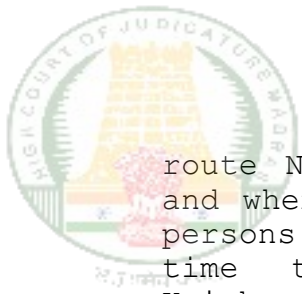
6. The Court below, after hearing the arguments advanced on either side and also considering the materials available on record, found that the accused/appellant is guilty for the offence punishable under Section 3 (1) of TNPPDL Act and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default, to undergo rigorous imprisonment for a period of three months. Being aggrieved by the said judgment of conviction and sentence, the appellant is before this Court.



7.1 The learned counsel for the appellant would submit that the alleged occurrence said to have been taken place on 04.03.2014. After deliberation, P.W.1/de facto complainant, who is the Conductor of the Bus preferred a complaint before the respondent/police after two days i.e. on 06.03.2014. Therefore, there was a delay in preferring the complaint and registering the First Information Report and sending the case to the Court and the delay has not been properly explained by the de facto complainant/P.W.1. Hence, the unexplained inordinate delay is fatal to the case of the prosecution. The case of the prosecution as per the de facto complainant is that the said Bus was damaged by the appellant and twenty other persons on 04.03.2014, but, the complaint was given against the appellant only on 06.03.2014. He would further submit that non examination of the independent witnesses i.e the passengers, who were travelled in the Bus and the persons, who were available in the alleged scene of occurrence is also fatal to the case of the prosecution. There are material contradictions in the evidence of P.W.1 and P.W.2, who were travelled in the same Bus as a Conductor and a Driver. P.W.1 and P.W.2 are highly interested witnesses and no credibility would be attributed to their evidence and the evidence of the interested witnesses are not reliable one, which needs corroboration when independent witnesses are available in the place of occurrence.

7.2 The learned counsel for the appellant would further submit that as to how P.W.1 and P.W.2 identified and named the appellant in the complaint and the same was not properly explained by the prosecution. The mahazar witnesses P.W.3 and P.W.4 have not supported the case of the prosecution. Therefore, the observation mahazar and recovery mahazar were not proved in the manner known to law. The evidence of P.W.7/Sub Inspector of Police is totally contradictory to the evidence of P.W.6/Special Inspector of Police. The trial Court has failed to appreciate that two different amounts were mentioned in the Damage Valuation Report (Ex.P6) and there was no reason assigned in the valuation report for the damages of Rs.16,000/- instead of Rs.5,000/-. Further, the value of the damage also not proved by the prosecution. Therefore, the trial Court has failed to appreciate the evidence of the prosecution witnesses and wrongly convicted the appellant only on assumption and presumption, and hence, the judgment of conviction and sentence passed by the trial Court against the appellant, is liable to be set aside.

8.1 The learned Government Advocate (Crl.Side) would submit that P.W.1/de facto complainant, who is the Conductor of the Bus as well as the injured witness lodged the complaint and alleged that on 04.03.2014 at about 7.10 p.m. the Tamil Nadu State Transport Corporation Bus bearing registration No.TN 21 N 1040,



route No.212/8 was proceeding from Thiruttani to Sorakkapettai and when the Bus was stopped at Krishnasamuthiram Bus stop, ten persons who boarded into the Bus, immediately got down. At that time the accused/the appellant herein, who belongs to Krishnasamuthiram damaged the back side glass of the bus with stones and ran away from that place and the same was witnessed by P.W.1/Conductor of the Bus. When P.W.1 tried to catch the accused, he ran away from that place, and hence, the complaint was lodged before the Tiruttani Police Station. On receipt of the complaint/Ex.P.1, the respondent/police registered the case on the same day. The Investigating Officer/P.W.8 proceeded to the scene of occurrence and prepared observation mahazar in the presence of independent witnesses and laid a charge sheet.

8.2 The learned Government Advocate (Crl.Side) would further submit that in order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as eight witnesses were examined, out of which, the de facto complainant, who is the Conductor of the Bus was examined as P.W.1 and the Driver of the Bus was examined as P.W.2 and they have clearly narrated the said incident. Further, P.W.1 and P.W.2 have clearly identified and named the accused. The mahazar witnesses P.W.3 and P.W.4 have not supported the case of the prosecution. However, based on the evidence of official witnesses P.W.1 and P.W.2, the prosecution has proved its case beyond all reasonable doubts. He would further submit that there was no previous enmity against the appellant and P.W.1 and P.W.2 and therefore, there is no necessity to foist a false case against the appellant. Further, the contradictions as pointed out by the learned counsel for the appellant are not material contradictions and the same will not affect the case of the prosecution. Though the learned counsel for the appellant named P.W.1 and P.W.2 as interested witnesses, the case of the prosecution is that the appellant damaged the Bus, naturally the Conductor and the Driver, who are the custodian of the Bus have to prepare the case against the person, who caused damage to the Bus. Merely because they are interested witnesses, their evidences cannot be brushed aside simply, unless trustworthiness is doubted. Therefore, the prosecution has clearly established its case that backside glass of the Bus was damaged by the appellant to the tune of Rs.16,000/-.

8.3 P.W.5/the Branch Manager of the Tamil Nadu State Transport Corporation has given the certificate/Ex.P.6 for the damages of the Bus. From the evidence of P.W.1, P.W.2, P.W.5 and Ex.P6 the prosecution has proved the occurrence as well as the worth of damage caused to the Bus. Therefore, the trial Court has rightly convicted and sentenced the appellant for the offence punishable under Section 3(1) of TNPPDL Act and hence, the appeal is liable to be dismissed.



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

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

11. On a careful reading of the evidence of P.W.1/the de facto complainant, it reveals that on 04.03.2014 at about 7.10 p.m. when P.W.2, Driver of the Bus took the Bus bearing registration No.TN 21 N 1040 route No.212/8 from Thiruttani to Sorakkapettai and when the bus was stopped at Krishnasamuthiram Bus stop, ten persons, who boarded into the Bus, immediately got down, at that time, the accused/the appellant herein, who belongs to Krishnasamuthiram, damaged the back side glass of the Bus with stones and ran away from that place and the same was witnessed by P.W.1/Conductor of the Bus. When P.W.1 tried to catch the accused, he ran away and hence, the complaint was lodged before the Tiruttani Police Station against the appellant.

12. The Driver of the Bus was examined as P.W.2 and he has deposed that on the date of occurrence when the Bus was stopped at Krishnasamuthiram Bus stop, twenty persons entered into the Bus and searched somebody and they immediately got down. Thereafter, he heard the noise from the back side of the glass and stopped the Bus, at that time the Conductor caught hold the person, who hit the glass, however, he escaped from that place. Subsequently, they lodged the complaint against the appellant. Further, P.W.2 also identified the accused, who was present in the Court.

13. P.W.3 and P.W.4, the mahazar witnesses were turned hostile, however, they admitted the signature found in the observation mahazar and recovery mahazar.

14. P.W.5, who is the Branch Manager of the Tamil Nadu State Transport Corporation, has assessed the value of damages caused to the Bus at Rs.5,000/- and also gave a Damage Valuation Report, which was marked as Ex.P6. Though there is a discrepancy with regard to the worth of the damages caused to the Bus. However, P.W.5 in his deposition has stated that worth of the damage caused to the Bus is Rs.5,000/-. From the evidence of P.W.1/Conductor, P.W.2/Driver, P.W.5/Branch Manager and Ex.P6/Damage Valuation report, the prosecution has proved its case beyond all reasonable doubts.

15. The defence taken by the learned counsel for the



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appellant is that the de facto complainant mentioned only the name of the appellant in the complaint, which is highly doubtful. After deliberation, the complaint was given after two days belatedly, and therefore, the evidence of the de facto complainant/P.W1 is not trustworthy. Though the occurrence was said to have taken place on 04.03.2014 at about 7.10 p.m., where as the complaint was given only on 06.03.2014, however, the prosecution has not explained, why there was a delay in giving the complaint. He has further stated that P.W.1 in his evidence has deposed that ten passengers got down from the Bus, but, in the complaint they have stated that the appellant herein and twenty other persons got down from the Bus, whereas, the charge sheet was filed against the appellant alone. Further, the prosecution has not proved that how the eye witness/P.W.1 know the name of the appellant. P.W.2 is not an eye witness to the occurrence, but, as a Driver of the Bus, he has clearly stated that he has not seen the occurrence, but, after hearing the sound of broken glass, he turned back. Therefore, no other independent witnesses were examined by the prosecution. The mahazar witnesses are also not supported the case of the prosecution. Ex.P6, the Damage Valuation Report, shows the value of the damage caused to the glass is Rs.16,000/-. However, P.W.5 has deposed that the damage caused to the glass is Rs.5,000/-. There are material contradictions in the prosecution witnesses and the prosecution has failed to prove its case beyond all reasonable doubts.

16.This Court independently appreciate the entire evidence and finds that some suspicion in the evidence of P.W.1 and P.W.2. The prosecution has not clearly proved that how P.W.1 and P.W.2 identified and named the appellant in the complaint and F.I.R. Further, the complaint was not filed on the date of occurrence, it was filed after two days of occurrence and the delay has not been properly explained by the prosecution and hence, the unexplained delay is fatal to the case of the prosecution. The prosecution failed to examine the independent witnesses i.e the passengers, who had travelled in the Bus and the persons, who were available in the alleged scene of occurrence is also fatal to the case of the prosecution. Therefore, the evidence of P.W.1 and P.W.2 are not trustworthy and this Court finds that the prosecution failed to prove its case beyond all reasonable doubts. Therefore, the benefit of doubt is extended to the appellant. The trial Court has failed to appreciate the entire evidence and convicted the appellant, which warrants interference of this Court and hence, this Criminal Appeal is liable to be allowed.

17.In fine, the Criminal Appeal is allowed. The conviction and sentence passed by the trial court in S.C.No.115 of 2017 are set aside and the appellant is acquitted. Bail bond executed by



him shall stand cancelled. Fine amount paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar

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//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Thiruvallur, Thiruvallur District.
- 2.The Judicial Magistrate,
Thiruthani.
- 3.The Chief Judicial Magistrate,
Thiruvallur(For information)
- 4.The Inspector of Police,
Thiruthani Police Station,
Thiruvallur District.
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Section Officer | with a direction to send back the
(Records) |
(Criminal Section), | original records, if any, to the
High Court, Madras. | trial Court

CRL.A.No. 758 of 2019

NMI (CO)
GN(05/08/2021)