

Bail Slip

The Appellant/Accused was directed to be released on Bail made in MP(MD). No.1/2015 in Crl.A.(MD).378/2015 dated 21/12/2015 on the file of the Madurai Bench of Madras High Court, Madurai.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**ORDER RESERVED : 16.07.2021**

**ORDER PRONOUNCED : 03.09.2021**

CORAM :

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**  
**Crl.A.(MD) No.378 of 2015**

A.Muthu ... Appellant/Sole Accused

vs.

The State of Tamil Nadu,  
Represented by its  
The Inspector of Police,  
Thideernagar Police Station,  
Madurai.  
(Cr.No.343 of 2011)

... Respondent/Complainant

**PRAYER:-** This Criminal Revision Case filed under Section 374 of the Code of Criminal Procedure, to call for the records in S.C.No.275 of 2014 on the file of the learned VI Additional District Sessions Judge, Madurai, dated 26.11.2015 and set aside the same.

For Petitioner : Mr.R.Venkatesan

For Respondent : Mr.T.Senthil Kumar  
Government Advocate (Crl. Side)

**ORDER**

This Criminal Revision Case is filed to call for the records in S.C.No.275 of 2014 on the file of the learned VI Additional District Sessions Judge, Madurai dated 26.11.2015 and set aside the same.

2. The brief facts relevant to appreciate the case as per the prosecution which as follows:

2.1.P.W-1-Muthu was working as a Conductor in TNSTC Bus belonging to Ponmeni Depot in Sivaganga. On 22.02.2011, the bus

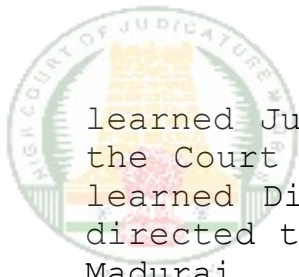
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bearing Registration No.TN-58-N-1811 in Route No.10-L was proceeded on its trip by 12.40 p.m., from Arapalayam Bus station and when it was nearing Madurai Shopping Complex bus station at 12.55 p.m., the Driver of the bus went to sign the trip in the register. At that time, the accused/Muthu who was stationing behind the bus had knocked on the body of the bus due to anger as there was no bus towards his village for a long time. The Conductor of the bus objected to the same and warned him not to knock the body of the bus, enraging the accused picked up a stone and threw it on the backside window glass. Due to which, the window screen was broken and the value of the window screen is at Rs.35,000/-. Therefore, the Conductor got down from the bus and caught hold the accused. By the conduct of the accused, he had caused a loss of Rs.35,000/- to the TNSTC by breaking window screen of the bus bearing Registration No.TN-58-N-1811. P.W-1-Conductor of the bus had preferred a complaint to the Thideer Nagar Police Station under Ex.P-1. P.W-5-Anbazhagan, Special Sub Inspector of Police, Thideer Nagar Police Station received the complaint under Ex.P-1 and registered the case under Ex.P-6-FIR. He had forwarded the original FIR under Ex.P-6 and complaint under Ex.P-1 to the Court of the learned Judicial Magistrate, Madurai and copy of the complaint and FIR were forwarded to his higher officials including P.W-6-Inspector of Police.

2.2.On receipt of the FIR under Ex.P-6 in Crime No.343 of 2011 under Section 3 (1) of the TNPPDL Act and P.W-6-Inspector of Police had visited the place of occurrence (i.e.,) Arapalayam bus station by 3.15 p.m. and prepared a rough sketch under Ex.P-8 and Observation Mahazar under Ex.P-5 in the presence of witnesses P.W.4 and one Selvakumar and seized the broken glass pieces of the window screen of the bus under seizure Mahazar under Ex.P-3 and Ex.P-4 in the presence of the very same witnesses. He had sent a request letter to the Assistant Engineer, Ponmeni Bus Depot regarding the valuation of the windscreen glass of the bus and recorded the statements of the Driver of the bus, Conductor of the bus, Assistant Engineer, TNSTC, Ponmeni Depot, P.W-4-Instructor attached to TNSTC, P.W-3-Timekeeper of TNSTC and P.W-6-Assistant Manager of TNSTC and concluded the investigation and filed a final report of the investigation before the Court of learned Judicial Magistrate No.V, Madurai. On receipt of the final report filed by the Investigation Officer, the learned Judicial Magistrate No.V, Madurai, had taken cognizance and numbered the case as P.R.C.No.29 of 2012 and issued summons to the accused.

2.3. On receipt of summons, accused appeared before the Court of learned Judicial Magistrate No.V, Madurai. On appearance, learned Judicial Magistrate had furnished the copies to the accused under Section 207 of Cr.P.C., and adjourned the case for committal proceedings. Accordingly, on perusal of the record, the



learned Judicial Magistrate had found out the case was triable by the Court of Sessions. Therefore, the case record was sent to the learned District and Sessions Judge, Madurai and the accused was directed to appear before the learned District and Sessions Judge, Madurai.

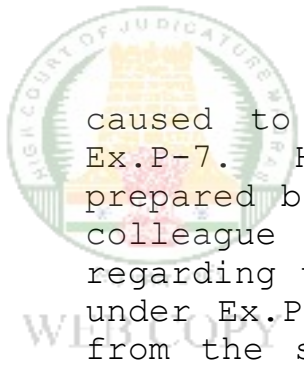
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2.4. On appearance of the accused before the learned Principal District and Sessions Judge, he had made over the case and numbered the case as S.C.No.275 of 2014 and made over the case to the Court of the learned 6<sup>th</sup> Additional Sessions Judge, Madurai and bound over the accused to the learned 6<sup>th</sup> Additional Sessions Judge, Madurai. The learned 6<sup>th</sup> Additional Sessions Judge framed the charges against the accused under Section 3 (1) of the TNPPDL Act. The charges framed were read over and explained in Tamil to the accused, he pleaded not guilty to the charges and claimed to be tried. Therefore, the learned 6<sup>th</sup> Additional Sessions Judge ordered for trial.

2.5. During trial, the prosecution had examined seven witnesses as P.W-1 to P.W-7 and eight documents were marked under Ex.P-1 to Ex.P-8 and marked M.O-1 (i.e.,) stone and M.O-2 (ie.) broken glass piece.

2.6. P.W-1-the Conductor of the bus had in his evidence stated that the trip commenced by 12.40 p.m., on 22.02.2011 and by 12.55 p.m., it was at Madurai Shopping Complex Bus Terminus wherein the accused was waiting impatiently and knocked on the body of the bus as there was no bus for his village, when the Conductor objected to the same, the accused enraged and threw the stone on the back side of the windscreen. P.W-2-Driver of the bus bearing Registration No.TN-58-N-1811 had collaborated the evidence of P.W-1-Conductor of the bus. P.W-3-Timekeeper of the TNSTC bus at Madurai Shopping Complex Bus Station had stated that on 22.02.2011 by 12.55 p.m., when the Driver came to sign in the register, the accused herein had knocked on the bus which was objected to by the Conductor. Therefore, the accused picked up the stone and threw on the backside windscreen of the bus. Therefore, the Conductor caught hold the accused and brought the accused to the Thideer Nagar Police Station to lodge the complaint. P.W-4-Instructor attached to the TNSTC had been a witness to the seizure of broken windscreen pieces collected by P.W-6-Investigation Officer under Ex.P-4-Seizure Mahazar and Ex.P-5-Observation Mahazar.

2.7. P.W-5-Special Sub Inspector of Police who had received the complaint under Ex.P-1 on 22.02.2011 from P.W-1-Conductor of the bus and registered the FIR under Ex.P-6 under Section 3 (1) of TNPPDL Act in Cr.No.343 of 2011. He had arrested the accused and also recovered the stone used by the accused under Ex.P-3-Form -91. P.W-6 had issued the Valuation Report regarding the damage



caused to the bus bearing Registration No.TN-58- N-1811 under Ex.P-7. He had deposed evidence regarding the Valuation Report prepared by Bharathi Mohan, Assistant Engineer, TNSTC who was the colleague of P.W-6. P.W-7-Investigation Officer had deposed regarding the investigation conducted by him on receipt of the FIR under Ex.P-6 and preparation of Observation Mahazar, Rough Sketch from the scene of occurrence and obtaining report regarding the damages from the TNSTC, Assistant Engineer under Ex.P-7 and he had examined the witnesses P.W-1 to P.W-6 and laying the final report before the learned Judicial Magistrate No.V, Madurai and prosecution was closed.

2.8.After closing the evidence of prosecution, the accused was examined under Section 313 Cr.P.C., regarding the incriminating evidence available from the deposition of P.W-1 to P.W-7. The accused denied the incriminating evidence against him and he did not offer any explanation. The accused had not examined any evidence on his part as defence witness. After hearing the arguments on behalf of the prosecution and the defence, the learned 6<sup>th</sup> Additional Sessions Judge, Madurai, pronounced the Judgment. On assessment of evidence available before the learned 6<sup>th</sup> Additional Sessions Judge, he had arrived at a conclusion that the accused herein is guilty for the offence under Section 3 (1) TNPPDL Act and by judgment dated 26.11.2015, recorded the finding of guilt of the accused and convicted him for the offence under Section 3 (1) TNPPDL Act and sentenced him for a period of two years of Rigorous Imprisonment and to pay a fine of Rs.1000/- in default, to undergo simple imprisonment of six months. The period of detention already undergone by the accused from 22.02.2011 to 13.06.2011 was set off under Section 428 of Cr.P.C.

3.Aggrieved by the judgment of conviction and sentence of imprisonment pronounced against the accused, the accused has preferred this appeal.

4.Mr.R.Venkatesan, learned counsel for the appellant had assailed the judgment stating that the prosecution has scrambled down all the witnesses belonging to the TNSTC and not even an independent witness had been examined. The charge against the accused had not been proved through cogent evidence. On perusal of the cross examination of witnesses P.W-1 to P.W-7 clearly shows that there had been delay in filing FIR and the investigation itself is shoddy.

5.The learned trial Judge failed to appreciate the evidence on its entirety, therefore, finding of guilt recorded by the learned 6<sup>th</sup> Additional Sessions Judge, Madurai is perverse. Therefore, the learned counsel for the appellant/accused sought indulgence of this Court to interfere with the finding of guilt recorded by the



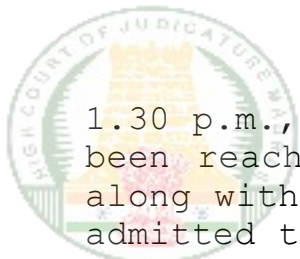
learned trial Judge and set aside the same as perverse.

6.The learned Government Advocate (Crl.Side) by way of reply submitted that the learned Sessions Judge properly appreciated the evidence and arrived at a conclusion that the charges levelled against the accused had been proved cogently through the evidence of P.W-1 to P.W-7. The statement that no independent witness was examined will not hold good as occurrence was inside the Bus Terminus, they will not lend the name as witness for the occurrence. Therefore, an offence committed against the State while damaging the bus cannot be proved if the principle of independent witness has not been examined is accepted by the Court. The witnesses are Government Servants employed in TNSTC had been to the place of occurrence and withstood the cross examination, nothing is found against the prosecution case from the cross examination of P.W-1 to P.W-7. Therefore, the appeal lacks merit and appeal is to be dismissed as having no merits.

7.Heard the submission of the learned counsel for the appellant/accused and learned Government Advocate (Crl. Side) and perused the materials available on record.

8.On perusal of the record, it is found that there had been delay in lodging the complaint. As per the cross examination of P.W-1-Conductor of the bus, he was asked to wait till the higher officials of the TNSTC clears the case of lodging the complaint. The learned counsel for the accused had objected to the marking of Ex.P-7 as it was prepared by Bharathi Mohan who was the Assistant Engineer in TNSTC, Madurai instead of P.W.-6-Assistant Manager in TNSTC, who is not aware of Ex.P-7. Therefore, the same was objected to by the learned counsel for the appellant/accused. Bharathi Mohan is available in Madurai and had not been examined. He was not supported the case of the prosecution, that is why, he was not examined as a witness and the same was denied by P.W-6 in his cross examination. Apart from the fact that M.O-1, stone was recorded in Ex.P-3-Form 91 by P.W-5-Special Sub Inspector of Police in the same Police Station and registration of FIR under Ex.P-6 is found unacceptable. Considering the fact that after deliberation by the higher officials, P.W-1-Conductor of the bus lodged a complaint under Ex.P-1 for the said offence alleged to have been taken place between 12.40 p.m., and 12.55 p.m. and the complaint was registered by P.W-5. The FIR was received in the Court of learned Judicial Magistrate No.V, Madurai by around 8 p.m., which creates a strong doubt regarding the lodging of FIR. When there is an inordinate delay, automatically, there is a suspicion regarding embellished FIR which is a valuable defence to the accused.

9. Even though the FIR is alleged to have been registered by



1.30 p.m., as per the entry in the FIR, the FIR is alleged to have been reached the Court of learned Judicial Magistrate by 8 p.m., along with that the evidence of P.W-1 in his cross examination had admitted that the stone alleged to have been thrown by the accused did not cause injuries on the passengers who were seated on the back portion of the bus. P.W-1 was inside the bus issuing tickets to the passengers when the accused alleged to have thrown the stone on the rear windscreen of the bus. The said answers in cross examination by P.W-1 does not inspire confidence of the Court to fix the criminal liability on the accused. P.W-2-Driver of the bus had in his cross examination admitted that when he took the bus on the reverse, the damage was caused and he did not notice the same. He had denied the suggestion that only to escape from the departmental enquiry, the case was foisted against the innocent accused as though he has caused damages.

10.The arguments of the learned counsel for the accused/appellant that only to protect the Driver of the bus from departmental enquiry causing damages to the bus and thereby foisted the case against the accused cannot be accepted from the facts that is available before the Court. The accused is alleged to have thrown the stone on the rear windscreen and caused damage. The accused was secured by P.W-1 and along with P.W-1 the accused was taken to the Police Station in the same bus.

11. The fact that the general public had not been examined as a witness is found true, but it should be borne in mind that in cases of this nature, the occurrence on public place, in bus station, the common public will not lend the name as a witness as they will be summoned to the Court and their time will be wasted. This is the attitude of the general public. Therefore, the Conductor and Driver themselves had apprehended and took the accused and P.W-3- Timekeeper had advised them to take the accused to Thideer Nagar Police Station. Therefore, the accused had been handed over to the Police by P.W-1 and lodged a complaint under Ex.P-1.

12. As pointed out by the learned counsel for the appellant that there are lapses in conducting the investigation, but it is the fact that the Conductor and Driver had promptly acted by apprehending the accused who had caused the damages on the vehicle, for which the Driver and Conductor are responsible. If they are not acted responsibly, they will be held responsible for their department of TNSSTC by proceeding against the departmental enquiry. Therefore, the action of P.W-1 and P.W-2 who are apprehending the accused and immediately after the occurrence, handed over the accused to the Police Station is found justified. P.W-7 stated that there is a delay in conducting the investigation. Those things cannot affect. The timely action



taken by the Conductor and Driver of the bus in apprehending the accused and handed over him to the Police for his action in causing damages to the public transport which are acceptable to be protected by P.W-1 and P.W-2. If they had not taken such action, they have to face the departmental enquiry. Therefore, action of P.W.1 and P.W-2 is appreciable. The fact that the independent witness was not examined is true, that is also particularly in bus station no one will come in support of the Investigation Officer and co-operate with the investigation as they are in a hurry and to get into the bus and to reach their destination and therefore, will not come to the help and aid of the Investigation Officer in endeavouring the accused or in reporting the crime and to trap the accused who indulged in such activities. Therefore, the valuable defence that is put forth on behalf of the appellant/accused is rejected. The argument of the learned Government Advocate (Crl. Side) is accepted.

13. Not only that, the finding of guilt recorded by the learned 6<sup>th</sup> Additional District Sessions Judge is based on proper appreciation of evidence. As per the evidence and also after observing the demeanor of witness and the accused which benefit is not available to the Court. Therefore, if the appellate Court comes to the conclusion that is opposite to the conclusion already recorded by the learned trial Judge on proper appreciation of the evidence, the appellate Court shall not disturb the finding of the learned trial Judge.

14. In the result, the appeal is partly allowed. The conviction recorded by the learned trial Judge is upheld and sentence of 2 years rigorous imprisonment alone is reduced to 6 months simple imprisonment. The learned Judicial Magistrate No.V, Madurai is directed to issue warrant to secure the appellant/accused to undergo the remaining period of sentence. The period of detention already undergone by the appellant/accused is set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar (CS)

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To,

1. The VI Additional District Sessions Judge,  
Madurai.



2.Do through The Principal District Judge,  
Madurai.

3.The Judicial Magistrate No.V,  
Madurai.

4.The Chief Judicial Magistrate,  
Madurai.

5.The Superintendent of Police,  
Madurai.

6.The Inspector of Police,  
Thideernagar Police Station,  
Madurai.

7.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

8.The Section Officer, Criminal Section(Records),  
Madurai Bench of Madras High Court, Madurai.

Crl.A.MD.No.378 of 2015  
03.09.2021

RK/JC(01/11/2021) 8P 10C