



BAIL SLIP

Sam Stalin, S/o. Selvaraj, aged about (30/16), sole accused was released on bail vide order of this court dated 08.06.2016 in CRL MP (MD)No.4339 of 2016 in CRL A(MD).No.193 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.07.2021
DELIVERED ON : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.(MD)No.193 of 2016

Sam Stalin : Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Thattarmadam Police Station,
Tuticorin District.
(Cr.No.26 of 2014)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records in S.C.No.221 of 2014 relating to the judgment, dated 03.11.2015 passed by the learned Principal Sessions Judge, Tuticorin and to set aside the judgment of the conviction on the appellant/accused.

For Appellant : Mr.T.A.Ebenezer

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

JUDGMENT

This appeal is filed as against the order of conviction and judgment of sentence in S.C.No.221 of 2014 on the file of the learned Principal Sessions Judge, Tuticorin, dated 03.11.2015 convicting the sole accused/appellant herein to undergo two years rigorous imprisonment and fine of Rs.32,000/- under Section 4 of the Tamil Nadu Properties (Prevention of Damage and Loss), Act and one year rigorous imprisonment under Section 506(2) IPC.

2.Heard Mr.T.A.Ebenezer, learned Counsel appearing for the Appellant and Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) appearing for the Respondent.



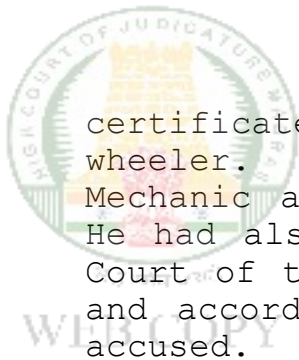
3.The case of the prosecution briefly as follows:

3.1.On 28.01.2014, by around 12.30 pm, PW-1, Durai Victor, had parked his two wheeler TVS Super Excel bearing registration No.TN-69-AW-4719, in front of his house at Pudukuti Street, Athisayapuram, Tuticorin and was talking with PW-2, Yosappu son of Samy Udayan, and PW-3, Joshua, son of Moses Nadar, in front of his house. At that time, the accused Sam Stalin son of Selvaraj Raj Nadar, came there with a bottle containing petrol and abused PW-1, Durai Victor, in filthy language, "you bastard, you have parked your vehicle in a place, where a person cannot walk". So saying, he had poured the petrol, that he had brought in a plastic bottle over the two wheeler and setting on fire with match stick. On seeing this, PW-1, Durai Victor and his brother's son, PW-3, Joshua, and other person, PW-2, Yosappu, with whom PW-1 was speaking, came rushing towards the two wheeler. On seeing them, the accused herein shouted at them, if you come near the vehicle, you will also be set fire and ran away. The two wheeler burnt to ashes.

3.2.Therefore, PW-1, Durai Victor, proceeded to the Police Station and lodged a complaint under Ex-P1 by 13.15 hours. The Sub Inspector of Police, PW-7, Vargheesh Ammal, had registered a case in Thattarmadam Police Station, Tuticorin in Cr.No.26 of 2014 for the offences under Sections 294b and 506(2) IPC r/w Section 4 of Tamil Nadu Properties (Prevention of Damage and Loss), Act. The original complaint under Ex-P1 and the FIR under Ex-P6 were forwarded to the learned Judicial Magistrate, Sathankulam and the copy of the complaint under Ex-P1 and the FIR under Ex-P6 were placed before the Inspector of Police, Thattarmadam Police Station, PW-8, Robinson.

3.3.On receipt of the FIR from PW-7, PW-8, the Inspector of Police, Robinson, proceeded to the house of the PW-1, Durai Victor at 14.00 hours and prepared observation mahazer under Ex-P2 and rough sketch under Ex-P7 in the presence of PW-4, Jeyakumar and one Visuwasam. He had seized the burnt two wheeler bearing registration No.TN-69-AW-4719 TVS Super Excel and a white bottle under seizure mahazer under Ex-P8, the half burnt seat of the two wheeler, MO-4 and examined PW-1, Durai Victor, PW-2, Yosappu, PW-3, Joshua and the witnesses to the seizure mahazer, observation mahazer and rough sketch, PW-4, Jeyakumar and Visuwasam.

3.4.By around 16.20 hours, PW-8, Inspector of Police, Thattarmadam Police Station, had arrested the accused, Sam Stalin, in the presence of witnesses, PW-5, Jeferson, and another witness, Justin. On such arrest, the accused Sam Stalin had voluntarily confessed to the crime and had handed over the match box from his shirt pocket and he had prepared seizure mahazer for match box in the presence of PW-5, Jefesron and another witness, Justin. He had taken the half burnt two wheeler to one Michael Raja and obtained



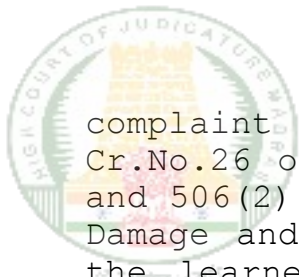
certificate regarding valuation and damage and cost to the two wheeler. He had recorded the statement of Michael Raja, who is a Mechanic and has given valuation regarding the burnt two wheeler. He had also arrested the accused and forwarded the accused to the Court of the learned Judicial Magistrate with a request for remand and accordingly, the learned Judicial Magistrate had remanded the accused.

3.5. On completion of the investigation, he laid final report of the investigation under Section 173(2) Cr.P.C., before the Court of the learned Judicial Magistrate, Sathankulam. The learned Judicial Magistrate on receipt of the final report taken cognizance of the offence under Sections 294b and 506(2) IPC and Section 4 of Tamil Nadu Properties (Prevention of Damage and Loss), Act, and numbered the case as P.R.C.No. He had issued summons to the accused. On appearance of the accused, he was questioned regarding his capability to engage a Counsel. Since the offences are triable by the Court of the Session, the case records were forwarded to the Court of the learned Principal Sessions Judge, Tuticorin and the accused was bind over to the Court of the Principal Sessions Judge, Tuticorin and the case was renumbered as S.C.No.221 of 2014.

3.6. On appearance of the accused, the learned Principal Sessions Judge, Tuticorin, had framed the charges under Sections 294b and 506(2) IPC r/w Section 4 of Tamil Nadu Properties (Prevention of Damage and Loss), Act, and the charges were read over and explained in Tamil to the accused and the accused pleaded not guilty and claimed to be tried. Therefore, the trial was ordered.

3.7. During the trial, the prosecution had examined PW-1 to PW-8 and marked Ex-P1 to Ex-P9 and MO-1 to MO-4. PW-1 is Durai Victor, who had deposed regarding the act of pouring petrol over the two wheeler bearing registration No.TN-69-AW-4719 TVS Super Excel, MO-1, on 28.01.2014, by around 12.30 noon in the presence of PW-2, Yosappu and PW-3, Joshwa by the accused, Sam Stalin and lodging of the complaint under Ex-P1. PW-2, Yosappu and PW-3, Joshwa, had also corroborated the evidence of PW-1, Durai Victor.

3.8. PW-4, Jeyakumar, had deposed regarding the preparation of observation mahazer under Ex-P2, and rough sketch under Ex-P8 by the Inspector of Police, PW-8, Robinson, Thattarmadam Police Station. PW-5, Jeferson, who deposed regarding the arrest of the accused by PW-8, the Inspector of Police, Thattarmadam Police Station and the confession of the accused and recovery of match box and preparation of seizure mahazer under Ex-P4 regarding the recovery of match box. PW-6, Michael Raja, who is a Mechanic and who had deposed regarding the value of the two wheeler bearing Registration No.TN-69-AW-4719, TVS Super Excel, as Rs.32,823/-, for which, he had issued valuation certificate under Ex-P5. PW-7, Vardheese Ammal, Sub Inspector of Police, who had deposed regarding the receipt of



complaint from PW-1, Durai Victor, and registration of the case in Cr.No.26 of 2014, under Ex-P6 for the offences under Sections 294b and 506(2) IPC r/w Section 4 of Tamil Nadu Properties (Prevention of Damage and Loss), Act, and forwarding of the same to the Court of the learned Judicial Magistrate, Sathankulam and the copy of the same being placed before the Inspector of Police for investigation. PW-8, Robinson, Inspector of Police had in his deposition stated that he had proceeded to the scene of crime in front portion of the house of PW-1, Durai Victor, by around 14.00 hours and preparation of Ex-P2, observation mahazer, Ex-P7, rough sketch and examination of the witnesses, PW-1 to PW-7 and laying of the final report before the Court of the leaned Judicial Magistrate under Section 173(2) of Cr.P.C.,

3.9.The evidence of the prosecution was closed with PW-1 to PW-8, Ex-P1 to Ex-P9 and MO-1 to MO-4. The incriminating materials against the accused was put to him and he was examined under Section 313(1) Cr.P.C., and he had offered no explanation regarding the case.

3.10.After hearing the prosecution and the learned Counsel for the accused and on consideration of the materials, evidence and witnesses, PW-1 to PW-8, Ex-P1 to Ex-P9, MO-1 to MO-4, the learned Principal Sessions Judge, Tuticoroin, had arrived at a logical conclusion that the accused had committed the offences, as was stated by the prosecution. The charges were proved against the accused under Section 506(2) IPC and Section 4 of Tamil Nadu Properties (Prevention of Damage and Loss), Act. The charge against the accused was not proved by the prosecution under Section 294b IPC. Therefore, the accused was acquitted for the offence under Section 294b IPC and the accused was convicted for the offence under Section 506(2) IPC and sentenced to undergo one year rigorous imprisonment and Section 4 of Tamil Nadu Properties (Prevention of Damage and Loss), Act and sentenced to undergo two years rigorous imprisonment with fine of Rs.32,000/-. Aggrieved by the judgment of learned Principal Sessions Judge, Tuticorin, the sole accused had preferred this appeal.

4.In the grounds of the appeal, the following grounds had been agitated:

(1)The judgment of the Court-below is against law, weight of evidence and probabilities of the case.

(2)The accused Sam Stalin, son of Selvaraj aged 30 years was convicted under Sections 294(b), 435 and 506 (ii) of I.P.C. and Section 4 of Prevention of Damages to the Public Property Act. It is alleged for Sam Stalin for burnt the TVS XL 50 of the Durai Victor son of Moses Nadar, Athiesyapuram near Sathankulam, Tuticorin District.



(3)The complainant Durai Victor has given statement that he has no driving licence at all and he has not also produced the R.C.Book of the two wheeler to the police officer who investigated the crime.

(4)The Investigation Officer failed to verify the R.C.Book of the two wheeler to confirm the ownership of the TVS XL 50 which was burnt by the accused. The investigation officer has deposed in the trial that he did not verify the R.C.book of the two wheeler moreover the Durai Victor has confirmed that he did not have the Driving Licence of two wheeler XL 50 which has burnt down by the accused.

(5)It is humbly submitted that from the above facts it is clear the accused Sam Stalin son of Selvaraj is innocent and he is nothing to do with burning of two wheeler. In order to wreck vengeance a false case is fabricated on the innocent accused.

(6)Viewing from in any angle the judgment of the court-below is not sustainable either in law or on facts."

5.Mr.T.A.Ebenezer, learned Counsel for the appellant/accused had stated that the case had been framed against the appellant. The appellant is no way connected to the offence. The case was a foisted case. The two wheeler does not belong to PW-1, Durai Victor. By using a two wheeler, that does not belong to PW-1, and exploit the animosity between PW-1, Durai Victor and accused, Sam Stalin, this case had been foisted against the accused.

6.Mr.T.A.Ebenezer, learned Counsel for the appellant/accused relied on the cross examination of PW-1, Durai Victor, in which, he had stated that he does not know, who had written the complaint. But, PW-7, Sub Inspector of Police, in her cross examination states that the complaint was written in the hand writing of the de-facto complainant. PW-2 and PW-3 are relatives to the PW-1. They were cousins. No other witness was examined. PW-1 in his cross examination had stated that the two wheeler was not removed from the police station till the date of examination of PW-1. PW-1 admitted that he does not have licence regarding the driving of two wheeler and no Registration Certificate had been furnished, as proof of ownership of MO-1. PW-8, the Inspector of Police in his cross examination admitted that he has not verify the ownership of MO-1.

7.Mr.T.A.Ebenezer, learned Counsel for the appellant/accused in his arguments pointed out that the provisions of Tamil Nadu Properties (Prevention of Damage and Loss), Act, originally applicable only to public properties. Subsequently, taking into consideration that during political agitation or communal clashes,



if private properties are set fire, the private properties were also included in the provisions of Tamil Nadu Properties (Prevention of Damage and Loss), Act. Regarding solitary incidents, the ordinary IPC alone will be applicable and not the provisions of Tamil Nadu Properties (Prevention of Damage and Loss), Act.

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8.Mr.T.A.Ebenezer, learned Counsel for the appellant/accused relied on the ruling of this Court in Crl.A.(MD)No.273 of 2008, dated 27.09.2018 and submitted that the conviction under Section 4 of the Tamil Nadu Properties (Prevention of Damage and Loss), Act, will not be made out. Even if it is accepted that the accident had occurred, the place of occurrence is also not proved. PW-1 says that the occurrence was happened in front of his house, whereas, PW-2 says that the occurrence was happened in front of the accused's house. Therefore, the place of occurrence itself is doubt full. There are contradictions between PW-1 and PW-2 regarding the place of occurrence of the alleged crime. Under those circumstances, the finding of guilt recorded by the learned Principal Sessions Judge, Tuticorin is to be considered as perverse and the judgment of conviction passed against the accused and the order of sentence of imprisonment passed against the accused are to be set aside.

9.Mr.T.Senthil Kumar, learned Government Advocate (Crl.side), by way of reply submitted that the prosecution had proved the case through PW-1 to PW-8. PW-1 to PW-3 had clearly stated that the accused herein had brought the petrol with him in a bottle and poured the petrol over the two wheeler and set it fire and scolded the PW-1 in filthy language. When PW-1 to PW-3 came near the burning two wheeler, the accused had threatened that they will also be set fire similarly and ran away. That itself will be sufficient for this Court to arrive at a conclusion that the accused was culprit and the PW-1 had suffered loss due to the act of the accused. Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) prayed this Court to dismiss this appeal as having no merits and confirm the finding of guilt recorded by the learned Trial Judge.

Point for consideration:

Whether the order of conviction and judgment of imprisonment passed by the learned District Sessions Judge, in S.C.No.221 of 2014, dated 03.11.2015 is to be set aside, as perverse?

10.On consideration of the rival submissions advanced by Mr.T.A.Ebenezer, learned Counsel for the appellant/accused and Mr.T.Senthil Kumar, learned Government Advocate (Crl.side), this Court is of the view that in cases. where, the fire destroy the property, the forensic experts are at opinion that who set fire to the property cannot be traced. The seat of the fire destroy the evidence. That is the theory regarding the detection of criminal cases, where fire is the culprit. Unless and otherwise, there is evidence, the real culprit cannot be founded, traced or detected.



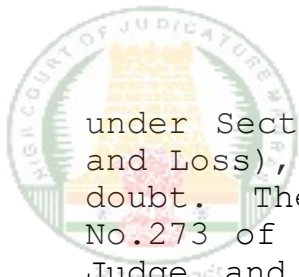
There are incidents where, two wheeler and four wheeler catches fire on its own. Till date, no motor vehicle manufacture is able to explain the phenomena. Therefore, for such events, one cannot doubt the handy work of neighbours.

11. Here, this is a similar case. PW-1 had not furnished the Registration Certificate book regarding the ownership of the property, MO-1. He only says he saw the accused setting fire to his two wheeler. If it is broad day light, PW-1 raised alarm and the accused would have got red handed by the people passing by, as it is a public street. Considering the animosity between the accused and PW-1, it can be safely concluded that the de-facto complainant, with the help of PW-2 and PW-3, had stage managed case.

12. As rightly pointed out by Mr. T. A. Ebenezer, learned Counsel for the Appellant, in the judgment in Crl.A.(MD)No.273 of 2008, which was disposed of by a learned Single Judge of this Court, on 27.09.2018, it was observed that the provisions of Tamil Nadu Properties (Prevention of Damage and Loss), Act, originally protected the public properties only. Subsequently, it was amended, whereby, private properties, which were damaged in the course of agitation by the political parties or other such groups, either communal, religious, linguistic agitating against the State and in the course of the agitation, the vehicles and the properties, even though belonging to private parties, are also damaged, are included. But in the solitary incidents, the private properties whether, building or vehicle are not covered under the amendment. For those purpose, already provisions are available under IPC. The Investigation Officer mechanically invoking the provisions of Tamil Nadu Properties (Prevention of Damage and Loss), Act, which cannot be accepted by a Court of Law, as it is against the legislation intended by the amendment brought by the State.

13. The said observation relied upon by the learned Counsel for the appellant/accused herein. The judgment of the learned Single Judge of this Court in **Crl.A. (MD)No.273 of 2008**, in the case of **Logu @ Loganathan vs State**, squarely applies to this case also. Herein, also it is a solitary occurrence between two individuals, as per the prosecution case. But the provisions under Section 435 IPC had not been invoked. The learned Trial Judge also, while framing the charges even though material was available, did not frame charge under Section 435 IPC. Therefore, at the stage of appeal, this Court cannot frame charge.

14. Not only that, the circumstances are not in favour of the prosecution. Even otherwise, as pointed out by Mr. T. A. Ebenezer, learned Counsel for the appellant/accused, the witnesses are related to each other and they had supported PW-1. Based on the corroborative evidence of PW-2 and PW-3, the learned Trial Judge had arrived at a finding that the charges framed against the accused



under Section 4 of the Tamil Nadu Properties (Prevention of Damage and Loss), Act, had been proved by the prosecution beyond reasonable doubt. Therefore, based on the judgment of this Court in Crl.A.(MD) No.273 of 2008, the finding of guilt recorded by the learned Trial Judge and the sentence of imprisonment and fine of Rs.32,000/- cannot be accepted.

15. In the light of the above discussion, there is doubt regarding the role of the accused herein in setting fire to a two wheeler, even though PW-1 clearly states that he saw the accused in setting fire on the two wheeler. Therefore, the benefit of doubt has to be extended to the accused.

The point for consideration is answered in favour of the accused and against the respondent.

In the result, the Criminal Appeal is allowed and the order of conviction and judgment of sentence in S.C.No.221 of 2014 on the file of the learned Principal Sessions Judge, Tuticorin, dated 03.11.2015 convicting the sole accused/appellant herein and sentencing him to undergo two years rigorous imprisonment and fine of Rs.32,000/- under Section 4 of the Tamil Nadu Properties (Prevention of Damage and Loss), Act and to undergo one year rigorous imprisonment under Section 506(2) IPC, are hereby set aside. The present Presiding Officer of the Court of the learned Principal Sessions Judge, Tuticorin, is directed to the refund the fine amount deposited by the accused, to the accused. The bail bond executed by the appellant is terminated.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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To

1. The Principal Sessions Judge, Tuticorin.
2. The Judicial Magistrate, Sathankulam.
3. Do Through, The Chief Judicial Magistrate, Thoothukudi.
4. The District Collector, Thoothukudi.



5. The Director General of Police, Mylapore, Chennai.
6. The Superintendent, Central Prison,
Palayamkottai, Tirunelveli District.
7. The Inspector of Police,
Thattarmadam Police Station,
Tuticorin District.
8. The Government Advocate, (Crl Side)
Madurai Bench of Madras High Court, Madurai.
9. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 copies)

Judgment made in
CRL.A.(MD)No.193 of 2016
30.07.2021

PK(CO)
TR(06.08.2021) 9P 11C