



BAIL SLIP

The Petitioner/Accused Kumar, aged 47 Years S/o.Rajagopal was directed to be released on bail as per order of this court dated 25.01.2019 in Crl.M.P.No.1118/2019 in Crl.A.No.57/2019 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.57 of 2019

Kumar

...Appellant/accused

Vs.

State by Inspector of Police,  
Edaiyur Police Station,  
(Cr.No.132 of 2008)

...Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment of conviction and sentence imposed upon the appellant by the learned District and Sessions Judge, Thiruvavarur, in S.C.No.108 of 2010 dated 21.12.2018.

For Appellant : Mr.K.Sukumaran

For Respondent : Mr.Leonard Arul Joseph Selvam,  
Government Advocate(crl.side)

J U D G M E N T

The present appeal has been filed by the appellant / accused against the judgment of conviction and sentence imposed upon him by the learned District and Sessions Judge, Thiruvavarur, in S.C.No.108 of 2010 dated 21.12.2018.

2.The appellant herein is the sole accused in the above referred case. He stood charged for the offence punishable under Sections 452, 294(b), 326 and 506(ii) of IPC and Section 3(1) of Tamilnadu Property (Prevention of Damage and Loss) Act, 1992. After a full fledged trial, the learned District and Sessions Judge found the accused guilty under Sections 452, 294(b), 326 of IPC and Section 3(1) of Tamilnadu Property (Prevention of



Damage and Loss) Act, 1992, convicted and sentenced as follows:

| Offence                                                                | Sentence                                                                                                                               |
|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
| Under Section 452 of IPC                                               | to undergo six months simple imprisonment and to pay a fine of Rs.1,000/- in default, to undergo one month simple imprisonment         |
| Under Section 294(b) of IPC                                            | to pay a fine of Rs.300/- in default, to undergo one week simple imprisonment                                                          |
| Under Section 326 of IPC                                               | to undergo one year simple imprisonment and to pay a fine of Rs.1,000/- in default, to undergo two months simple imprisonment          |
| Section 3(1) of Tamilnadu Property (Prevention of Damage and Loss) Act | to undergo eighteen months simple imprisonment and to pay a fine of Rs.1,000/- in default, to undergo three months simple imprisonment |
| The trial court also ordered the sentences to run concurrently         |                                                                                                                                        |

3.Challenging the said conviction and sentence, the accused is before this Court by way of filing the present criminal appeal.

4. The case of the prosecution, in brief, is as follows:-

(i)P.W.2-Sumathi is the daughter in law of P.W.1-Surendran. The domestic servant working in the house of P.W.1 is P.W.3. On 08.08.2008 around 1.30 a.m., when at the time P.W.1 was in his residence along with P.W.2 and P.W.3, the accused-Kumar came there along with wooden log and abused the P.W.2 by using filthy language. When the same was questioned by P.W.1, the accused after pushing her down, stamped on her neck. Further, he criminally intimidated P.W.1 and later, he damaged the T.V., torch light and one car bearing registration No.TN 01 AB 7758 and caused damage to the tune of Rs.1,00,000/-. Later, around 3.00 p.m., P.W.1 brought the P.W.2 to the Best Hospital and admitted her as an in-patient.

(ii) P.W.8-Dr.Ravi attached to the said hospital, on 08.08.2008 around 7.50 p.m. examined the P.W.2 and found the following injuries:

(1) contusion over right shoulder size 3x4 cm

(2) contusion over right upper back 4x4 cm

He issued wound certificate under Ex.P6 as injury No.1 is grievous and the other injury sustained by P.W.2 is simple in nature.

(iii)In the meanwhile, P.W.10-Natarajan, the then Inspector of Police, on the same day around 15.30 hrs, received the



complaint from P.W.1 and registered a case in crime No.132 of 2008 under Sections 147, 148, 294(b), 323, 448, 506(ii) of IPC r/w 3(1) of TNPPDL Act. The copy of the F.I.R. is marked as Ex.P7. After registering the case, he visited the scene of occurrence and in the presence of P.W.7-Ravi, P.W.5-Annadurai, he prepared observation mahazar under Ex.P2. He drawn rough sketch and the same has been marked as Ex.P8.

(iv) In continuation of investigation, on the same day around 5.00 p.m., from the occurrence place, he recovered M.O.1 & M.O.2 under cover of mahazar. He examined the witnesses and recorded their statements. On 10.08.2008, he has produced the car alleged to be damaged in the alleged occurrence before the Motor Vehicles Inspector for issuing a certificate as regards to the value of the damage. Later since he was transferred, he handed over the case records to his successor Samarasam. The said Samarasam took the case for further investigation and after examining the Motor Vehicles Inspector, he came to the conclusion that the accused herein is liable to be convicted under Sections 452, 294(b), 325 and 506(ii) of IPC and Section 3 (1) of Tamilnadu Property (Prevention of Damage and Loss) Act, 1992. He filed final report accordingly.

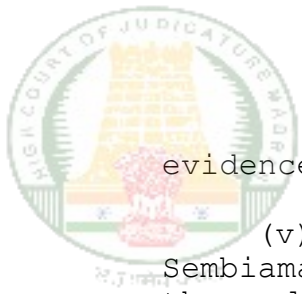
5. Based on the above materials, the trial Court framed the charges under Sections 452, 294(b), 326, 506(ii) of IPC and Section 3(1) of TNPPDL Act, 1992. The accused denied the same and opted for trial. Hence in order to prove their case, on the side of the prosecution, eleven witnesses have been examined as P.W.1 to P.W.11 and nine documents were marked as Ex.P.1 to Ex.P.9, besides two Material Objects, which were marked as M.O.1 and M.O.2.

(i) Out of the said witnesses, P.W.1-Surendran is the defacto complainant, he has spoken about the occurrence as on 08.08.2008 around 1.30 p.m., when at the time he was in his residence along with P.W.2 and P.W.3, the accused came there with wooden log and after attacking P.W.2, he damaged the torch light, T.V. and car. In this regard, he lodged a complaint.

(ii) P.W.2-Sumathy is the injured, spoken about the occurrence as during the relevant point of time, the accused came there with wooden log and after made a quarrel with P.W.1, abused her by using filthy language, also stamped on her neck. And later, he damaged the property as alleged by the prosecution.

(iii) P.W.3-Suguna is the domestic servant working in P.W.1's house. She had spoken about the occurrence as stated by the P.W.1 and P.W.2.

(iv) P.W.4-Somasundaram also gave evidence in support of the



evidence given by P.W.1 and P.W.3.

(v) P.W.5-Annadurai and P.W.7-Ravi is the residents of Sembiamangalam. They have spoken about the occurrence as during the relevant point of time, the investigation officer in this case prepared observation mahazar and recovered the material objects i.e. M.O.1 and M.O.2 in their presence.

(vi) P.W.6-Santhanakrishnan, alleged witness who conducted panchayat and P.W.7-Ravi who signed as witness in the observation mahazar and in the seizure mahazar have not supported the case of the prosecution. Hence, both of them treated as hostile witnesses and after treating them as hostile witnesses, they did not say anything about the case of the prosecution.

(vii) P.W.8-Ravi is the doctor, spoken about the treatment given to the P.W.2, also in respect to issuing of wound certificate.

(viii) P.W.9-Rajendran, hear say witness, not supported the case of the prosecution.

(ix) P.W.10-Natarajan is the then Inspector of Police, Edaiyur Police Station spoken about the receipt of complaint, registering the case and about filing of final report.

(x) P.W.11-Mukkannan is the Motor Vehicles Inspector working in Tiruvarur Zonal Transport Office, spoken about the inspection conducted on the car bearing registration No.TN 01 AB 7758. According to him, during the time of inspection, the following damages were found:

- (1) Front w/s glass broken
- (2) Front bonnet dented
- (3) Front right side door glass broken
- (4) Rear dicky door and w/s glass broken
- (5) Front side bumper damaged

In this regard he issued a certificate under Ex.P9.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, in order to prove his case, on his side, none examined as defence witness.

7.The learned District and Sessions Judge, Tiruvaur, after perusing all the above materials and on considering the arguments advanced by either side, convicted and sentenced the appellant as stated supra. Aggrieved over the said conviction and sentence, the appellant is before this Court, with the present criminal appeal.



8.I have heard Mr.K.Sukumaran, learned counsel appearing for the appellant and Mr.Leonard Arul Joseph Selvam, learned Government Advocate(crl.side) appearing for the respondent State. I have also perused the records carefully.

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9.The learned counsel appearing for the appellant would contend that though P.W.1 to P.W.3 who are the alleged eye witnesses to the occurrence, have not been cross examined, the evidence given by them in the chief examination is having a lot of contradictions in respect to injuries sustained by P.W.2. The investigation officer, during the time of investigation, even after the advice given by Motor Vehicles Inspector, he has not obtained any damage certificate from the competent authority and therefore, prosecution fails to prove the offence committed under the provisions of TNPPDL Act. He further submits that though the wound certificate issued by the doctor disclose the fact that P.W.2 sustained grievous injury, the same has not been established by showing relevant material and therefore it cannot be said the accused is guilty under Section 326 of IPC. Accordingly, he prayed to allow this appeal and to set aside the conviction and sentence.

10.Per contra, the learned Government Advocate(crl.side) appearing for the respondent police would submit that the evidence recorded before the trial court would sufficiently prove the case of the prosecution beyond reasonable doubt. Accordingly, the interference of this court in the findings of the trial court is not necessary.

11.Submissions made by the counsels appearing on either side are considered.

12.Here it is a case, after recording chief examination of P.W.1 to P.W.3, their cross examination has not been recorded. Further, in this regard, the attempt made by the accused are all ended in vain and therefore, it would be necessary to see whether the evidence given by them has substantially proved the case of the prosecution, or otherwise, the non appearance of P.W.1 to P.W.3 before the trial court for the purpose of cross examination is a fatal to the case of the prosecution or not. In this regard, in the impugned judgment rendered by the trial court, the learned Sessions Judge has categorically held that after recording the chief examination of P.W.1 to P.W.3, the appellant filed two applications under Section 311 Cr.P.C and after allowing the same, the police was unable to produce them before the court. Accordingly, sufficient efforts have been taken by the trial court for securing P.W.1 to P.W.3. But for the reasons best known to the police, they have not produced P.W.1 to P.W.3 before the trial court. However, those applications filed under Section 311 Cr.P.C. were filed after



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four years from the date of recording the chief examination. The same is not having much importance to decide the case in favour of accused. Further, during the time of trial, the counsel appearing for the accused, after ignoring the fact that the cross examination has to be conducted on the same day, not completed the cross examination

13. In the said circumstances, now on going through the evidence given by P.W.1 to P.W.3, they are all categorically stated before the trial court as during the time of occurrence, accused herein by using wooden log attacked the P.W.2 and later, after pulling her down, stamped on her neck and due to the same, P.W.2 sustained injury in the neck. Now in respect to the said incident, particularly in respect to using the weapon, in the complaint lodged before the police, P.W.1 has not stated anything. Though the averments found in the F.I.R. is not an encyclopaedia, being the reason that the weapon used at the time of occurrence is a material one, if really the alleged occurrence had happened as stated by P.W.1 to P.W.3, necessarily the same has to be mentioned in the complaint in detail. But here it is a case, nature of weapon used has not been stated in the complaint. Further, investigation officer in this case admitted that the weapon used at the time of occurrence has not been recovered after securing the accused.

14. More than that it is a case, in the wound certificate issued in respect to the injury sustained by P.W.2, the doctor has stated that the injury No.1 (contusion over right shoulder size 3x4 cm) is a grievous one. On the other hand, while at the time of giving evidence as P.W.8, he has stated that for the injury sustained by P.W.2, X-ray has been taken wherein there was no fracture found.

15. Now on going through the said evidence with the nature of injury sustained by P.W.2, it would necessary to see whether the said injury comes under the head of 320 of IPC. In fact, Section 320 of IPC which is narrated as follows:

320. Grievous hurt

The following kinds of hurt only are designated as "grievous":

First - Emasculation.

Secondly - Permanent privation of the sight of either eye. Thirdly - Permanent privation of the hearing of either ear, Fourthly - Privation of any member or joint.

Fifthly - Destruction or permanent impairing of the powers of any member or joint.

Sixthly - Permanent disfiguration of the head or face.

Seventhly - Fracture or dislocation of a bone or tooth. Eighthly - Any hurt which endangers life or



which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

16. Now on applying the definition of grievous hurt with the evidence given by the doctor, here it is a case, there was no resemblance that the injury sustained by the P.W.2 in the neck is having the character of grievous in nature. Therefore, non recovery of weapon used at the time of occurrence, coupled with the fact that the injury sustained by P.W.2 is not a grievous hurt, convicting the accused under Section 326 of IPC is erroneous one.

17. Now on coming to the conviction under Section 3 (1) of TNPPDL Act, it is the case of the prosecution that during the time of occurrence, accused damaged the property to the tune of Rs.1,00,000/-. In this regard, admittedly the 'value of the damage' certificate has not been produced. In fact, in the Motor Vehicles Inspector's Report issued by the P.W.11 under Ex.P9, he had advised the investigation officer to collect the loss certificate from the automobile engineer, but the investigation officer in this case, without complying with the advice given by the Motor Vehicles Inspector, filed a final report alleging that the appellant is guilty under Section 3 (1) of TNPPDL Act.

18. It is a routine practice of the police to implicate even the individual, who allegedly causes damage of property worth about Rs.100/- under Section 3(1) of TNPPDL Act and such practice should not be embraced. The object of the amendment made in Tamilnadu Act, 46 of 1994 is only to prevent the widespread damages to the public property by enacting a comprehensive legislation providing for punishments of the persons who actually cause damage or loss to the public property and to make the political parties or communal, language or ethnic agitation, demonstration or other activities liable to pay compensation in respect of damages or loss caused to any public property during such processing, assembly, meeting, agitation, demonstration or other activities. Widespread damages to private property are also being caused during procession, meeting, agitation, demonstration or other activities organised by political parties or communal, language or ethnic groups. In fact the provisions of the said Act do not provide for the payment of compensation and for the punishment in respect of the damage or loss caused to private property. Only in the said circumstances, it has been decided to amend the said Act suitably providing for punishments of the persons who actually cause damage or loss to the private property.

19. In the said circumstances, herein it is a case being the reason that the value of the damage has not been brought to the



court, this Court is not in a position to decide whether the act committed by the accused is an ordinary mischief or offence punishable under Section 3(1) of TNPPDL Act. Therefore in the said circumstances, we cannot hold that the accused herein is liable to be convicted under the said provisions of the TNPPDL Act. Furthermore, in the alleged F.I.R., in the column shown for the accused, the details of the accused was mentioned as the appellant and others. Further, before the doctor, the injured herein reported the occurrence as some unknown persons attacked. The said contradiction also creates a doubt whether the present case has been registered for the real occurrence or not. More than that, it is the evidence given by P.W.1 that immediately after the occurrence, around 3.00 p.m., P.W.2 was admitted in the hospital and on the other hand, doctor who treated P.W.2 gave evidence as on the said day around 7.50 p.m., he treated P.W.2. In this area also, the difference of time stated by P.W.1 and P.W.8 would create a doubt over the case of the prosecution. Accordingly, the trial court without considering those aspects came to the conclusion that the accused alone committed offence as alleged by the prosecution. Hence, conviction and sentence rendered by the trial court is liable for set aside.

20. Accordingly, this Criminal Appeal is allowed . The conviction and sentence imposed by the learned District and Sessions Judge, Thiruvarur, in S.C.No.108 of 2010 dated 21.12.2018 is hereby set aside. The appellant/accused is acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The learned District and Sessions Judge,  
Thiruvarur.
2. The Judicial Magistrate,  
Thiruthuraipoondi.
3. The Inspector of Police,  
Edaiyur Police Station,



4. The Public Prosecutor,  
High Court, Madras.

Copy To

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The Section Officer,  
Criminal Section,  
High Court,  
Madras - 104.

+lcc to Mr.K.Sukumaran, Advocate, S.R.No.20764

Criminal Appeal No.57 of 2019

AD(CO)  
RGA(26/04/2022)