



WEB COPY



Crl.A.No.237 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.10.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.237 of 2018

1. Mahendiran @ Mannar Mannan
2. Suresh

... Appellants

Vs

The State by
The Inspector of Police,
Kandhikuppam Police Station,
Krishnagiri District.

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside conviction and imprisonment imposed on the appellants vide judgment dated 27.03.2018 made in S.C.No.131 of 2017 on the file of the learned Principal Sessions Judge, Krishnagiri.

For Appellants : Mr.T.Sathiyamoorthy

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



Crl.A.No.237 of 2018

WEB COPY

JUDGMENT

This Criminal Appeal is arising out of the judgment dated 27.03.2018 passed in S.C.No.131 of 2017 on the file of the learned Principal Sessions Judge, Krishnagiri, thereby convicting the appellants for the offence punishable under Section 3(1) of the Tamil Nadu Property (Prevention of Damages & Loss) Act 1992 (herein after referred to as “the TNPPDL Act”) and Section 323 r/w.34 of IPC.

2. The case of the prosecution is that on 24.08.2015, when the political party called Viduthalai Siruthaikal conducted dharna and the president of the said party was attacked. In order to show their protest against the Government, the appellants with common intention to damage the public property and in furtherance, on 24.08.2015 at about 5.30 p.m., in Thiruvannamalai to Krishnagiri road, near Chendharapalli, while the driver of the Tamil Nadu State Transport Corporation had driven a bus bearing registration number TN 32 N 3758 from Puducherry to Hosur, the second accused had driven his two wheeler bearing registration No.TN24AC4467 Yamaha with pillion rider, the first accused and proceeded opposite to the bus and stopped the bus. Thereafter, the first



Crl.A.No.237 of 2018

WEB COPY

accused had pelted stone against the front windscreen of the bus and also damaged the same. In the result, the front windscreen of the bus was completely damaged into pieces and caused damages to the bus to the tune of Rs.4,000/-. The broken glass pieces caused injuries near the Thumb finger of the driver. Hence the driver lodged a complaint and on receipt of the complaint, the respondent registered the FIR in Crime No.348 of 2015 for the offence under Section 3 of the TNPPDL Act and Section 324 of IPC.

3. After completion of investigation, the respondent filed final report and same has been taken cognizance for the offences punishable under Section 3(i) of the TNPPDL Act and Section 323 r/w 34 of IPC. In order to prove the guilt of the accused, the prosecution examined P.W.1 to P.W.10 and also marked documents as Ex.P.1 to Ex.P.14. The prosecution also produced material objects in M.O.1 to M.O.4. On a perusal of oral and documentary evidence, the trial Court found the appellants' guilty and convicted them for the offence punishable under Section 3(i) of TNPPDL Act & Section 323 r/w 34 of IPC, and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of



Crl.A.No.237 of 2018

Rs.2,000/- in default to undergo rigorous imprisonment for one month for the offence under Section 3(i) of the TNPPDL Act, and also sentenced them to undergo rigorous imprisonment for the period of four months for the offence under Section 323 r/w 34 of IPC. Aggrieved by the same, the present appeal.

4. The learned counsel appearing for the appellants submitted that both the appellants are A1 and A2 in which the first appellant died on 02.03.2021, as such the entire charges stand abated as against the first appellant. He further submitted that the occurrence alleged to have been happened on 24.08.2015 at about 5.30 p.m., and the complaint was lodged by P.W.1. at about 8.00 p.m., on the same day. However, it reached the concerned jurisdictional Court on 28.05.2012 at about 4.00 p.m. In the meanwhile on suspicious, the appellants were arrested and material objects were seized by the respondent.

4.1. He further submitted that P.W.1 lodged complaint and it was specifically mentioned that unknown persons pelted stone on the bus. Therefore, there is absolutely no material to connect the appellants in the



Crl.A.No.237 of 2018

alleged crime. The appellants were arrested only on suspicious ground and no material produced by the prosecution to connect the appellants. Even according to P.W.1 & P.W.2, who were the driver and conductor of the bus, they categorically deposed that the accused were identified only in the police station, after their arrest, since as per the FIR, two unknown persons were thrown stones in the windscreen of the bus driven by P.W.1. Therefore, the respondent without any evidence, arrayed the appellants as accused. It is a fatal to the case of the prosecution, since after arrest of the appellant, the prosecution made statements in accordance with their own wish. P.W.1 & P.W.2 who doesn't know about the identity of the accused and no other witness had deposed that they had witnessed the offence committed by the appellants.

4.2. In fact P.W.3 to P.W.5 were examined as eye witnesses to the occurrence and they also failed to identify the accused persons. He further submitted that the appellants were not arrested from the scene of occurrence immediately after the commission of offence. According, to the Investigation Officer only on secrete information the Inspector of Police arrested the appellants. However, the prosecution failed to prove



Crl.A.No.237 of 2018

the same before the trial Court. They were arrested only on suspicious and proper way to identify the accused is only to conduct identification parade in the presence of the learned Judicial Magistrate. Therefore, non conduction of identification parade is the fatal to the case of the prosecution and the trial Court ought to have acquitted the appellants from all the charges. Hence, he prayed to allow this appeal.

5. The learned Government Advocate (Crl. Side) appearing for the respondent/police submitted that though P.W.1 lodged complaint stating that two unknown persons pelted stone on the bus, P.W.1 categorically mentioned the two wheeler with registration number which was used by the accused persons to pelt stone on the bus. The two wheeler driven by the second accused bearing registration No. TN24AC4467 Yamaha, owned by the brother of the second accused. While investigation, the respondent found that the vehicle was driven by the second accused and the first accused was a pillion rider. Therefore, there is no question of identification parade has to be conducted. P.W.1 categorically mentioned the registration number of the two wheeler.



Crl.A.No.237 of 2018

WEB COPY

5.1. He further submitted that P.W.1 also sustained injury and he was treated by the Doctor, who was examined as P.W.4. Further P.W.3 deposed about the occurrence and it corroborated the evidence of P.W.1 & P.W.2. He further submitted that the Motor Vehicle Inspector assessed the damage caused to the bus to the tune of Rs.4,000/- and he was examined as P.W.5. Therefore, the prosecution proved the case beyond any doubts and the trial Court rightly convicted the appellant and it doesn't warrant any interference from this Court.

6. Heard Mr.T.Sathiyamoorthy, learned counsel appearing for the appellants and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for the respondent/Police.

7. There are totally two accused in which the appellants are arrayed as A1 and A2. The first appellant died on 02.03.2021, as such all the charges are abated as against him. Insofar as the second appellant is concerned, on 24.08.2015, the political party called Viduthalai Siruthaikal conducted dharna. Due to the attack on their president of the said party, in order to show their protest, the appellants came in the two



Crl.A.No.237 of 2018

wheeler bearing Registration No.TN24AC4467 and stopped the bus.

Thereafter the first accused pelted stone against the front side windscreen of the bus, which was driven by P.W.1. and caused damage to the tune of Rs.4,000/-. The broken glass pieces caused injury near the thumb finger of P.W.1. Thereafter, P.W.1 lodged complaint and the same was registered in Crime No.348 of 2020 for the offence under Section 3 of the TNPPDL Act and Section 323 of IPC.

8. On a perusal of FIR, P.W.1 alleged that two unknown persons came in motor cycle bearing registration No.TN24AC4467 and the pillion rider of the motor cycle pelted the stone on the front side windscreen of the bus. Though the accused persons are unknown to P.W.1, he noted the registration number of the two wheeler and specifically mentioned the number of the two wheeler in the FIR. After registration of FIR, the respondent started investigation and during the investigation found that the said two wheeler belongs to the brother of the second accused. On further enquiry found that both the accused only came in the two wheeler and stopped the bus and pelted stone on the bus. Therefore, it is absolutely not required to conduct any identification



Crl.A.No.237 of 2018

parade. During the investigation, the appellants were found to be the accused persons and arrested them.

9. Further, the conductor of the bus was examined as P.W.2, who is also an eye-witness to the occurrence. He deposed that on 24.08.2015, the accused persons came before the bus and pelted stone on the front windscreen of the bus. He also identified the accused persons that the second accused drove the two wheeler at the time of occurrence and the first accused pelted stone on the bus, due to which the front side windscreen completely damaged and the glass pieces caused injury on the right hand of P.W.1.

10. Immediately, they taken the vehicle to the police station and lodged complaint. The Doctor who treated P.W.1 was examined as P.W.4 and she categorically deposed that P.W.1 came to the Government Hospital and P.W.1 was treated for the injuries sustained on his right hand. P.W.4 issued the accident register and the same was marked as Ex.P.2. Therefore, the prosecution clearly proved its case beyond any doubt and the trial Court rightly convicted the appellants for the offence under Section 3(1) of the Tamil Nadu Property (Prevention of Damages



Crl.A.No.237 of 2018

WEB COPY
& Loss) Act 1992 (herein after referred to as “the TNPPDL Act”) and
Section 323 r/w.34 of IPC.

11. However, considering the facts and circumstances this Court is inclined to reduce the sentence imposed by the trial Court. Accordingly, the conviction imposed on the second appellant is hereby confirmed. Insofar as the sentence is concerned, it is reduced to six months, on condition that the second appellant shall pay a sum of Rs.25,000/- (Rupees twenty five thousand only) as compensation by way of Demand Draft directly to the office of P.W.1 viz., the Tamil Nadu State Transport Corporation, failing which the order passed by the trial Court shall stand restored. The trial Court is directed to take steps to secure the second appellant for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant, if any, shall be given set off, as required under Section 428 Cr.P.C.

12. Accordingly, the Criminal Appeal is dismissed as abated as against the first appellant. Insofar as the second appellant is concerned,



Crl.A.No.237 of 2018

the Criminal Appeal stands partly allowed.

WEB COPY

19.10.2022

Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

rts



WEB COPY



Crl.A.No.237 of 2018

G.K.ILANTHIRAIYAN, J.,

rts

To

1. The Principal Sessions Judge,
Krishnagiri.
2. The Inspector of Police,
Kandhikuppam Police Station,
Krishnagiri District.
3. The Public Prosecutor,
Madras High Court,
Chennai.

Crl.A.No.237 of 2018

19.10.2022