



Bail Slip

The Petitioner / Accused namely Mahendran, S/o.Ganagaraj be and hereby was directed to be released on bail as per order dated 09.05.2019 in Crl.M.P.No.6483 of 2019 in Crl.A.No.264 of 2019.

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED: 09.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.264 of 2019

Mahendran
S/o.Ganagaraj

... Appellant/Accused-2

versus

State rep. by
The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
(Crime No.1959/2012)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment made in S.C.No.175 of 2015 dated 05.01.2019 on the file of II Additional District and Sessions Judge, Tiruppur.

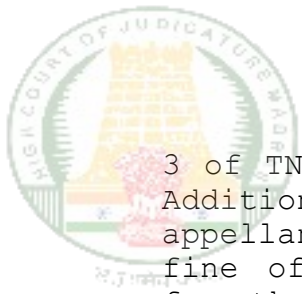
For Appellant : Mr.Deepan Uday

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

J U D G M E N T

The present Criminal Appeal has been filed by the appellant to set aside the judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Tiruppur dated 05.01.2019 in S.C.No.175 of 2015.

2. The appellant herein is arrayed as Accused No.2 in the above referred case. He stood charged for the offences punishable under Sections 294(b), 506(ii) of I.P.C. and Section



3 of TNPPDL Act. By a judgment dated 05.01.2019, the learned II Additional District and Sessions Judge, Tiruppur convicted the appellant under Section 294(b) of IPC and sentenced to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for three months. Further, the appellant was convicted under Section 506(ii) of I.P.C. and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for three months. The learned II Additional and Sessions Judge further convicted the appellant for the offence under Section 3 of TNPPDL Act and sentenced to undergo three months Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo Rigorous Imprisonment for three months. The trial Court also ordered the sentences to run concurrently.

3. Challenging the said conviction and sentence the accused No.2 is before this Court, by way of filing the present criminal appeal.

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

4.1. P.W.1- Karthikeyan was working as a driver in Tamil Nadu State Transport Corporation. On 18.11.2012 around 5.00 p.m. when he was driving the bus near Iyengar Bakery, opposite to Velan Hotel at Tiruppur-Kangayam Road, he heard a noise of breaking of glass. Immediately he stopped the bus and got down from the bus and on seeing the back side of the bus, the appellant herein and another accused, holding the Sivasena Flag and after seeing P.W.1 abused him by showing knife and black stone. Both of them had criminally intimidated P.W.1. Hence, P.W.1 lodged a complaint under Ex.P1.

4.2. On receipt of the complaint given by P.W.1, P.W.6-Shanmuga Sundaram, the then Head Constable, Tiruppur, South Police Station registered a case as against the appellant and other accused in Crime No.1959 of 2012 for an offence punishable under Sections 294(b), 506(ii) of I.P.C. and Section 3 of TNPPDL Act. The printed F.I.R. was marked as Ex.P4. After registration of the case, he forwarded the copy of the F.I.R to Sub-Inspector of Police for investigation.

4.3. P.W.7-Sasikala, the then Sub-Inspector of Police, Tiruppur South Police Station, on receipt of the copy of F.I.R., examined the appellant and other accused. During examination both the accused have admitted the offence. Hence, she secured both the accused and sent them to remand. She recovered the material objects, which are all produced by P.W.1.

4.4. In continuation of investigation, on 18.11.2012 around 19.00 hrs. she visited the scene of occurrence and in the



presence of witnesses, she prepared the observation mahazar under Ex.P5. She drawn rough sketch and the same has been marked as Ex.P6. She recovered the broken glass pieces and a small black stone under Seizure Mahazar-Ex.P7. She examined the witnesses in the scene of occurrence and recorded their statements. She made arrangements for the production of the vehicle before Motor Vehicle Inspector for estimating the value of the damage. Afterwards she handed over the case records to P.W.8 for further investigation.

4.5. P.W.8-Eswaran, the then Inspector of Police, on receipt of the case records, examined the witnesses and after receiving the report from the Motor Vehicles Inspector, he came to the conclusion that both the accused are liable to be convicted under Sections 294(b), 506(ii) of I.P.C. and Section 3(1) of TNPPDL Act. He filed a final report accordingly.

5. Based on the above materials, the trial Court framed charges under Sections 294(b), 506(ii) of I.P.C. and Section 3 of TNPPDL Act. Both the accused pleaded not guilty and prayed for trial. Hence, they were put on trial. Before the trial Court, in order to prove the case of the prosecution, 8 witnesses were examined as P.W.1 to P.W.8 and 9 documents were marked as Exs.B1 to B9. Besides, six material objects, which were marked as M.O.1 to M.O.6.

6. Out of the said witnesses, P.W.1-Karthikeyan is working as a driver in Tamil Nadu State Transport Corporation. He has spoken about the occurrence as, on the date of occurrence the appellant and another accused attacked the bus by using black stones. He has further stated that after seeing the same, with the help of public, he secured the accused and produced before the police along with the complaint.

7. P.W.2-Sethuraman is a passenger travelled in a bus, which was damaged at the relevant point. Though he has been cited as an eye witness, he has not given any evidence in support of the case of prosecution. Hence, he was treated as a hostile witness.

8. P.W.3-Kanagaraj was working as a Motor Vehicle Inspector, he has spoken about the examination of the bus, which was alleged to be damaged and about the issuance of the report. According to him, the glass fitted on the back side of the bus was broken in the measurement of 59 x 26 inches.

9. P.W.4-Selvakumar is the conductor. He has spoken about the occurrence as, during the relevant point of time, the appellant and another accused holding Sivasena Flag thrown out a black stone on the back side of the bus and due to which, the glass fitted on the back side was broken into pieces.



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10. P.W.5-Kannan is the resident of Poyampalayam. He gave evidence in respect of the preparation of observation mahazar and about the recovery of material objects. Though he was cited as eye witness to the occurrence, he has not stated about the occurrence, hence, he was treated as hostile witness.

11. P.W.6 to P.W.8 are the police officers speak about the receipt of complaint, registration of the case, investigation and about the filing of final report.

12. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, none examined on his side.

13. The learned II Additional District and Sessions Judge, Tiruppur 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 this appeal.

14. I have heard Mr.Deepan Uday, 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.

15. The learned counsel appearing for the appellant would contend that before the trial Court, the alleged eye witnesses, who were examined on the side of the prosecution to prove the occurrence, have not given any evidence in support of the case of prosecution. The evidence given by those witnesses are having lot of contradictions. The trial Court without appreciating the same with correct perspective, convicted the accused and sentenced as above. Accordingly, he prayed to set aside the conviction and sentence.

16. On the other hand, the learned Government Advocate (Criminal Side) appearing for the respondent police would submit that the evidence put forth by the prosecution witnesses before the trial Court would be sufficient to accept the case of the prosecution. According to him, interference in the judgment rendered by the trial Court is not necessary and thereby he prayed to dismiss this appeal.

17. I have considered the rival submissions made on either side and perused the records carefully.

18. On going through the submissions made by the learned counsel for the appellant, there is no doubt, before the trial Court in order to prove the case of the prosecution, P.W.1,



P.W.2, P.W.4 and P.W.5 were examined as eye witnesses to the occurrence. Now on going through the evidence given by P.W.1, in his chief examination, he has stated that only after hearing the noise, he stopped the vehicle and got down from the bus. In other words, he has stated about the presence of accused and not about the act committed by the accused.

19. Therefore, in the absence of any specific evidence about the alleged occurrence, this Court cannot come to the conclusion that in the presence of P.W.1, the appellant and another accused damaged the bus. P.W.2, who is also one of the evidence, did not say about the occurrence. P.W.4, who is the conductor working in the same bus also stated that only after hearing the noise he saw the occurrence, wherein in the backside of the bus both the appellant and other accused were standing with the flag. Even he did not say about the possession of the black stone by the accused, which was used for damaging the vehicle. The other witness, who was examined as P.W.5 also deposed before the trial Court that after seeing the crowd, they secured the accused and produced before the police station. On the other hand, as per the case of the prosecution, he was shown as witness attested in the observation mahazar prepared by the investigation officer. Therefore, his evidence is also not sufficient to prove the guilt of the accused. Even, the witnesses examined on the side of prosecution have not stated about the words uttered by the accused at the relevant point of time.

20. In the said circumstances, except those witnesses, the other prosecution witnesses have not spoken about the occurrence. They are the persons deposed about the investigation and about the inspection of the damaged bus. Their evidence is only in respect to the process of investigation and about the inspection of bus.

21. Ultimately, I am of the considered opinion that the witnesses examined on the side of the prosecution has not stated as to whether the alleged occurrence had happened in their presence or not. Therefore, in the absence of any direct evidence in respect of the alleged occurrence, we cannot hold that the appellant and another accused waylaid the bus and damaged the same, as alleged by the prosecution. The trial Court, without appreciating the same with the correct perspective, convicted the accused, which is liable to be set aside.

22. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellant/accused No.2 by the learned II Additional District and Sessions Judge, Tiruppur, dated 05.01.2019 in S.C.No.175 of 2015 for the offences under Sections 294(b), 506(ii) of I.P.C. and Section 3



of TNPPDL Act, is set aside. Fine amount, if any paid is directed to be refunded. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rsi

To

1. The II Additional District and Sessions Judge,
Tiruppur.
2. -do through- The Principal District Judge,
Tiruppur.
3. The Judicial Magistrate No.II,
Tiruppur.
4. -do through- The Chief Judicial Magistrate
Tiruppur.
5. The District Collector,
Tiruppur.
6. The District General of Police,
Mylapore, Chennai.
7. The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
8. The Superintendent,
Central Prison, Coimbatore.
9. The Public Prosecutor,
High Court, Madras.

Copy to

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

CrI.A.No.264 of 2019

AJS[co]
NSK 25/03/2022