



BAIL SLIP

The Appellant/Accused Namely 1.Nazeer @ Naser S/o A.M.Mohammed mohiteen, 2. Abuthagir, S/o Seerajutheen, 3. Hakkim @ Valayal Hakkim, S/o Mohamed, 4,Kaja Hussain S/o Sahul Hameed, 5, Bias @ Mujbar Rahuman, S/o Muthalief where directed to be released on bail as per the order dated 08/07/2019 in CRL.M.P.No.8911/2019 in crl.A.No.403/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.403 of 2019

1. Nazeer @ Naser
2. Abuthagir
3. Hakkim @ Valayal Hakkim
4. Kaja Hussain
5. Bias @ Mujbar Rahuman

... Appellants/Accused

Versus

State Rep. by,
The Inspector of Police,
B-12 Ukkadam Police Station,
Coimbatore.
Crime No.302 of 2010

... Respondent/Complainant

Prayer : Criminal Appeal filed u/s. 374 of Cr.P.C to call for the records and set aside the conviction and sentence imposed against the appellant on 10.06.2019, in S.C.No.21/2011(on the file of the Principal District and Sessions Court, Coimbatore) and acquit the appellants.

For Appellant : Mr.P.Pugalenth

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

JUDGMENT

This appeal is filed by the appellants who are Accused No. 1 to 5 in this case, aggrieved by the judgments of the Principal Session Judge, Coimbatore in Special S.C.No. 21 of 2011 dated 10.06.2019, whereby, the appellants are convicted for



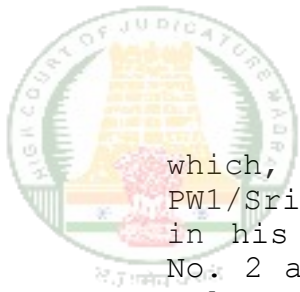
an offence under Section 147 of IPC and imposed a simple imprisonment of one year for the offence under Section 31 of the Tamil Nadu Public Property Damage Act read with Section 149 of IPC, imposed a sentence of one year imprisonment and a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment and for the offence under Section 332 of IPC, to undergo a simple imprisonment of one year and for the offence under Section 332 read with 149 of IPC and to undergo sentence of one year simple imprisonment.

2. The case of the prosecution is that, on 07.03.2010, when PW15 was on duty in B12 Ukkadam Police Station, one Sriamachandran, PW1 lodged a complaint stating that when PW1 was on Bandobust duty near Ukkadam, appellants had hurled stones on the TASMACH Shop and also on the Police Personnel involved in bandobust duty, thereby causing injuries to them and damaged the TASMACH Shop name board, amounting to a sum of Rs.500/-. Based on the said complaint, a case in Crime No. 302 of 2010 was registered for alleged offences under Section 147, 148, 188, 353, 322 read with Section 3 of Tamil Nadu Public Property Damages Act and PW15 took up the case for investigation and laid charge sheet and the same was taken on file as P.R.CNo. 6 of 2010 and after furnishing copies as per Section 207 of Code of Criminal Procedure, the case was committed to Sessions under Section 209 of Code of Criminal Procedure and was taken on file in Special S.C.No. 21 of 2012.

3. Upon the charges being framed, the appellants denied charges and stood trial. The prosecution examined PW1 to 15, so as to bring home the charges including the injured witnesses, namely Sri Ramachandran as PW1 and one Karpagavalli as PW2. On the side of prosecution, exhibits P1 to P14 were marked and the prosecution rested its case. Upon questioning about the evidence and incriminating circumstances as per Section 313 of Code of Criminal Procedure, the appellants denied the same as false. Thereafter, no evidence was let in on behalf of the defence. The trial Court proceeded to hear the learned Public Prosecutor and learned counsel for the accused and by its judgement dated 10.06.2019, found the accused guilty for the offences mentioned above. Aggrieved by the same, present appeal is laid before this Court by A1 to A5.

4. Heard Mr.P.Pugalenth, learned counsel for the appellant and Mr.S.Vinoth Kumar, learned Government Advocate (Crl. Side) on behalf of the prosecution and perused the materials available on record.

5. Learned counsel for the appellants taking this Court through the charges framed against the accused submitted that there were four charges which were framed by this Court, of



which, the Charge No.4 is that Accused No. 2 and 5 had hit PW1/Sri Ramachandran by stones. However, PW1 /Sri Ramachandran in his chief examination itself, had not implicated Accused No. 2 and 5. Per Contra, in his evidence, he has mentioned that only one Selvapuram Nasar threw stones at him. Therefore, there is no evidence at all to prove Charge No.4. Similarly, Charge No.3 is that Accused No.1, 3 and 4 threw stones at PW2 Karpagavalli, on account of which, she was injured. In this regard, PW2 Karpagavalli herself being the Police Personnel, had deposed that, she did not see as to who threw the stones at her and only when she went to B12 Police Station, the Inspector told that A4 had thrown the stones at her. Therefore, absolutely there is no direct evidence to prove the said charge also.

6. As far as the charge No.2 is concerned, on a complete perusal of the evidence of PW1 & 2 and other witnesses on record, it is clear that, large number of persons had gathered and stones were being thrown and therefore there is no clinching evidence that it is only the Appellants 1 to 5, who alone threw the stones and caused loss and therefore, he prays that benefit of doubt may be given to the appellant.

7. As far as first charge is concerned, the learned counsel submitted that, the right to democratic protest cannot be denied by an order and just because democratic protest has been conducted in the teeth of denial of permission, by itself, would not amount to an offence under Section 147 IPC. Learned Counsel would rely upon the series of judgement of this Court whereby, the Court had repeatedly quashed the proceedings and held that the prosecution for democratic protest would be an abuse of process of law. He relied upon the dictum laid down in "M.Janaki Vs. The Superintendent of Police" in H.C.P.No.724 of 2017, dated 04.05.2017 and "Baskaran and others Vs. State" in Crl.O.P(M.D)No.2840 of 2022, dated 20.02.2020 and "Annadurai and others Vs. State" in Crl.O.P(M.D)No.12673 of 2020 dated 09.11.2020 and "Jayakumar Vs State" in Crl.O.P No.6029 of 2021 dated 30.03.2021 and "V.Subramanian Vs State" in Crl.O.P.No.14296 of 2017 dated 14.12.2017 and prayed that conviction for first charge was also not in order.

8. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent contended that firstly the petitioners have sought for permission and the same has been refused and the very assembly itself becomes unlawful and hence the offence under Section 147 of IPC is made out. Similarly, the prosecution has examined PW1 and PW2, even though they have not pinpointedly deposed as to the accused, it can be seen from the evidence that the damage was caused to the TASMAC Board as well as the Police Personnel and for which, the trial Court has



rightly convicted the appellants/accused.

9. I have considered the rival submissions made on either sides and perused the material records of this case.

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10. As rightly contended by the learned counsel for the appellant, the specific charge of causing hurt by throwing stones at PW1 Sri Ramachandran and PW2 Karpagavalli are made against the specific accused, when large number of persons gathered. As a matter of fact, there is no evidence adduced, in support of the charges. Therefore, the finding of trial Court that the appellants are guilty of charges 3 & 4, is unsustainable.

11. Similarly, in respect of 2nd charge also, on a reading of the entire evidence on record, it is clear that large number of people gathered before the TASMAC shop and indulged in throwing stones. Therefore, the appellants alone cannot be booked for causing damage the TASMAC shop, when there is no direct and clinching evidence to name the appellants 1 to 5 as if they had thrown stones and caused damages to the board of the TASMAC shop.

12. Finally, this Court perused the Judgements referred to by the learned counsel for the appellant, wherein it has been held that the prosecution for the offence under Section 147 IPC especially in case of a democratic protest that too for insisting on Directive Principle of State Policy of prohibition, would amount to abuse of process of Court and further the State itself had withdrawn several cases. Considering the nature of allegations and the nature of protest etc., especially when the application of permission was made, I hold that the conviction of the appellants alone especially when a large number of persons gathered for the said democratic purpose of opposing TASMAC shop is not in order. Therefore, I am of the view that, the conviction for all the offences by the trial Court is unsustainable. Therefore, giving benefit of doubt, the appellants are entitled to acquittal and the petitioners are acquitted of charges.

13. Accordingly,

(i) this Criminal Appeal No.403 of 2019 is allowed.

(ii) the conviction and sentence imposed by the learned Principal Sessions Judge, Coimbatore in Spl.S.C.No.21 of 2011 is set aside.



(iii) the fine amount if any paid by the appellants are ordered to be refunded.

Connected Miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

sma

To

- 1.The Judicial Magistrate No.5,
Coimbatore.
- 2.The Chief Judicial Magistrate,
Coimbatore.
- 3.The Principal District and Sessions Judge,
Coimbatore.
- 4.The Inspector of Police,
B-12, Ukkadam Police Station,
Coimbatore.
- 5.The Public Prosecutor,
Madras High Court.

COPY TO
The Section Officer,
Original Section (Records)
High Court, Madras-104.

Crl.A.No.403 of 2019

KK(CO)
CT/30/06/2022