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Crl.A.No.643 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM

THE HONOURABLE Mr. JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.A.No.643 of 2019 and
Crl.M.P.No.13689 of 2019

1. Mohan
2. Mukundan
3. Chinnathambi

.. Appellants/Accused 1, 2 and 3

.Vs.

The State represented by,
Inspector of Police,
Ponneri Police Station,
Ponneri
Thiruvallur District.

(Cr.No.209 of 2013) .. Respondent / Complainant
(Amended as per in Crl.M.P.No.15814/2019
in Crl.A.No.643 of 2019 dated 1/11/2019)

Criminal Appeal filed under section 378 of the Code of Criminal Procedure, 1973, to set aside the judgement passed by the learned Principal Sessions Judge at Thiruvallur in S.C.No.293 of 2014 dated 11.03.2019 and acquit the appellant.

For Appellants : Mr.D.Arun
For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.side)



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J U D G M E N T

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This Criminal Appeal has been filed to set aside the Judgment of conviction and sentence, dated 11.03.2019, passed in S.C.No.293 of 2014 on the file of the learned Principal Sessions Judge at Thiruvallur.

2.The case of the prosecution is as follows :

2.1. On 28.06.2013, at 20:00 hrs, when one Natarajan, Sub Inspector of Police was on duty at E1 Ponneri Police Station, one Krishnamurthy (P.W.1), Driver of Tamil Nadu Transport Corporation, Villupuram (Division III), Ponneri Depot appeared before him and gave a written complaint to the effect that on 28.06.2013, when he was driving the bus bearing Registration No. TN 21 N 0942, at about 16:30 hours opposite to the Ponneri bus stand, three accused has broken the front side windshield of the bus and hit him on the right hand ankle and also hit the time keeper one Pandian with an iron spoon and that apart they also hit the conductor One K. Ramesh Babu in his hands and head with wooden log and therefore all the injured persons took first aid treatment in the Government Hospital, Ponneri and thereafter he came to the police station to lodge the complaint.

3. On the strength of the said complaint, a case in Crime No.203/2013



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for the offence punishable under Sections 294 (b), 324 of I.P.C. r/w. Section 3 of the Tamil Nadu Prevention of Damage to Public Property Act, 1984 was registered and thereafter taken up for investigation by P.W.7-Inspector of Police. After completion of investigation, P.W.7 laid Charge sheet proposing the accused guilty of the above offences, upon which the case was taken on file by the learned Judicial Magistrate I, Ponneri in P.R.C.No.33 of 2013 and after appearance of the accused and furnishing of copies of documents under Section 207 of Cr.P.C., the accused was committed to the Court of Sessions in S.C.No.293 of 2014.

4. After considering the materials on record, the Trial Court framed the charges for the offence punishable under Section 294 (b), 324 I.P.C. and Section 3 (1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 r/w Section 34 I.P.C. against all the three accused. When questioned, the accused pleaded 'not guilty'.

5. To prove the case, the prosecution examined the de-facto complainant and driver of the bus as P.W.1, Mr. A.Pandiyan- Time Keeper as P.W.2., Mr.Basker, Mr.C.Nithyanandan, Mr.T.Thiyaneswaran who are the witnesses to Seizure Mahazar as P.W.3., P.W.4 and P.W.5 respectively, Dr.



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Ilayamurugan, the Doctor who treated injured witness as P.W.6 and Mr.P.Ramesh, Inspector of Police as P.W.7. and marked Ex.P1,- complaint given by P.W.2, Ex.P2- Admissible portion of confession statement of A2, Exs.P3 to P5- seizure and observation Mahazar, Ex.P6 to Ex.P8- the Accident Register copy of three injured witness, Ex.P9-F.I.R., Ex.P10-Rough Sketch and Ex.P11- Motor Vehicle Inspector's Report. This apart, the prosecution also produced one wooden log as M.O.1 and glass pieces as M.O.2.

6. When the Accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. Thereafter, one Saravanan was examined as D.W.1 who deposed that on the date of occurrence he found some of the school children playing with the ball near the bus and when the ball was thrown, the windshield of the bus got hit by the ball which resulted in breaking of the windshield. He further deposed that after half an hour, some police persons came to that place and enquired about the incident and he heard them talking between themselves that children cannot be made as an accused and thereafter implicated the Appellants in this case.

7. The Trial Court, thereafter proceeded to hear the learned Public Prosecutor who appeared on behalf of the prosecution and the learned counsel



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for the accused and upon considering the evidence on record, by judgment and order dated 11.03.2019, convicted and sentenced the 1st Appellant for the offences under Sections 294 (b) 324 of I.P.C. and 3(1) of TNAPPDL Act and 2nd and 3rd Appellants for the offence under Sections 294 (b), 324 of I.P.C. and Section 3(1) of TNPPDL Act read with Section 34 of I.P.C. and they have been convicted and sentenced as under:

<i>Provision under which convicted</i>	<i>Sentence</i>
Section 294 of I.P.C.	2 weeks Simple Imprisonment and to pay of fine of Rs.500/- (A1 to A3)
Section 324 of IPC	6 months Simple Imprisonment and fine of Rs.500/- (A1 to A3)
Section 3(1) of TNPPDL Act	1year Rigorous Imprisonment and fine of Rs.1,000/- in default to undergo 1 month Simple Imprisonment (A1)
Section 3 (1) of TNPPDL ACT r/w 34 of I.P.C.	1 year Rigorous Imprisonment and fine of Rs.1,000/- in default to undergo 1 month simple imprisonment (A2 and A3)

8. Aggrieved by the same, the present Appeal is laid before this Court.

9. Heard Mr.Arun, learned counsel appearing for the Appellant and Mr.S.Vinoth Kumar, learned Government Advocate (crl.side) appearing on behalf of the prosecution.



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10. According to the learned counsel for the Appellant, firstly even as per the charge the motive for the commission of the said offence is that A2 and A3 had challenged A1 that if he had guts, break off the windshield of the bus and to that effect there is no material on record. He further submitted that complaint clearly reveals that a mob came into the bus and broken the windshield and thereafter attacked the conductor, driver and time keeper of the bus and therefore charge and the material on record are absolutely incompatible to each other. This apart, the learned counsel appearing for the Appellants submitted that the word written in the complaint is "சுமார் பத்து பேர் கொண்ட கும்பல்" and thereafter word "பத்து" was struck off and overwritten with the words "மூன்று" meaning three and if only three persons were involved in the offence, the word "கும்பல்" would not have included in the complaint. Therefore, the very complaint itself is doubtful, which clearly probabalises the defense as put forth by the accused.

11. He further submitted that in the later part of the complaint one of the accused was mentioned as son of Muthu, however, none of the three persons prosecuted are the sons of Muthu. This apart, it is the contention of the learned counsel for the Appellants that according to P.W.2 they got the name of the



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accused from Bajji shop owner and despite his name was informed to the police, the said person was not examined as witness in this case.

12. He would further submit that no identification parade has been conducted during investigation and the accused were identified by the complainant only in the Court. It is his further contention that though the place of occurrence is opposite to the Ponneri Bus Depot and at the time of occurrence the schools were just over, no single independent witness has been examined in this case. Therefore, he would submit that the trial Court erred in convicting the accused.

13. Per contra, the learned Government Advocate (Crl.Side) would submit that in this case the Appellants/Accused were involved in damaging the windshield of the bus and also injured the driver, conductor and time keeper of the bus. He would further submit that all the three injured witnesses were examined, the parts of the broken windshield were produced as M.O.2, the Doctor who treated the injured witnesses was also examined. He further submitted that evidence of three injured witnesses corroborate each other.

14. The learned Government Advocate (crl.side) would further submit



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that eventhough in this case no identification parade is conducted, the accused were identified by the injured witnesses in the Court and therefore the Trial Court based on the oral and documentary evidence rightly convicted the accused and he prays for dismissal of the Appeal.

15. I have considered the rival submissions advanced on behalf of either side and perused the records.

16. In this case, the complaint clearly reflects the words "சுமார் பத்து பேர் கொண்ட கும்பல் " and it was obviously struck off and rewritten as "மூன்று" . Even though P.W.1 had denied in his cross examination that the word பத்து was not written, however from the word " கும்பல் " it would be clear that they have written "பத்து". However, even unparliamentary words are later included in the complaint which is visible from Ex.P1. This apart, admittedly in this case, all the accused persons are not known persons. Therefore, the non-conduct of identification parade is a serious lapse and even as per the witnesses they were identified in the police station. Apart from this, D.W.1 have raised probable defense that the windshield is damaged by the children who were playing near the bus and the accused were falsely roped in the case. Moreso, a reading of the complaint as well as evidence of P.W.1, would make it very clear that fierce



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mob rushed the window screen and injured the de-facto complainant and time keeper. However, later in the charge the motive itself is that there is betting between the accused. If such is the case, there is no occasion for A1 or other accused to get into the bus and hit the driver conductor and time keeper. That too with iron spoon and wooden log. Therefore, there is doubt in the case of the prosecution, moreso when the occurrence is said to have happened at 4.30 P.M. opposite in the bus Depot, no other independent witness have been examined by the prosecution to prove the guilt. Therefore, I hold that there is a grave doubt in the case of prosecution and hence all the accused is entitled to benefit of doubt and therefore the conviction and sentence imposed by the learned Trial Judge is not sustainable.

17. In the result, the Criminal Appeal is allowed. The conviction and sentence passed by learned Principal Sessions Judge in Sessions Case No.293 of 2014 on 11.03.2019, are set aside and the Appellants /Accused 1, 2 and 3 are acquitted of all charges. Fine amount, if any, paid shall be refunded to the Appellants. Consequently, connected M.P. is closed.

27.06.2022



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Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

To

1. The Inspector of Police,
Ponneri Police Station,
Ponneri
Thiruvallur District.
2. The Principal Sessions Judge at Thiruvallur
3. The Additional Public Prosecutor, Chennai

D.BHARATHA CHAKRAVARTHY.,J

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