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CrI.A.No.604 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2023

PRONOUNCED ON : 01.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.A.No.604 of 2021

1. Boopathi

2. Ajith

... Appellants

Vs.

State rep. by
The Inspector of Police,
B-5, Singanallur Police Station,
Coimbatore.
Crime No.716 of 2015

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set-aside the conviction and sentence passed by the Special Court for Trial of Bomb Blast Cases, Coimbatore made in S.C.No.89 of 2016, dated 11.11.2021 and to acquit the appellants.



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For Appellants : Mr. S. Yogarajasekar

For Respondent : Mr. C.E.Pratap,
Government Advocate (Crl.side)

ORDER

Challenging the conviction and sentence passed by the learned Sessions Judge, Special Court for Trial of Bomb Blast Cases, Coimbatore in S.C.No.89 of 2016, dated 11.09.2021, the present Criminal Appeal has been filed.

2. The fact of the case is that on 07.09.2015, at about 2.00 a.m., when the defacto complainant, who is the driver of the Tamil Nadu State Transport Corporation, had driven the bus bearing registration No. TN 45 N 3505, from Singanallur towards Trichy, near Sowdambikai Textiles, the appellants/accused along with one juvenile Shiyam were quarreled with each other in the middle of the road. When the defacto complainant and the



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conductor of the bus, namely Chandrasekaran, questioned the same, the accused abused them with filthy language and A1 thrown a brandi bottle on the rear side of the bus and the remaining accused also thrown stones on the rear side of the bus and thereby caused damage to the bus to the tune of Rs.6000/-. In pursuance of complaint, a case in Crime No.716 of 2015 was registered under Sections 204(b) of IPC and Section 3(1) of Tamilnadu Property (Prevention of Damage and Loss) Act.

3. Based on the materials, the Trial Court framed charges as against the accused under Sections 294(b) & 427 of IPC and Section 3(1) of the Tamilnadu Property (Prevention of Damage and Loss) Act and the accused denied the same as false. In order to prove the case of prosecution, as many as 10 witnesses were examined, 9 documents were marked, besides 3 material objects were marked.

4. When the incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However they neither choose to examine any witness nor mark any documents.



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5. Having considered all the materials, the Trial Court acquitted the accused from the offences under Section 294(b) IPC and convicted the accused for the offence under Section 427 IPC and Section 3(1) of Tamilnadu Property (Prevention of Damage and Loss) and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1000/ each, in default, undergo 3 months R.I. Though the petitioner was convicted under Section 427 of IPC, no separate punishment was ordered for the offence under Section 427 of IPC as sentence was passed for the offence under Section 3(1) of TNPPDL Act. Challenging the above conviction and sentence, the accused are before this Court with this appeal.

6. The learned counsel for the appellants/accused contended that the conviction and sentence recorded by the Trial Court are contrary to law, weight of evidence and probabilities of the case. All the prosecution witnesses not denied the fact that in the place of occurrence, there is CCTV camera available. They can very well take photograph of the damaged bus and also secure the CCTV footage in the scene of occurrence. However, the



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prosecution failed to take photograph of the damaged bus and also failed to secure the CCTV footage to prove the occurrence beyond reasonable doubt. Further, to connect the accused with the crime, the police examined 10 witnesses before the Trial Court. Among them, Sasikumar(P.W.1), Chandrasekaran(P.W.2) are driver and conductor of the damaged bus. Karthik (P.W.3) and Azhaguraja(P.W.4) are passengers in the bus. Their evidences are not credible due to inconsistency between the witnesses. Other evidences are not enough to connect the accused with the crime. In the absence of producing the photograph of damaged bus and the non placement of CCTV Camera footage from the place of occurrence created doubt about the involvement of the accused in the crime. The Trial Court, failed to appreciate the fact and without sufficient evidence found the accused guilty, which is unsustainable and reiterated the other grounds raised in the grounds of appeal and thus, pleaded to acquit the accused from the charges and pleaded to allow the Criminal appeal.



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7. The learned Government Advocate (Crl.side) appearing for the respondent police supported the judgment of the Trial Court. The accused were prosecuted for the offences under Sections 294(b) , 427 of IPC and Section 3(1) of Tamil Nadu Property (Prevention and Damages) Act and acquitted the accused from the charge under Section 294(b), but rightly found them guilty under Section 427 of IPC and Section 3(1) of TNPPDL Act. Sasikumar(P.W.1), Chandrasekaran(P.W.2) are driver and conductor of the bus. They clearly deposed before the Trial Court about the crime committed by the accused. The accused damaged the bus by throwing brandi bottles and stones, which were recovered by the Investigating Officer and the same were marked before the Trial Court as M.O.1 to M.O.3 . This is corroborated by the evidence of Karthik(P.W.3) and Azhaguraja (P.W.4) and Ganesh (P.W.5), who are passengers in the bus at the time of occurrence. Under these circumstances, the Trial Court rightly found the charge is proved and found the accused guilty and convicted and sentenced them as per law and there is no ground to interfere with the findings of the Trial Court and thus, pleaded to dismiss the criminal appeal.



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8. I have considered the submission made by the learned counsel for the parties and also perused the materials available on records carefully.

9. On 07.09.2015 at about 02.00 a.m., when Tamil Nadu State Transport Corporation Bus bearing Registration No.TN 45 N 3505 was driven by Sasikumar (P.W.1) towards Trichy from Singanallur bus-stand, near Sowdambikai Textiles, the appellants along with one juvenile Shiyam involved wordy quarrel in the middle of the road. So that, the driver of the Bus, Sasikumar (P.W.1) stopped the bus and asked them not to stand in the middle of the road. Hence, the accused abused the driver with filthy language and A1 thrown a brandi bottle on the rear side of the bus and the remaining accused also thrown stones on the rear side of the bus. Thereby caused damage to the rear side glass of the bus and caused damage worth about Rs.6000/- and hence a complaint was given by Sasikumar (P.W.1). In pursuance of the complaint, the case has been registered in Crime No.716 of 2015. After investigation, prosecuted the accused for the offences under Sections 294(b), 427 IPC and 3(1) of TNPPDL Act before the Trial Court.



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The prosecution examined 10 witnesses(P.W.1 to P.W.10), marked 9 documents(Ex.A.1 to Ex.A.9), besides 3 material objects(M.O.1 to M.O.3). Among them, Sasikumar (P.W.1) , driver of the bus lodged the complaint , Chandrasekaran (P.W.2) is the conductor of the bus. Karthik(P.W.3) and Azhaguraja (P.W.4) are the passengers of the bus. Ganesh(P.W.5) and Gopal(P.W.6) are witnesses to the confession of the accused, Observation Mahazar(Ex.P.3) and seizure Mahazar (Ex.P.4). Senthilkumar (P.W.7) Branch Manager of the Tamilnadu Transport Corporation, Karur valued the damage of the bus and given the Value Certificate (Ex.P.5). Kirankumar (P.W.8) Assistant Engineer of the Tamilnadu Transport Corporation,Karur, had given the Trip Sheet of the bus (Ex.P.8). Marimuthu (P.W.9), who was working as Special Sub Inspector of Police, registered the First Information Report (Ex.P.7). Ravikumar (P.W.10), Inspector of Police, investigated the case and file the final report.

10. On perusal of the oral evidence of all the prosecution witnesses, it reveals that the alleged eye-witnesses and the other witness persons in the



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bus at the time of occurrence, i.e. P.W.1 to P.W.4 admitted that no passenger was injured at the time of the alleged occurrence, when the accused thrown Brandi bottles and stones upon the bus. According to their evidence, the Brandi bottles and stones after brokening the glass fell into the bus. The alleged passengers P.W.3 and P.W.4 though claimed as passenger in the bus at the time of occurrence, they have not produced any bus ticket to the Investigating Officer. The Investigating Officer also not received the bus tickets from them to evidence the fact that they are in the bus at the time of occurrence. Further, the witnesses admitted that the place of occurrence is covered area and CCTV cameras are available in the shops and further on perusal of the Observation Mahazar(Ex.P.3) and the Rough Sketch(Ex.P.8), it is seen that the alleged place of occurrence is covered place and there is CCTV cameras. But, in this case, the Investigating Officer has not recovered the CCTV camera footage to show that the bus was damaged by the accused by throwing Brandi bottles and stones. From the evience of P.W.1 and P.W.2., it is seen that only after the brandy bottles and stones fell into the bus, they realized that the rear side glass of the bus was



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damaged. Under these circumstances, the evidence of these P.Ws.1 to 4 are highly improbable. Further, the Investigating Officer, P.W.10, during the cross examination admitted the fact that he had not recovered the CCTV footage and not taken photographs of the damaged bus. For better appreciation the relevant portion of his evidence is reproduced as follows:

" சிசிடிவி கேமரா பதிவுகள் எதையும் வழக்கிற்காக கைப்பற்றவில்லை என்று சொன்னால் சரிதான். பேருந்தின் சேதம் குறித்து புகைப்படங்கள் எதையும் தாக்கல் செய்துள்ளேனா என்றால் இல்லை."

It shows that the Investigating Officer, to connect the accused with the crime, ought to have recovered the CCTV camera footage available in the business complex and to show the damage of the bus, he should take the photographs. But, the prosecution failed to produce the same to prove the case as against the accused persons. Hence, in the absence of sufficient evidence to connect the accused with the crime, the accused are entitled to get the benefit of doubt. The Trial Court failed to appreciate the above said facts and in the absence of sufficient evidence, it is unsafe to held that the accused have committed the offence. The prosecution evidence is not



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enough to convict the accused. Therefore, the accused are entitled for acquittal by granting benefit of doubt and hence, the judgment of the trial court is to be set-aside.

11. In the result, the Criminal Appeal is allowed and the judgment passed by the Trial Court is set aside. The appellants shall stand acquitted of all the charges. Fine amount, if any, paid shall be refunded to the appellants. Bail bond, if any, executed by the appellants shall stand cancelled.

01.03.2023

mrp

To

1. The Sessions Judge,
Special Court for Trial of Bomb Blast Cases,
Coimbatore.

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V.SIVAGNANAM, J.,

mrp

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