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Crl.A.No.633 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Criminal Appeal No.633 of 2017

K.V.Viswanathan

.. Appellant

-VS-

The State rep by its
The Inspector of Police
Avinashi Police Station
Tiruppur District
(Crime No.1621 of 2010)

.. Respondent

Memorandum of Grounds of Criminal Appeal under Section 374(2) of the Code of Criminal Procedure against the judgment dated 22.09.2017 passed in S.C.No.249 of 2011 on the file of the learned Principal District & Sessions Judge at Tiruppur.

For Appellant :: Mr.K.Myilsamy

For Respondent :: Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

The appellant/A1 stands convicted for the offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and sentenced to undergo rigorous imprisonment for one year and to pay a fine



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of Rs.5,000/-, in default to undergo simple imprisonment for a period of six months, by the judgment dated 22.09.2017 passed in S.C.No.249 of 2011 by the learned Principal District & Sessions Judge, Tiruppur. Challenging the above conviction and sentence, the appellant has preferred this criminal appeal.

2. It is the case of the prosecution that protesting the action taken for removal of encroachments, on 14.05.2010, the appellant along with his friend, pelted stones on the two Tamil Nadu State Transport Corporation buses bearing Registration Nos.TN-38-N-0818 and TN-33-N-2262, causing damage to the wind shields; that the damage caused to the first bus was Rs.2501/- and the damage caused to the other bus was Rs.4200/-. On the complaint given by P.W.1, the driver of the bus, P.W.8, the Inspector of Police registered the First Information Report for the offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act. P.W.9 examined P.W.4, the Branch Manager of the State Transport Corporation to assess the damage caused to the bus bearing Registration No.TN-33-N-2262, similarly examined P.W.6 to assess the damage caused to the other bus bearing Registration No.TN-38-N-0818. After examination of all other witnesses, he laid the final report under Section 3 of the Tamil Nadu



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Property (Prevention of Damage and Loss) Act before the learned Judicial Magistrate, Avinashi on 13.05.2011.

3. The prosecution examined witnesses, P.W.1 to P.W.9, marked exhibits, P1 to P7 and produced M.O.1, broken glass & M.O.2, stone to prove their case.

4. The trial Court, after framing the charge under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act against the appellant and considering the oral and documentary evidence, found that the prosecution had proved the case and held the appellant guilty of the offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act and convicted and sentenced the appellant to imprisonment as stated above. Pending trial, A2 died, which is recorded in the judgment of the trial Court.

5. The learned counsel appearing for the appellant submitted that admittedly, the witnesses were not known to the appellant. No test identification parade was conducted during investigation. The names of the accused were also not known to the witnesses, namely, P.Ws.1 & 2. They



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were examined seven years after the occurrence. Therefore, their version that they saw the appellant as a pillion-rider and the person who hurled stone on the wind shields, is unbelievable. The learned counsel further pointed out that the investigating officer has also not stated as to how he identified the appellant as the person who hurled the stone on the buses.

6. The learned Additional Public Prosecutor submitted that the evidence of P.Ws.1 & 2 is clear and they had identified the appellant during the examination in Court. The trial Court rightly believed the evidence of P.Ws.1 & 2 and convicted the appellant for the offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act. There is no infirmity in the said finding, prayed for dismissal of the appeal.

7. On perusal of the records, this Court finds that P.Ws.1, 2 & 3 are the crew members, namely, driver and conductor of the buses which are said to have been damaged by throwing of stone. P.W.4 and P.W.6, the Managers attached to the Tamil Nadu State Transport Corporation have assessed the damage caused to the two buses. P.W.5 states that he saw the stone being thrown on the two buses. He is also a retired employee of the Tamil Nadu State Transport Corporation. P.W.7 is the witness to the



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observation mahazar. P.Ws.8 & 9 are the investigating officers. It is seen from the records that First Information Report was registered on 14.05.2010 on the complaint given by P.W.1, the driver of one of the buses. He has not given the vehicle number of the two wheeler in which the appellant is said to have travelled to throw stone on the buses. According to P.W.8, the appellant and the other accused were formally arrested while they were in custody with regard to another case in Crime No.580 of 2010. P.W.8 admits that the appellant and the other accused were not known to the witnesses, namely, P.Ws.1 to 3. He also admits that no test identification parade was conducted to ascertain if the accused were involved in the alleged occurrence. P.W.8 has not stated in his evidence as to how he identified the vehicle of the appellant and the appellant as the person involved in the alleged occurrence. Further the occurrence is said to have taken place on 14.05.2010. The witnesses were examined on 11.07.2017 nearly seven years after the occurrence. P.W.1 had not stated about the identifying features of the accused while he gave the complaint. In such circumstances, it is highly unsafe to rely upon the evidence of P.Ws.1 & 2 as regards identification of the appellant seven years after the occurrence. Further the prosecution has also not established that the TVS-50 which is said to be involved in the occurrence belonged to the appellant.



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8. Therefore, for the aforesaid reasons, this Court is of the view that the judgment of conviction rendered by the trial Court is liable to be set aside. Accordingly, the judgment of the trial Court is set aside and the appeal stands allowed acquitting the appellant of the charge framed against him. Fine amount paid by the appellant is ordered to be refunded to him. Bail bond executed by the appellant shall stand discharged.

Index : yes/no

Neutral Citation : yes/no

07.12.2023

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To

1. The Principal District & Sessions Judge at Tiruppur
2. The Inspector of Police, Avinashi Police Station, Tiruppur District
3. The Public Prosecutor, High Court, Madras



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SUNDER MOHAN, J.

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