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CrI.A.No.843 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.A.843 of 2018

Murugan

...Appellant/1st Accused

-Vs-

State rep. By
Inspector of Police
Uthukuli Police Station
Tirupur District
(Crime No.410/2016)

...Respondent/Complainant

Prayer - Criminal Appeal filed under Section 374(2) of Cr.P.C, to set aside the judgment passed against the Appellant on 22-11-2018 in S.C.No.93 of 2018 on the file of the learned Principal District and Sessions Judge at Tiruppur.

For Petitioner : Mr. P.Thinesh

For Respondent : Mrs. G.V.Kasthuri
Additional Public Prosecutor



ORDER

WEB COPY When the case came up for hearing, the learned Counsel for the Appellant submitted his argument. As per his argument, the Appellant is arrayed as Accused-1 before the learned Principal District and Sessions Judge, Tiruppur.

2. As per the Prosecution case, the P.W-1 was the Driver of the bus bearing Registration No.TN-30 N 0966 which was driven from Salem towards Coimbatore. When the bus was passing through Koolipalayam Naal Road near Reliance Petrol Bunk, two persons had stood on the middle of the road on the path of the bus giving signs to stop the bus. Therefore the Driver/P.W-1 drove the bus avoiding them and parked it on the side of the road. Immediately the two persons who signed the bus to stop, came challenging the Driver of the bus and passed uttered the words, "*The President of Hindu Munani Sasi kumar was murdered, How dare you drive the bus*" yelling such words one person threw stones on the windshield of the bus and broke it. The stone hit the shoulder of the Driver/P.W-1. P.W-1 immediately opened the door of the bus and chased that person. Along with P.W-1, the Passengers in the bus also chased that person and caught hold of him, secured and brought him inside the bus. Similarly the other person behind the bus threw stones on the backside of



the bus, thereby damaging the glass paint on the backside of the bus. There also the Conductor/P.W-2 and the other Passengers chased the other person and caught hold of him. Both were secured and kept inside the bus and on enquiry by the P.W-1, P.W-2 and the Passengers, those two persons gave their names as 1.Murugan S/o. Karupasamy and 2.Murugesh S/o. Rangaraj. When the bus had started to move, the persons who were secured by the P.W-1, P.W-2 and the Passengers, jumped out of the bus and ran away. Still the Driver of the bus lodged a complaint with the Tiruppur Police Station under Ex.P-1 within the shortest time and accordingly case was registered and investigated and Final Report laid before the Court of the learned Judicial Magistrate, Tiruppur. Based on which the learned Judicial Magistrate, Tiruppur had committed the case to the Court of the learned Principal District and Sessions Judge, Tiruppur.

3. On appearance of the Accused, the learned Principal District and Sessions Judge, Tiruppur, after hearing the Prosecution and the Defence framed charge under Section 3(1) of TNPPDL Act. Since the Accused denied the charges, the learned Principal District and Sessions Judge, Tiruppur ordered trial. During trial, the Prosecution examined totally 6 witnesses. After hearing the Prosecution and assessment of the evidence, the learned Principal District and Sessions Judge, Tiruppur by judgment



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dated 22.11.2018 in S.C.No.93 of 2018 convicted the Accused for offences under Section 3(1) of TNPPDL Act, sentencing the Accused to undergo imprisonment for One year and to pay fine of Rs.15,000/- each.

4. Aggrieved by the same, the Accused-1 had challenged and preferred this Criminal appeal. As per the submission of the learned Counsel for the Appellant P. Thinesh, P.W-1/Velusamy was the Driver of the bus, P.W-2/Jayakumar was the Conductor of the Bus, P.W-3/Vincent Thiagarajan was the Village Administrative Officer of Sarkar Periyapalayam, P.W-4/Manikandan was the Assistant Engineer in Government Transport Corporation who had valued the damage caused by the conduct of the Accused-1 on the case on the Government Vehicle belonging to Tamil Nadu State Transport Corporation. P.W-5/Ramesh was the Manager of the Depot. P.W-6 was the Investigation Officer of Uthukuli Police Station.

5. The learned Counsel for the Appellant invited the attention of the Court to the evidence of P.W-1 and P.W-2, the Driver and the Conductor. The evidence of P.W-4 is regarding the valuation regarding damage caused to the bus. Except the witnesses P.W-1 to P.W-6, there was no independent witness. It is the submission of the learned Counsel for the Appellant that as per the evidence of P.W-1/Velusamy/Driver, P.W-2/Jayakumar/



Conductor of the bus there were Passengers in the bus. None of the

Passengers were examined by the Prosecution. Also he invited the attention

of the Court to the evidence of P.W-2 in the cross examination as per the

version of the Conductor/P.W-2, the Bus was driven to Uthukuli Police

Station immediately after the Occurrence. Whereas, as per the version of

P.W-1/Driver, the bus was driven to Tiruppur Town Police Station.

Therefore there had been contradiction in the versions of the Driver and the

Conductor. It is further submitted that in the cross examination P.W-2, it

was stated that at that time when the Driver and Conductor reached the

Police Station concerned, the Accused-1 and Accused-2 were secured by

the Police in the Police Station. Therefore it is the contention of the learned

Counsel for the Appellant that the case as stated by the Prosecution is false.

It cannot be believed. Further he would submit that the Sub-Inspector of

Police who had received the complaint and registered the FIR under Ex.P-6

was not all examined by the Prosecution. The Investigation Officer alone

was examined. Further he would submit that Accused-1 had already

undergone period of detention with 2 months before trial 1 month after

trial. During the pendency of the case by the order of this Court, he had

been secured and now in prison for one month. Therefore the same may be

considered and he may be released considering his period of detention.



6. The learned Counsel for the Appellant submits that Accused-2 had already undergone the period of imprisonment for 1 year, had not preferred appeal.

7. The learned Additional Public Prosecutor vehemently objected to the line of arguments of the learned Counsel for the Appellant stating that the Driver and Conductor in the evidence clearly stated immediately after the occurrence, along with the help of the Passengers in the bus, the two persons who had damaged the vehicle from the front and at the back were chased and caught hold immediately after the occurrence. Their names have been stated in the complaint under Ex.P-1. Therefore the version of the learned Counsel of the Appellant is that they were already in the Police Station will not hold good. The complaint was lodged without delay as per the mandatory provisions, sent to the Police and Higher Officials and promptly investigated the case and laid the Final Report. And the Prosecution had proved the case made reasonably true through the evidence of P.W-1 to P.W-6. Non Examination of the Sub Inspector of Police registered the FIR will not affect the Prosecution case. As the Investigation Officer had in his evidence deposed regarding the role of Sub Inspector in registering the Complaint.

8. Further the learned Additional Public Prosecutor submitted that



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the Accused-2 had undergone the period of sentence of imprisonment.

Therefore the appeal lacks merit and has to be dismissed.

Point for Consideration

Whether the judgment of the learned Principal District and Sessions Judge, Tirupur in S.C.No.93 of 2018 dated 22.11.2018 is to be set aside as perverse.

9. Heard the learned Counsel for the Appellant Mr.P.Thinesh and the learned Additional Public Prosecutor Mrs.Kasthuri. Perused the judgment of the learned Principal District and Sessions Judge Tiruppur in S.C.No.93 of 2018 dated 22.11.2018. Perused the depositions of the witnesses P.W-1 to P.W-6 and Ex.P-1 to Ex.P-8.

10. On perusal of the judgment of the learned Principal District and Sessions Judge, Tiruppur, nothing is found perverse. The learned Principal District and Sessions Judge had on proper appreciation of evidence convicted the Accused for offences under Section 3(1) of TNPPDL Act. The argument of the learned Counsel for the Appellant is that the P.W-2/Conductor had in his evidence stated that the Driver of the bus drove the bus to Tiruppur Police Station. As per the evidence of P.W-1/Driver he had clearly stated that he drove to Tiruppur Station where they had stated that the offence taken place within the limit of Uthukuli Police Station.



Therefore he gave complaint to Uthukuli Police Station. They cannot be considered as contradictory evidence or contradictory to each other.

11. Further in the cross examination, the Conductor had clearly admitted the suggestion of the Defence that Accused-1 and Accused-2 were found in the Police Station when they went to lodge the complaint. It is to be noted that the occurrence took place in the Intervening night on the alleged date of occurrence early morning and day by time. Therefore people are not expected on the road. It is the case of the prosecution that the Accused had blocked the bus and caused damage. The Accused is alleged to have protested against the murder of Sasi Kumar, Hindu Munani Leader belonging to that part of the State, Coimbatore and Erode. Therefore the police on the road expecting some protest. They are the person who made protest regarding the murder. How they secured, the Accused when they secured is not before the Court. But in the Complaint itself, P.W-1 had clearly stated that names of the Accused-1 and Accused-2. They were caught hold immediately by the Conductor and the Driver along with the passengers in the bus and on the enquiry, the Accused had given out their names is found natural. The same is found in the complaint under Ex.P-1. The driver who had driven the bus from Salem to Coimbatore had faced the ire of the Accused herein who had damaged the



bus. After giving out signs to stop the bus as a way of protest they had thrown stones on the bus. The person who threw from the front was caught hold by the person (the driver of the bus) who suffered injury on the shoulder because of the stone hit his shoulder after breaking the Windshield. Therefore the driver of the bus opened the door and chased the Culprit. Therefore the argument of the learned Counsel for the Appellant is rejected in the light of the Specific evidence.

12. One of the grounds raised by the Appellant is that there was no Identification parade conducted by the Investigation officer to identify the Accused. There are reported ruling of the Hon'ble Supreme Court that had stated that Identification Parade is conducted by the Investigation Officer to inspire confidence in Investigation Officer that the Investigation is proceeding on the right track.

13. Here is the case, where two strangers not known to the Driver and the Conductor blocked the bus and caused damage to the bus under the pretext of protest for the murder of Hindu Munani Leader Sasi Kumar. The Strangers were caught hold by the Conductor and Driver of the bus immediately with the help of the passengers of the bus. The conduct of the Conductor and Driver in getting hold of the culprits who caused damage to the vehicle belonging to the Government Transport Corporation. The



Driver and Conductor of the bus are appreciated. Through it, the attitude of the Passengers in the bus in co-operating with the Driver and Conductor to get hold of the culprit are appreciated. If this has taken place in a city like Chennai, passengers would have been silent spectators. The people of Erode and Coimbatore are appreciated for getting hold of the culprits immediately after the occurrence of the crime which resulted in ending up in conviction.

14. The other argument of the learned Counsel for the Appellant that there was no eye witness that affect the case of the Prosecution. There is no enmity for the Driver and Conductor to corner these two people. Their evidence will be sufficient to convict the Accused. Further apart as far as case of this nature is concerned, the so called independent witness, the Passengers in the bus going from Salem towards Pollachi and they will not volunteer to come as witness to help the Investigation Officer or the State as they will be sent summons quite often, affecting their livelihood. It is the behaviour noticed from the common man. It is the blame on the Court and the Criminal Justice System for harassing Common man as witness before the Court. The learned Counsel who appear for the Accused will not cross examine, therefore the witness has to come again and again. Finally, the Courts will issue warrants to the witnesses. It affects their right and their



reputation in the Society. Further apart, almost in all the cases, the witness

is branded as a liar as a part of cross examination. Therefore they are shy

on appearing before Courts particularly in Criminal Cases it had to be

taken note by the Judiciary, when this part of the argument is raised in

Appeal or in trial. Therefore that part of the argument of the learned

Counsel for the Appellant is rejected in the light of the above discussion.

The judgment of the learned Principal District and Sessions Judge,

Tiruppur in convicting the Accused-1 and Accused-2 is confirmed that

nothing found perverse in the judgment of the learned Principal District and

Sessions Judge, Tiruppur.

15. Considering the submission of the learned Counsel for the Appellant that the Accused had already undergone 2 months in Imprisonment during the period of remand subsequently during the pendency of this Appeal for the presence of the learned Counsel for the Appellant in protecting the Appeal. This Court by order dated 13.09.2023 had directed the Inspector of Police, Uthukuli Police Station to secure the Accused. The learned Principal District and Sessions Judge, Tiruppur was directed to issue warrant in the light of the judgment of the conviction recorded in S.C.No. 93 of 2018 dated 22.11.2018.

16. The judgment of conviction and sentence imposed on the



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Appellant/Accused in Sessions Case No.93 of 2018 on the file of the learned Principal District and Sessions Judge, Tiruppur, dated 22.11.2018, is confirmed.

17. Considering the period of detention of 2 months in remand and one month during the pendency of this appeal, the Appellant is directed to be released on probation for a period of one year. At the same time, he has to deposit a sum of Rs.10,000/- before the learned Principal District and Sessions Judge, Tiruppur, in S.C.No.93 of 2018 within a period of one month from today as compensation for the loss caused to the Tamil Nadu Government vehicle. The said deposit shall be in addition to the fine of Rs.15,000/- already deposited before the learned Principal District and Sessions Judge, Tiruppur in S.C.No.93 of 2018.

18. In the result, the Criminal Appeal is partly allowed by modifying the sentence of imprisonment. The Prison Authority is directed to release the Appellant/Accused forthwith, unless he is required in connection with any other case. The Accused released on probation shall execute a bond for Rs.10,000/- each for a likesum to the satisfaction of the learned Principal District and Sessions Judge, Tiruppur, one of the sureties shall be



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a blood relative. He shall execute the bond under the Probation of Offenders Act, 1958. He shall remain on probation of good conduct on supervision of the Probationary Officer concerned. The learned Principal District and Sessions Judge, Tiruppur, shall warn him that if violates the bond his probation will be cancelled and thereby he had to undergo the remaining period of sentence of imprisonment as per the judgment dated 22.11.2018.

11.10.2023

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Index : Yes/No

Speaking/Non-speaking order

To

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



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SATHI KUMAR SUKUMARA KURUP, J.,

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