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Crl.A.377 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.A.377 of 2022

1. Shanmugam
2. Rahul
3. Venkatesan

...Appellants

Versus

State by its
Inspector of Police,
Sholingur Police Station,
Sholingur,
Vellore District.
(Presently Ranipet District).
(Crime No.223 of 2018)

...Respondent

Prayer: Criminal Revision Petition filed under Section 374(2) of Cr.P.C. to set aside the conviction and sentence imposed upon the appellant vide judgement dated 21.03.2022 in S.C.No.120 of 2019 on the file of the Principal Sessions Judge, Vellore and acquit the appellant.

For Appellants : Mr. K.G.Senthilkumar

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

JUDGMENT

Assailing the conviction and sentence imposed on the appellants by
the learned Principal Sessions Judge, Vellore, vide judgment dated



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21.3.2022 in S.C. No.120/2019, the present appeal has been filed by the aggrieved appellants.

2. The appellants stood charged for the offences u/s 294 (b) r/w 34 IPC and Section 3 (1) of Tamil Nadu Prevention of Property (Damages & Loss) Act and after trial, the court below, while found the appellants guilty of the offence u/s 3 (1) of TNPPDL Act and sentenced each of them to undergo rigorous imprisonment for a period of one year along with fine of Rs.1,000/- (Rupees One Thousand only) each, in default to undergo simple imprisonment of one month, however, found the appellants not guilty of the offence u/s 294 (b) r/w 34 IPC and acquitted them of the said offence. The period of detention already undergone by the appellants were directed to be set off u/s 428 Cr.P.C. Aggrieved by the said conviction and sentence imposed on the appellants, the present appeal has been filed by the appellants.

3. Shorn of unnecessary details, the brief facts necessary for the disposal of this appeal are as under :-

(i) The defacto complainant P.W.1 is the conductor of the bus. A-1



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to A-3, on 29.5.2018, at about 17.10 hours, while the bus was driven by its driver P.W.2 when the bus was proceeding within the limits of Sholingur Police Station, A-1 to A-3, coming in a two-wheeler, in furtherance of the common intention of committing the act, wrongfully restrained the bus bearing TN-21-N-1311, driven by P.W.2 and abused P.W.2 in filthy words and, thus cause annoyance in public place. A-1 to A-3 further pelted stones on the rear side of the bus and damaged the wind screen and caused loss to the tune of Rs.10,000/-.

(ii) P.W.1, after informing his higher official, P.W.7 about the occurrence, laid the complaint before P.W.8, the Sub Inspector of Police of Sholingur Police Station, which was registered in Crime No.223/2018 for the offence u/s 294 (b), 506 (II) IPC and Section 3 (1) of TNPPDL Act. The printed copy of the FIR was forwarded to the Court and also higher officials.

(iii) P.W.9, the Inspector of Police, on receipt of Ex.P-6, the printed FIR, took up investigation and on reaching the scene of occurrence at about 21.30 hours, prepared the observation mahazar and drew the rough



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sketch, Exs.P-2 and P-7. In the presence of witnesses, P.W.9 seized M.O.s 1 and 2 and sent the same to Court under Form-95 under Ex.P-8. P.W.9 examined P.W.s 1 and 2 and other witnesses and recorded their statements. On 30.5.2018, at about 13.00 hours, P.W.9 during routine vehicle check up arrested the accused, who were coming in the motor cycle in the presence of witnesses and upon enquiry, A-1 came forward and gave a confession statement, which was reduced into writing in the presence of witnesses, who countersigned the same. A-1 produced the vehicle, which was used and also the knife and an amount of Rs.200/-, which was used during the commission of the offence. The said items were seized under mahazar. Thereafter, P.W.9 obtained the certificate with regard to the loss caused to the bus and after collecting all the materials, P.W.9 filed the final report before the court against the aforesaid appellants.

(iv) To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 9 and marked Exs.P-1 to P-9 and marked M.O.s 1 & 2.

(v) On completion of the evidence on the side of the prosecution, the



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accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

4. The trial court, on consideration of oral and documentary evidence and other materials, convicted and sentenced A-1 to A-3 as aforesaid and aggrieved by the said conviction and sentence, the present appeal has been filed by the appellants.

5. Learned counsel appearing for the appellants submitted that barring the evidence of P.W.s 1 and 2, who are interested witnesses, there is no material connecting the appellants with the commission of the crime. It is the further submission of the learned counsel that the other prosecution witnesses have not supported the case of the prosecution. It is the further submission of the learned counsel that the damage assessed by P.W.7 is without any basis and it has not been assessed by a competent person. It is the further submission of the learned counsel that the material



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objects, which are alleged to have been recovered have not been produced before the court. It is therefore the submission of the learned counsel that in the absence of any corroborating evidence from the passengers in the bus, placing reliance upon the evidence of P.W.s 1 and 2, who have not seen the occurrence, but were only hearsay witnesses, the court below has erroneously convicted the appellants, which deserve interference at the hands of this Court.

6. Learned Addl. Public Prosecutor appearing for the respondents submitted that the trial court, on a careful analysis of the evidence of the witnesses has found the appellants guilty. It is the further submission of the learned Addl Public Prosecutor that merely because the witnesses are not independent witnesses, their evidence need not be discarded so long as the said evidence is cogent, convincing and trustworthy. The trial court, analysing the evidence in proper perspective has convicted and sentenced the appellants, which does not require any interference at the hands of this court.

7. This Court gave its careful consideration to the submissions



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advanced by the learned counsel appearing on either side and perused the materials available on record.

8. P.W.s 1 to 4 are the witnesses to the occurrence. While P.W.s 1 and 2 are the conductor and driver of the bus, P.W.s 3 and 4 are the passengers in the bus. The rear side windscreen of the bus is alleged to have been broken by the appellants by pelting stones. Even from the above, it could safely be inferred that the conductor and driver of the bus, viz., P.W.s 2 and 1, who were in the front portion of the bus, would not have seen the occurrence. To this extent, the evidence of P.W.3 corroborates the occurrence. It is the further evidence of P.W.s 3 and 4 that there were passengers on the bus and that the rear portion of the bus was also occupied by passengers.

9. It is to be noted that P.W.s 3 and 4 have turned hostile and they have not supported the version of the prosecution. However, notwithstanding the said fact, it is to be noted from the evidence of the aforesaid witnesses that they have clearly deposed that the bus was damaged from the rear side and that there were independent witnesses



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available. Yet, the prosecution has not thought it fit to examine independent witnesses, but have submitted P.W.s 1 and 2, the conductor and driver of the bus, who are not eye witnesses to the occurrence and who have not witnessed the appellants pelting stones on the bus.

10. When there is no iota of evidence connecting the appellants with the commission of the offence, notwithstanding the fact that independent witnesses, who could have witnessed the occurrence was available, yet the prosecution had not examined them, but had relied on the evidence of P.W.s 1 and 2, whose testimonies are hearsay testimony. That being the case, the reliance placed on the aforesaid witnesses to bring home the guilt of the appellants is grossly erroneous and the trial court has not adverted to the above in proper perspective, while convicting the appellants.

11. The prosecution has miserably failed to establish that it was the appellants, who had committed the offence through proper oral evidence of the witnesses, though they were available and in such circumstances, this Court is of the considered view that it would not be in the interest of justice to convict the appellants in the absence of cogent and corroborative



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evidence, which corroborates the version of P.W.s 1 and 2. Therefore, this Court is of the considered view that the conviction and the consequent sentence imposed on the appellants cannot be sustained and, therefore, the same deserves to be set aside.

12. Accordingly, for the reasons aforesaid, the conviction and sentence imposed on the appellants in S.C. No.120 of 2019, by the learned Principal Sessions Judge, Vellore, dated 21.3.2022 is set aside and this appeal is allowed by acquitting the appellants. Bail bonds, if any, executed by the appellants shall stand cancelled. Fine amounts, if any, paid by the appellants, shall be refunded to them.

26.04.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
rap/GLN



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To

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- 1.The Principal Sessions Judge, Vellore
- 2.The Public Prosecutor, High Court, Madras.
3. The Inspector of Police,
Sholingur Police Station,
Sholingur,
Vellore District.



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M.DHANDAPANI, J.

rap/GLN

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