



Crl.A.No.458 of 2001

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.02.2024

PRONOUNCED ON : 16.02.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

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Michael Raj

...Appellant

VS.

The State of TamilNadu,
Rep. by the Inspector of Police,
Thisaiyanvillai Police Station.
(Crime No.128/1998)

... Respondent

(Respondent amended as per order dated 22.06.2001
in Crl.M.P.No.3517/2001)

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment and order dated 14.03.2001 in S.C.No. 207 of 2000 on the file of the Principal Sessions Judge, Tirunelveli.

For appellant

: Mr.G.Karuppasamy Pandian
Amicus Curiae

For Respondent

: Mr.M.Sakthi Kumar
Government Advocate (Criminal Side)



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J U D G E M E N T

This criminal appeal has been filed against the judgment and order dated 14.03.2001 in S.C.No.207 of 2000 passed by the Principal Sessions Judge, Tirunelveli, in and by which, the appellant was convicted for the offences punishable under Sections 3(1) and 5 of Tamil Nadu Property (Prevention of Damage and Loss) Act [hereinafter referred to as 'the TNPPDL Act' in short] and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
3(1) of TNPPDL Act	Rigorous Imprisonment for one year	Rs.1,000/- in default, to undergo Rigorous imprisonment for three months.
5 of TNPPDL Act	Rigorous Imprisonment for one year	Rs.1,000/- in default, to undergo Rigorous imprisonment for three months.

The sentences were ordered to run concurrently.

2. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.



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3. A learned single Judge of this Court vide his Judgement dated 19.06.2007 confirmed the conviction and sentence passed by the trial Court Judge. Aggrieved over the same, the appellant filed S.L.P. (Criminal)No.9488 of 2023 before the Supreme Court. The Honourable Supreme Court vide orders dated 28.11.2023 had observed the following.

"Leave granted.

2. Heard learned counsel for the parties. It is true that in criminal appeal against conviction, an option is available to the appellate court to decide the appeal on merits in absence of the advocate appointed by the accused. But the better option will be to appoint an amicus to espouse the cause of the accused.

3. In this case, by the impugned judgment, the appeal against conviction preferred by the appellant has been finally decided in absence of the advocate for the appellant. We have carefully perused the judgment. It was the duty of the High Court to re-appreciate the entire evidence and then come to the



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conclusion whether the guilt of the appellant was proved beyond a reasonable doubt. In this case, there is hardly any consideration of evidence by the High Court. In our view, criminal appeal against the order of conviction has not been decided in the manner in which it ought to have been decided. We, therefore, set aside the impugned judgment and restore Crl.A. (MD) No.458 of 2001 to the file of the High Court.

4. We direct the Registrar (Judicial) of Madurai Bench of the Madras High Court to list the appeal before the concerned roster bench on 08.01.2024. The appellant shall ensure that his advocate remains present on that day. On 08.01.2024, the High Court will fix a date for hearing. If for any reason, the advocate for the appellant remains absent on the date fixed, it will be open for the High Court to appoint an amicus curiae, to represent the cause of the appellant and decide the appeal on merits. Till the disposal of the appeal, interim relief granted on 04.08.2023 by this Court will continue to operate.



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5. *The appeal is partly allowed in the above terms. Pending application(s), if any, shall also be allowed."*

Accordingly, the case was posted on 08.01.2024. Since there was no representation for the appellant, Mr.G.Karuppasamy Pandian, Advocate, Enrollment No.711/2009 was appointed as an *amicus curiae* for assisting this Court and thereafter, it was posted for final hearing on 12.02.2024.

4. In order to bring home the guilt of the accused, the prosecution examined 8 witnesses, marked 7 documents and 1 material object. The case of the prosecution as could be discerned from the oral and documentary evidence is briefly as follows.

(i) On 28.04.1998, Thiru.Sudalai (PW1) was the conductor of the Tamil Nadu State Transport Corporation Bus bearing Registration No.TN 72 N 0715 in route No.504D, which was proceeding towards Thisaiyanvillai from Tirunelveli. It is a limited stop service (LSS). At about 12.45 p.m., the bus was proceeding from Tirunelveli Junction to



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Uvari. When the bus stopped at Emankulam bus stop, the present appellant and another person boarded the bus. They requested the conductor to issue tickets to Vazhaithottam. Thiru.Sudalai (PW1) informed both of them that the bus would not stop at Vazhaithottam and issued tickets to Mannarpuram. Aggrieved over the same, the present appellant picked up quarrel with Thiru.Sudalai (PW1) and also threatened him with dire consequences, if he does not stop the bus at Vazhaithottam. When the bus stopped at Mannarpuram, the appellant and his friend got down from the bus and once again picked up quarrel with Thiru.Sudalai (PW1), the conductor of the bus and confronted him as to why, he did not stop the bus at Vazhaithottam. The appellant also pelted stone on the rear side windshield of the bus and caused damage to the tune of Rs.2,000/- to the bus. Thirumathi.Subbammal (PW3) was one of the passengers in the bus. The stone after damaging the windshield, hit the forehead of Thirumathi.Subbammal (PW3) as a result of which she sustained bleeding injury on her forehead. She took first aid in Thirsaiyanvillai hospital from where she was referred to Government hospital at Radhapuram. Dr.Vedamoorthy (PW2) examined her and found an incised 'V' shaped



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injury of one inch in length on the forehead. According to him, the injury sustained by (PW3) is simple in nature. The wound certificate issued by him was marked as Ex.P2. Thiru.Ganapathy (PW4) another passenger of the bus witnessed the entire incident.

(ii) Based on the complaint given by Thiru.Ganesan, the driver of the bus, Thiru.S.Balakumar, the then Sub-Inspector of Police, Thisaiyanvillai Police Station registered FIR in Crime No.128/1998 against the present appellant for the offences punishable under Sections 2 and 3 of TNPPDL Act and Sections 336 and 323 IPC. He took up investigation, went to the scene of offence and prepared an observation mahazar (Ex.P3) in the presence of the witnesses Thiru.Gopal (PW5) and one Thiru.Ravichandran. He also prepared a rough sketch (Ex.P7) and recovered pieces of rear side windshield of the bus (M.O.1) under the cover of a mahazar (Ex.P4) from the place of occurrence in the presence of same witnesses. He recorded the statements of witnesses under Section 161(3) Cr.P.C. Thereafter, he arrested the appellant on 29.04.1998 at about 6.00 a.m. near Vazhaithottam and produced him before Judicial



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Magistrate, Nanguneri for judicial custody. Subsequently, Thiru.Manohanakumar, Inspector of Police took up further investigation and recorded the statements of Dr.Vedamoorthy (PW2) and Thiru.Kannapiran (PW6), Assistant Branch Manager, Tamil Nadu State Transport Corporation Depot, Sankarankoil and obtained a damage certificate (Ex.P5) from PW6. He had almost completed the investigation and since he was transferred from Thisaiyanvillai Police Station, one Thiru.Arunachalam, Inspector of Police, Thisaiyanvillai Police Station after completing investigation, laid a final report before the Judicial Magistrate, Nanguneri in P.R.C.No.58/1999.

(iii) The learned Judicial Magistrate after furnishing copies of records to the appellant, committed the case to the Court of Sessions. The Principal Sessions Judge, Tirunelveli took up the case on file in S.C.No. 207/2000 and framed the charges against the accused. After the closure of prosecution witness, the appellant was questioned under Section 313 Cr.P.C. with regard to the circumstances appearing in evidence against him. He denied of having committed any offence and also added that he



is working as a watchman in Ennore Thermal Power Plant and he has come down to his native place Vazhaithottam for celebrating a Temple Festival. According to him, a false case has been foisted against him and that he is innocent.

5. The learned trial Court Judge after analysing the oral and documentary evidence, convicted the appellant for the offences punishable under Sections 3(1) and 5 of the TNPPDL Act and sentenced him as stated in the first paragraph of this Judgement.

6. Mr.G.Karuppasamy Pandian, *Amicus Curiae* would contend that the conviction and sentence passed by the trial Court Judge are liable to be set aside on the following grounds.

(i) The prosecution has not conducted any test identification parade and the dock identification done by the witnesses nearly after a lapse of 3 years cannot be sustained. In this regard, he relied on the decision of this Court in *K.V.Viswanathan vs. The State, represented by, the Inspector of Police, Avinashi Police Station, Tiruppur District in*



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Criminal Appeal No.633/2017 dated 07.12.2023 and contended that when the name of the appellant was not known to the witnesses, the prosecution should have conducted a test identification parade.

(ii) The damage certificate (Ex.P5) was issued by Thiru.Kannapiran (PW6) only on 23.09.1999 which would clearly show that PW6 did not inspect the bus on the date of occurrence, i.e., on 28.04.1998. The prosecution did not give any explanation in this regard and therefore, the damage certificate issued by PW6 cannot be relied upon in the present case for any purpose.

(iii) Though Thiru.S.Balakumar, the then Sub-Inspector of Police, Thisaiyanvillai Police Station had stated that he arrested the accused on 29.04.1998, Subbammal (PW3) had deposed before the Court that she saw the accused in the Police Station on 28.04.1998 itself. Thus, according to him, the date of alleged arrest is suspicious.

(iv) The driver of the bus, Thiru.Ganesan, has not been examined eventhough he has lodged the complaint (Ex.P1) with the police.



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7. Per contra, Mr.M.Sakthi Kumar, learned Government Advocate (Criminal Side) would contend that Thiru.Kannapiran (PW6) issued the damage certificate (Ex.P5) based on the entries made in the relevant Registers by his predecessor who inspected the place on the date of occurrence and therefore, the damage certificate is a valid document. His further contention is that the conductor of the bus had heard the friend of the appellant calling the appellant as 'Michael Raj'. Infact, the friend of the appellant had requested the appellant to not pick up quarrel with the conductor. Therefore, it had become easier for the Police Officer to fix up the present appellant and in the circumstances, conduct of test identification parade was not necessitated. His further contention is that though the driver of the bus is the complainant herein, the appellant had picked up quarrel with PW1, the conductor and also pelted stone on the bus causing damage to the rear side windshield of the bus and injury to a passenger (PW3) in the bus. Moreover, the injured witness Thirumathi.Subbammal (PW3) had also identified the appellant in the Court. Though PW3 had stated that she saw the accused in the Police



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Station on the date of occurrence itself, the fact remains that the accused was arrested on 29.04.1998 at Vazhaithottam.

8. The State Transport Corporation Bus bearing Registration No.TN 72 N 0715 was a limited stop bus service and it was proceeding towards Thisaiyanvillai from Tirunelveli. The appellant insisted Thiru.Sudalai (PW1), conductor of the bus for issuance of ticket to Vazhaithottam. However, since the bus does not have a stop at Vazhaithottam, the conductor issued a ticket to Mannarpuram. Aggrieved over the same, the appellant picked up quarrel with the conductor till the bus reached Mannarpuram. After getting down from the bus at Mannarpuram, the appellant pelted stone on the rear side windshield and caused damage to the bus and also caused injury to one of the passengers Subbammal (PW3). After taking first aid in a nearby hospital, Thirumathi.Subbammal (PW3) went to Government hospital at Radhapuram where, Dr.Vedamoorthy (PW2) examined her and issued a wound certificate (Ex.P2) stating that the injury sustained by her is simple in nature.



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9. Subbammal (PW3) and Thiru.Sudalai (PW1) had identified the appellant in the Court. Thiru.Ganapathy (PW4) is also one of the co-passengers and he had seen the appellant picking up quarrel with the conductor for issuing ticket to him for Vazhaithottam. He has also deposed before the trial Court that the appellant after getting down from the bus at Mannarpuram, pelted stone on the rear side windshield of the bus though he was requested by his friend to not do the said act. Though the witnesses were examined after a lapse of 3 years from the date of occurrence, it is to be pointed out that the appellant was travelling in the very same bus in which PW1, PW3 and PW4 were travelling and infact, PW3 and PW4 are natural witnesses and nothing useful was suggested to them during the course of examination to discredit or disbelieve their versions. The decision in *K.V.Viswanathan vs. The State, represented by, the Inspector of Police, Avinashi Police Station, Tiruppur (cited supra)* may not apply to the facts of the present case, because, in that case, two persons travelling in a two wheeler had pelted stones on the windshield of the bus and caused damage to the bus. They also fled from the scene of occurrence immediately. The witnesses were examined after 7 years. As



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already observed, the present appellant was travelling in the very same bus and picked up quarrel with the conductor PW1 and therefore, definitely he would have drawn the attention of other passengers of the bus. Therefore, there was no need for the prosecution to conduct a test identification parade. Moreover, the appellant when questioned under Section 313 Cr.P.C. did not state that he never travelled in the bus bearing Registration No.TN 72 N 0715 from Tirunelveli to Mannarpuram. On the contrary, his specific contention was that he was working as a watchman in Ennore Thermal Power Plant and he had come down to his village for attending a Temple Festival. It was not also his contention that his arrest was under mistaken identity as there were several people in the village with the same name.

10. It is true that the damage certificate was issued on 23.09.1999 by Thiru.Kannapiran (PW6), the then Assistant Branch Manager, Tamil Nadu State Transport Corporation Depot, Sankarankoil. The occurrence took place on 28.04.1998 and the evidence of PW6 shows that he verified the relevant Registers before issuing the damage



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certificate. Thus, it is clear that the vehicle was inspected on the date of occurrence itself and the then Branch Manager had made entries in the Registers. Therefore, the issuance of damage certificate on 23.09.1999 would not affect the present case.

11. Thiru.S.Balakumar (PW7), the then Sub-Inspector of Police, Thisaiyanvillai Police Station stated in his deposition that he arrested the accused near Vazhaithottam on 29.04.1998. In this regard, the arrest card and other records were produced before the Judicial Magistrate, Nanguneri. Merely because, PW3 had deposed that she saw the appellant on the Police Station on the date of occurrence itself, this Court cannot come to any conclusion that the accused was arrested on 28.04.1998 itself. Moreover, it is not also the case of the appellant that he was actually arrested on 28.04.1998 itself by the Police.

12. In the instant case, it is seen from the Judgement of the trial Court that the driver was not in service when the final report was filed and therefore, he was not shown as a witness in the prosecution case. In



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any event, the appellant had picked up quarrel with the conductor PW1 and this was witnessed by the injured witness PW3 and another passenger PW4 who were travelling in the very same bus. The evidence of PW1 is corroborated by the evidence of PW3 and PW4 in all material particulars and there are no good grounds to discard their evidence. In fact, all these aspects have been dealt with by the learned trial Court Judge and I do not find any reason to interfere with the conviction passed by the trial Court Judge against the appellant.

13. As regards the sentence:

13.1. Section 3(1) of TNPPDL Act reads as under.

"Punishment for committing mischief in respect of property - whoever-

Commits mischief by doing any act in respect of any property and thereby cause damage or loss to such property to the amount of one hundred rupees or upwards.



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Provided that the Court may, for any adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than one year"

13.2. Section 5 of TNPPDL Act reads as under.

"Punishment for throwing stones, bricks, etc., upon persons travelling in motor vehicles-

Whoever commits or instigates, incites or otherwise abets the act of throwing stones, bricks, soda-bottles or any other material whatsoever upon the persons travelling in any motor vehicle, shall be punished with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

Provided that the Court may, for any adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than six months"

14. In the instant case, the occurrence took place in the year 1998 and now we are in the year 2024. There are no other bad



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antecedents against the present appellant and he was working as a watchman in Ennore Thermal Power Plant during the relevant period. Considering the ordeal of trial undergone by the present appellant, sentence passed by the trial Court is modified as under.

Section of Law	Sentence of imprisonment	Fine amount
3(1) of TNPPDL Act	Simple Imprisonment for six months	Rs.100/- in default, to undergo Simple Imprisonment for two weeks.
5 of TNPPDL Act	Simple Imprisonment for six months	Rs.100/- in default, to undergo Simple Imprisonment for two weeks.

The above sentences shall run concurrently. The period of sentence undergone by the appellant shall be set off under Section 428 Cr.P.C.

15. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) The conviction passed by the learned Principal Sessions

Judge, Tirunelveli in S.C.No.207 of 2000, dated 14.03.2001 is confirmed and sentence passed by the learned Judge is modified as stated above.



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16. I wish to commend the contribution by Mr.G.Karuppasamy Pandian, *amicus curiae* in the matter by ably assisting this Court. It was also due to his efforts that this Court was able to complete the task in a seamless manner within a short period.

16.02.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order
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To

- 1.The Principal Sessions Judge, Tirunelveli
- 2.The Inspector of Police,
Thisaiyanvillai Police Station
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.HEMALATHA, J.

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Pre-Delivery Judgement in
Crl.A.No.458 of 2001

16.02.2024