



CRL.A(MD).No.387 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.387 of 2020

Selvaraj @ Sella

... Appellant/Sole Accused

Vs.

The State rep by,
The Inspector of Police,
Chinnamanur Police Station,
Theni District.
(Crime No.207of 2016)

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records of the Court below and set aside the judgment and conviction dated 04.12.2020 made in S.C.No.53 of 2017 on the file of the learned Principal Sessions Judge, Theni, and acquit the appellant/accused.

For Appellant : Mr.S.Sundarapandian

For Respondent : Mr.M.Sakthikumar,
Government Advocate (Crl.Side)



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JUDGMENT

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This appeal has been filed to set aside the judgment and conviction passed by the learned Principal Sessions Judge, Theni, in S.C.No.53 of 2017, dated 04.12.2020.

2.The appellant, who is the sole accused in S.C.No.53 of 2017, on the file of the learned Principal Sessions Judge, Theni, has filed this appeal, challenging the conviction and sentence imposed on him for the offences under Sections 341, 353, 427 and Section 3(1) and Section 4(1) of the Tamil Nadu Public Property (Prevention of Destruction and Loss) Act, 1982, by the impugned order dated 04.12.2020.

3. The brief facts of the case are as follows:-

3.1. P.W.1 is the conductor and P.W.2 is the driver of the government TNSTC bus bearing Reg.No.TN-57-N-1508. On 27.03.2016, at 05.40 p.m, when the bus was proceeding towards Bodi, near Pallavarayanpatti Vilakku, the appellant is said to have stopped the bus and pelted the stones on the front windscreen of the bus in a drunken state and caused damage to the wind screen of the bus. When the same was questioned by the P.W.1 and P.W.2, he also scolded them in filthy language. Immediately, P.W.1 &



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P.W.2 and the passengers of the bus caught the accused and produced him before the respondent police. A complaint was lodged before the respondent police and the same was registered in Crime No.207 of 2016 for the offences punishable under Sections 341, 353 of IPC, Section 3(1) and Section 4(1) of the Tamil Nadu Public Property (Prevention of Destruction and Loss) Act, 1982. The Investigating Officer, conducted investigation and filed the final report. The same was taken on the file in P.R.C.No.26 of 2016 by the learned Judicial Magistrate, Uthamapalayam.

3.2. On appearance of the accused, copies of documents relied by the prosecution were furnished to the accused under section 207 of Cr.P.C. The the learned Judicial Magistrate, Uthamapalayam, found that the offence under Section 3(1) and Section 4(1) of TNPPDL Act, are triable only by the Sessions Court and committed the case under Section 209(A) of Cr.P.C., to the learned Principal Sessions Judge, Theni. Thereafter, the case was taken on file in S.C.No.53 of 2017.

3.3. After taking cognizance, the learned trial Judge framed the charges against the appellant for the offences under Sections 341, 353 of IPC, Section 3(1) and Section 4(1) of the Tamil Nadu Public Property



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(Prevention of Destruction and Loss) Act, 1982. On the basis of charges, the learned trial Judge, questioned the appellant and the appellant pleaded not guilty and hence, the trial was conducted and the prosecution adduced evidence through P.W.1 to P.W.7 and marked the documents under Ex.P1 to Ex.P.8 and also marked 1 material object under MO.1.

3.4. The learned trial Judge, considered the evidence and examined the appellant under Section 313 Cr.P.C., by putting the incriminating materials available against him and he denied the same as false and then the case was posted for examination for the defence witness. On the side of defence, neither witness was examined nor any document was marked.

3.5. The learned trial Judge, considering the evidence adduced through the witnesses held that Section 427 IPC is made out against the accused. Since Section 427 IPC is a minor offence for Section 3(1) TNPPDL Act, as it is a cognate offence and the ingredients are one and the same, the trial Judge has taken a stand to punish the accused under Section 427 of IPC instead of Section 3(1) of TNPPDL Act bringing it under the purview of Section 222(2) of Cr.P.C., The learned trial Judge after considering the oral and documentary evidence, convicted the accused for



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the offences under Sections 341, 353 & 427 of IPC and acquitted him from the offence under Section 3(1) and Section 4(1) of the Tamil Nadu Public Property (Prevention of Destruction and Loss) Act, 1982, by the impugned order dated 04.12.2020, and sentenced him to undergo 1 month simple imprisonment for the offence under Section 341 of IPC and sentenced him to undergo 2 years rigorous imprisonment for the offence under Section 353 of IPC and sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs. 10,000/- in default, to undergo 6 months simple imprisonment for the offence under Section 427 of IPC and also ordered to pay the fine amount as compensation. The sentences were ordered to run concurrently. The fine amount imposed on the appellant was already paid by him. Aggrieved over the same, the appellant filed this appeal on the grounds stated in the memorandum of grounds of appeal.

4. The learned Counsel for appellant submitted that there is contradiction between the evidence of P.W.1 and P.W.2 relating to pelting stones, and hence their evidence is liable to be rejected.

4.1. He further submitted that the evidence of P.W.3, the mahazar witness is not corroborated by the evidence of P.W.1 to P.W.2. As per the



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evidence of P. W.4 the damage was caused to the value of Rs.7,600/- and he also accepted a suggestion that the windshield of the said bus might have broken due to the violent vibration of the body while applying sudden brake and the same was not properly considered by the learned trial judge. The case of prosecution that the appellant was under the influence of alcohol is not supported by the evidence of P. W.5/doctor. The Doctor, in his evidence, deposed that the appellant had consumed alcohol, but, he was not under the influence of alcohol. The same was not considered by the learned trial judge.

4.2. He further submitted that there is delay in registration of FIR and also there is delay in sending the FIR to Court. The same were not properly considered by the learned trial judge and there was no explanation for the same. There are lot of infirmities in the case of the prosecution and the same were not properly considered by the learned trial judge and hence, he seeks acquittal.

5. The learned Government Advocate (Crl.Side) appearing for the respondent upon perusal of the materials submitted that P.W.1 and P.W.2 were not properly cross examined by the defence and their evidence is



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cogent and trustworthy and they have no motive to implicate the appellant in the said case. Further, their evidence is corroborated by the damage caused to the bus. The damage certificate also was produced and the author who issued the damage certificate also was examined. In the said circumstance, the prosecution clearly proved the case beyond reasonable doubts. Hence, the learned trial judge correctly convicted the appellant for the above said alleged offences and he seeks to confirm the conviction and sentence imposed against the appellant.

6. This court perused the records and the impugned judgment passed by the learned trial Judge.

7. P.W.1 and P.W.2 clearly deposed that they are driver and conductor of the Government bus bearing Reg.No.TN-57-N-1508. On 27.03.2016 at about 05.40 pm, when the said bus was proceeding in the Bodi main road, near Pallavarayanpatti Vilakku, the appellant in drunken state stopped the bus and pelted stone on the front glass of the said bus. As a result, the front glass was damaged. They have no motive against the appellant to falsely implicate him and their evidence are cogent and trustworthy. Ex.P.2, photograph of the bus was marked without objection



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which shows that there was a complete damage to the front glass. This Court finds no material discrepancy between the evidence of P.W.1 and P.W.2 and hence, this Court declines to accept the argument of the learned counsel for the appellant that there was material contradiction to disbelieve the evidence of P.W.1 and P.W.2. The damage certificate under Ex.P.5 for the value of Rs.7,600/- also was produced. From the above evidence, the prosecution clearly proved the offence under Sections 341, 353 and 427 of IPC. P.W.5, the Doctor stated that the appellant had consumed alcohol. His act of scolding P.W.1 and P.W.2, pelting of stone and causing damage to the Government Bus is proved beyond reasonable doubt. When the bus is being used by the public, the nefarious act of pelting stones on the bus can never be approved of and hence, this Court concurs with the finding of the learned trial Judge in convicting the appellant for the offences under Sections 341, 353 and 427 of IPC.

8. This Court also finds no merit in the contention of the appellant that the learned trial Judge has committed error in convicting the appellant under Section 427 of IPC after acquitting him from the offence under Section 4(1) of the Tamil Nadu Public Property (Prevention of Destruction and Loss) Act, 1982. It is settled principle that there was no bar to convict



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the accused under the cognate minor offence after acquitting the appellant under the major offence provided the ingredients of the minor offence are proved through legal evidence. Therefore, the learned trial Judge correctly relied upon the un-reported judgment of this court in "Cri.A(MD)No.273 of 2008 dated 27.09.2018 in Loge @ Loganathan Vs. State."

10. The submission of the learned counsel for the appellant that there is a delay in registration of the FIR is not an acceptable one since the occurrence took place on 27.03.2016 at 05.45 p.m. and the same was registered on the same date itself at 06.30 p.m. Further, it is the admitted fact that there was damage to the vehicle, and P.W.1 and P.W.2 are bound to inform the same to their Superior Officers, and in the meantime, according to the prosecution the public caught the appellant and produced him before the police station. In the said circumstances, the alleged delay is immaterial when the evidence of P.W.1 is supported with material particulars. Even otherwise the appellant has not established prejudice caused to him because of the delay caused in registration of the case by raising any question to any of the investigating officers. Therefore, this court comes to the conclusion that there is no inordinate delay in registering the FIR.



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11. Accordingly, this court finds no merit in the contention of the appellant that the appellant was wrongly convicted for the offences under sections 341, 353 & 427 of IPC.

12. However, considering the facts that the appellant has no previous case history and he is a first time offender, **this Court is inclined to reduce the sentence** imposed on him by the learned trial Judge **for the offences under Sections 353 and 427 of IPC from 2 years Rigorous imprisonment to 6 months Rigorous Imprisonment.**

13. Accordingly, this Criminal Appeal is **partly allowed** on the following terms:

(i) the conviction passed against the appellant for the offences under Sections 341, 353 and 427 of IPC in S.C.No.53 of 2017 on the file of the learned Principal Sessions Judge, Theni, dated 04.12.2020, is hereby confirmed

(ii) the sentence of imprisonment to undergo 1 month Simple Imprisonment for the offence under Section 341 of IPC is hereby confirmed.



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*(iii) the sentence of imprisonment to undergo two years **Rigorous Imprisonment for the offence under Section 353 of IPC is reduced to 6 months Rigorous Imprisonment.***

*(iv) the sentence of imprisonment to undergo two years **Rigorous Imprisonment for the offence under Section 427 of IPC is reduced to 6 months Rigorous Imprisonment.***

(v) the said sentences are to run concurrently and the judgment relating to the fine amount is hereby confirmed.

(vi) The period already undergone by the appellant is ordered to be set off under Section 428 of Cr.P.C.

(vii) The Bail bond executed by the appellant herein is hereby cancelled and the Court below is hereby directed to take steps to secure the appellant to undergo the remaining period of sentence of imprisonment.

16.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
dss

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To

1. The Principal Sessions Judge,
Theni.
2. The Inspector of Police,
Chinnamanur Police Station, Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

Dss

Order made in

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