

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/02/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.720 of 1997

Shamugha Thevar ... Appellant /  
Accused

-Vs-

State by:  
Sub-Inspector of Police,  
Nathampatti Police Station,  
Kamarajar District  
(Virudhunagar District.) ... Respondent

Criminal Appeal against the judgment dated 08.09.1997 made in  
S.C. No.117 of 1997 on the file of Principal Sessions Judge, Virudhunagar  
District at Srivilliputhur.

!For appellant : Mr.S.Shamugavelayutham

^For respondent : Mr.A.N.Thambidurai,  
Govt. Advocate (Crl.Side)

:J U D G M E N T

Accused in S.C.No.117 of 1997 on the file of Principal  
Sessions Court, Srivilliputhur is the Appellant. By the judgment dated:  
08.09.1997, the Appellant / Accused was convicted for the offence punishable  
under Sec.3(i) of Tamil Nadu Property (Prevention of Damage and Loss) Act,  
1992 (for short, referred as T.N.P.(P.D.& L.) Act) sentencing him to undergo  
Rigorous Imprisonment for one year and imposing fine of Rs.500/-.

2. Facts of the case which led to the present appeal could  
briefly be stated thus:- On 10.12.1996, P.W.1- Karuppiyah, P.W.2 - Ramamurthy  
were on duty as Driver and Conductor respectively in the Bus bearing  
Registration No.TN-59 N 0241 which belonged to erstwhile Pandian Roadways  
Corporation. The said Bus was bound from Srivilliputhur to Kuppampatti and  
was returning from Kuppampatti to Srivilliputhur. At about 12.30 Noon, the  
Bus was proceeding near Kuppampatti-Pudupatti Junction Road. In a show of  
protest against the arrest of their Leader, the Accused pelted stone on the  
Bus causing damage to the wind screen glass of the Bus.

3. P.Ws.1 and 2 took the Bus to Nathampatti Police Station.

On the damage caused to the Bus, P.W.1 - Driver lodged Ex.P.1 - Complaint. On the basis of Ex.P.1 - Complaint, a case was registered in Crime No.127 of 1996 of Nathampatti Police Station under Ex.P.4 - First Information Report by P.W.5 - Sub Inspector of Police.

4. P.W.5 - Sub Inspector of Police had taken up investigation. The scene of occurrence - Kuppampatti- Puduppatti Junction Road was inspected in the presence of P.W.3 - Saravanathevar and one Ponnaiah. Ex.P.2 - Observation Mahazar and Ex.P.5 - Rough Plan were prepared on the scene of occurrence. At about 3.00 p.m., the Accused was arrested and remanded to judicial custody. Pursuant to the requisition from the Investigating Officer, P.W.4 (Duraikannan) - Assistant Engineer of erstwhile Pandian Roadways Corporation inspected the damaged Bus, noting the damages and estimating the value of damage at Rs.1,500/-. P.W.4 - Assistant Engineer

issued Ex.P.3 - Damage Certificate. On completion of the investigation, Charge Sheet was filed against the Accused under Sec.3(i) of T.N.P.(P.D.& L.) Act and Sec.427 I.P.C.

5. To substantiate the charges against the Accused, in the Trial Court, P.Ws.1 to 5 were examined. Exs.P.1 to P.5 were marked. On the evidence of P.Ws.1 and 2 and P.W.4 - Assistant Engineer and Ex.P.3 - Damage Certificate, the damage caused to the Bus was found to be proved. The Accused was found to have caused damage to the Bus on the evidence of P.Ws.1 and 2. The points urged on the identification of the Accused and the reliability of the evidence of P.Ws.1 and 2 were rejected by the Trial Court. Aggrieved over the conviction, the Appellant / Accused has preferred this appeal.

6. Assailing the findings and conviction, the learned counsel for the Appellant / Accused has taken me through the evidence of prosecution witnesses. Assailing the evidence of P.Ws.1 and 2, the learned counsel submitted that their evidence suffers from improved version, which was not properly appreciated by the Trial Court. It is further submitted that in the absence of Identification Parade, naming of the Accused and identification of the Accused nearly eight months after the trial is unreliable. The case of prosecution is further attacked on the ground of non-examination of independent witness and the only Passenger, who is said to have been travelling at the time of the occurrence.

7. Countering the arguments, learned Government Advocate submitted that the identification of the Appellant/ Accused by P.Ws.1 and 2 is infallible and the Trial Court has rightly based the conviction upon the evidence of P.Ws.1 and 2. Drawn attention of the Court to the evidence of P.W.4 - Assistant Engineer of erstwhile Pandian Roadways Corporation and Ex.P.3 - Damage Certificate, the learned Government Advocate further submitted that the damage caused to the Bus to the tune of Rs.1,500/- is well proved by the prosecution. Reiterating the reasonings of the Trial Court, the learned Government Advocate further submitted that those reasonings do not suffer from any infirmity warranting any interference.

8. Upon careful assessment of the evidence, other materials on record, impugned judgment and submissions by both sides, the following points arise for determination in this appeal:-

(i) Whether the Appellant / Accused is proved to be the miscreant, who caused damage to the Bus ?

(ii) Whether the conviction under Sec.3(i) of Tamil Nadu Property ( Prevention of Damage and Loss) Act could be sustained ?

9. On 10.12.1996, P.W.1 - Karuppiah and P.W.2 - Ramamurthy were on duty as Driver and Conductor respectively in the Bus bearing Registration No.TN - 29 N 0241, belonged to erstwhile Pandian Roadways Corporation. The Bus was returning from Kuppampatti to Srivilliputhur. At about 12.30 Noon, it was proceeded near Kuppampatti - Puduppatti Junction Road and at that time, stones were pelted on the Bus causing damage to the wind screen glass. P.Ws.1 and 2 have consistently spoken about the damage caused to the Bus.

10. The fact that damage was caused to the Bus on account of pelting stone is also brought out by the evidence of P.W.4 - Assistant Engineer of erstwhile Pandian Roadways Corporation. He has inspected the damaged Bus and issued Ex.P.3 - Damage Certificate, noting the damages to the wind screen glass and estimating the damage at Rs.1,500/-. The prosecution has thus proved the damage caused to the Bus.

11. The crucial point is whether the Appellant / Accused is proved to be the miscreant and whether he is responsible for causing damage to the Bus ? Firstly, we may refer to the gist of the charge. In a show of protest against the arrest order, actuated by contemptuous motive, the Appellant / Accused is alleged to have pelted stone on the Bus. This part of the Charge remains unsupported by any materials. Only the Investigating Officer has stated that investigation disclosed that the Appellant / Accused was impelled by a motive in showing protest against the arrest of their Leader. No material is produced to show that the Appellant / Accused either belongs to the particular Party or a sympathizer of that Party. When the version of Investigating Officer remains unsupported, the learned Sessions Judge accepted the version of the Investigating Officer that the Appellant / Accused was impelled by a motive to pelt stones on the Bus. In the absence of any satisfactory proof that the Appellant / Accused belongs to that particular Party, the finding of the Trial Court cannot be endorsed with.

12. In cases of this nature, identification of the Accused is a primary matter for consideration. The Appellant / Accused was unknown to P.Ws.1 and 2 - Driver and Conductor respectively. After the occurrence, P.W.1 lodged Ex.P.1 - Complaint at 2.00 p.m. in Nathampatti Police Station. In Ex.P.1 - Complaint, the miscreant is named as " Fg;ghk;gl;o Ciur; nrh;e;j rz;Kfj; njth; ". P.W.1 is a resident of Edayankulam of Sivagiri Taluk. P.W.2 is residing at Madurai. Both of them were then employed in Sankaran Koil Depot. When they were on duty, P.Ws.1 and 2 happened to be in the place of occurrence. Obviously, they were strangers to Kuppampatti - Pudupatti Junction. When they have not earlier known the Appellant / Accused, the

question arises as to how they happened to name the Accused in Ex.P.1.

13. When P.W.1 - Driver was questioned on this aspect, he has stated that he came to know the name of the Accused from the only Passenger, who was then travelling in the Bus... g!;!py; te;jth; ahh; vd;W vdf;Fj; bjhpahJ/ mth; brhy;ypj;jhd; vjphpapd; bgaiuj; bjhppe;J bfhz; nld; ... That he learnt the name of the Accused through the Passenger is not indicated in Ex.P.1 - Complaint or in the statement of P.W.1 recorded by P.W.5 - S.I. of Police under Sec.161(3) CrI.P.C. The details of the lone Passenger, who was then travelling at that time are also not forthcoming. Omission to mention the name of the Passenger and that P.W.1 - Driver learnt about the name and identity of the Accused from that Passenger seriously undermine the prosecution case as to the complicity of the Appellant / Accused.

14. Kuppampatti - Pudukatti Junction is a North-South Road. House of the Appellant / Accused is on the Western side of the Road (Shown as Serial No.1 in Ex.P.5 - Rough Plan). House of one Palkannan shown as Serial No.2 in Ex.P.5 - Rough Plan is also on the Western side. The said Palkannan is cited as Eye Witness in the Charge Sheet. The said Palkannan would have been the more appropriate witness to speak about the occurrence and involvement of the Appellant / Accused in the occurrence. But he was not examined; dispensed in the Trial Court. Non-examination of the said Palkannan affects the case of the prosecution and the involvement of the Appellant / Accused in the occurrence.

15. As noted earlier, P.Ws.1 and 2 had not earlier known the Appellant / Accused. The Appellant / Accused was arrested at 3.00 p.m. on the same day i.e. on 10.12.1996, by P.W.5 - S.I. of Police. After the arrest of the Accused, P.Ws.1 and 2 were not further examined showing the Appellant/ Accused to them and calling upon P.Ws.1 and 2 to identify whether the Accused is the miscreant. The occurrence was on 10.12.1996. P.Ws.1 and 2 were examined in the Trial Court in August 1997, nearly after eight months. P.Ws.1 and 2 happened to see the Accused only for few minutes. While so, in the absence of any Identification Parade, the identification of a stranger nearly after eight months by P.Ws.1 and 2 becomes unreliable.

16. Evidence of P.Ws.1 and 2 also suffers from omissions and improvements. In Ex.P.1 - Complaint, it is stated that the Appellant / Accused was in a drunken mood and once pelted stone on the Bus. Though in Ex.P.1 - Complaint P.W.1 has mentioned about the drunken mood of the Accused, the Accused was not sent to the Hospital to note about his drunkenness, nor is the Charge framed against the Appellant / Accused for being drunk. To sail along with the Charge, in his evidence in the Chief Examination, P.W.1 has carefully omitted about the drunken mood of the Appellant / Accused, at the time of pelting the stone. When P.W.1 was questioned on this aspect during the Cross Examination, he has tried to explain the same by saying that he

presumed the drunkenness of the Accused because of his blabbering. Omission to further investigate upon the drunken mood of the Appellant / Accused also throws doubt upon the prosecution case.

17. Evidence of P.Ws.1 and 2 also suffers from the

improvements. As stated earlier, in Ex.P.1 - Complaint, P.W.1 has stated that the Appellant / Accused once pelted stone. But in their evidence, P.Ws.1 and 2 have stated that the Appellant / Accused had pelted stone once and they came down and saw the Accused. Further, according to P.Ws.1 and 2, when they moved the Bus, the Appellant / Accused pelted stone for the second time. It is difficult to reconcile the improved version of P.Ws.1 and 2 with their earlier version in Ex.P.1 - Complaint. Though this aspect was urged before the Trial Court, the learned Sessions Judge has not well appreciated the same.

18. The Trial Court was obsessed by the fact that damage was caused to the Bus, which is proved by the evidence of P.Ws.1, 2 and 4. The Trial Court has not appreciated that cases of this nature, identification of the Accused is of primary matter for consideration. The fact that the Appellant / Accused was actuated by contemptuous motive in a show of protest against the arrest of their Leader was also not proved, which aspect was not taken note of by the learned Sessions Judge. In the absence of satisfactory proof of identification of the Appellant / Accused from independent version, it is unsafe to base the conviction on the evidence of P.Ws.1 and 2, who happened to be in the place on duty. The identification of P.Ws.1 and 2 of the unknown Accused cannot form the basis for conviction. The prosecution has not proved the complicity of the Appellant / Accused beyond reasonable doubt. The finding of guilt and the conviction of the Appellant / Accused cannot be sustained.

19. Therefore, the judgment of the learned Principal Sessions Judge, Srivilliputhur in S.C.No.117 of 1997 (dated: 08.09.1997) convicting the Appellant / Accused under Sec.3(i) of Tamil Nadu Property ( Prevention of Damage and Loss) Act, is set aside and this appeal is allowed. The Appellant / Accused is acquitted of the Charge under Sec. 3( i) of Tamil Nadu Property (Prevention of Damage and Loss) Act.

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To

1. The Principal Sessions Judge,  
Kamarajar District at  
Srivilliputhur.

2. The Superintendent,  
Central Prison, Madurai.

3. The Sub Inspector of Police,  
Nathampatti Police Station,  
Virudhunagar District.

4. The Public Prosecutor,  
High court, Madras.

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