

Bail Slip

The Appellants/Accused namely Shankar A1 & Chokkalingam-A2 were directed to be released on bail as per the order of this Court dated 18.02.2004 in CrI.M.P.No.184/04 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2011

CORAM:

THE HONOURABLE MR.JUSTICE A. ARUMUGHASWAMY

CRIMINAL APPEAL NO.184 OF 2004

1.Shankar
2.Chokkalingam ... Appellants/Accused 1&2

/vs/

Inspector of Police
Baluchetti Chathiram
Kancheepuram District
(Crime No.294 of 2002) .. Respondent/Complainant

Criminal Appeal has been filed under Article 374 of Criminal Procedure Code to set aside the judgement dated 30.1.2004 made in S.C.No.443 of 2003 on the file of Fast Track Court, Kancheepuram District.

For Appellants : Mr. R. RaghuRaj
for Mr.S. Sundar Raman
For Respondent : Mr. N. Kumanan
Government Advocate(Criminal side)

JUDGMENT

The accused/appellants were tried for an offence under sections 341 and 353 read with section 3(1) of the Tamil Nadu Public Property (Prevention of Destruction and Loss) Act 1982 by the learned Additional District Judge(Fast Track Court), Kancheepuram. After conclusion of the trial, the accused/appellants were convicted under Section 3(1) of the Tamil Nadu Public Property (prevention of Destruction and Loss) Act and sentenced to undergo Rigorous Imprisonment for a period of one year with a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for three months. The accused/appellants were given the benefit of doubt and found not guilty under section 341 (2 counts) 353 (2 counts) of Cr.P.C.

2. Aggrieved by the conviction and sentence imposed on the accused/appellants, the present criminal appeal is filed.

3. The case of the prosecution was that on 29.09.2002 at about 12.15 p.m. the bus belonging to the Tamil Nadu State Transport Corporation bearing Reg.No.TN23 N1497 was driven by his driver Sathiyaseelan, in which, PW1-Selvam was a conductor and that when the bus was stopped at Ochery bus stop, the accused along with twenty other persons boarded the bus and demanded the conductor to issue two tickets for getting down at Thamal village. According to PW1, he had informed to the accused/appellants that the bus will not reach Thamal village and requested the accused/appellants to get down at the bypass road. The accused also consented to get down at the bypass road. At about 1.40 p.m. when the bus reached the bypass road, PW1 requested the accused/appellants to get down from the bus. At that time, the accused/appellants quarrelled with the PW1, by stating that, they will not get down at bypass road and they only want to get down at Thamal village. In this context, a quarrel arose between the accused/appellants and PW1 and ultimately, the accused/appellants were forced to get down at the bypass road. Enraged by this, according to PW1 the accused/appellants have pelted stones, which has been marked as M.O.1 (series), towards the bus, due to which, the glasses of the bus were broken into pieces. Immediately, PW1 caught hold of the accused/appellants and taken them to Baluchetti Chathiram police station at about 2.00 p.m and also given intimation to the Branch Manager of TamilNadu Government Transport Corporation over phone at about 2.15 p.m. The PW1 has given the complaint under Ex.P1 dated 29.09.2002, based on which, a case in Cr.No.294/2002 came to be registered against the accused/appellants for the offence punishable under section 3 (1) of the Tamil Nadu Public Property (prevention of Destruction and Loss)Act. After completion of enquiry, final report was filed before the Learned Judicial Magistrate NO.II, Kancheepuram. Subsequently, the case was transferred to the Court of Sessions and numbered as S.C.No.443 of 2003.

4. Before the Trial Court, on behalf of the prosecution, PW1 to PW5 were examined, Exhibits P1 to P9 were marked and M.O.1 series were produced. On behalf of the accused/appellants, no witnesses were examined or no documents were marked.

5. PW1 was the conductor during the relevant point of time. PW2 was the driver of the bus. PW3 was the photographer. PW4 was the Branch Manager of the Tamil Nadu Transport Corporation. PW5 was the Inspector of Police who has taken up the investigation.

6. PW5 in his evidence, stated that on the basis of the complaint, Ex.P1 given by PW1-Selvam, he registered the case under section 3(1) of the Tamil Nadu Public Property (prevention of Destruction and Loss)Act. Immediately, he went to the occurrence spot, drawn a rough sketch under Ex.P8. Thereafter, he returned to the police station, and enquired the witnesses and obtained their statements. He has also enquired PW1, PW2 and other witnesses and collected their statements and ultimately he has laid the charge sheet, in which, he has estimated the cost towards damage of the bus at Rs.5,300/-.

7. The Court below questioned the accused/appellants under section 313 of Cr.P.C. and the accused/appellants denied their involvement. The Court below, after the trial, held that the prosecution failed to prove the guilt of the accused/appellants under sections 341 and 353 of Cr.P.C. However, it found the accused/appellants guilty of the offence punishable under section 3 (1) of the Tamil Nadu Public Property (prevention of Destruction and Loss) Act.

8. Learned counsel appearing for the accused/ appellants mainly argued that though one Kumaran and Krishnamoorthy were cited as independence witnesses, they are not examined before the Trial Court and non examination of the above two persons are fatal to the case of the prosecution. He, therefore prayed that the appeal may be allowed.

9. Learned counsel for the accused/appellants further contended that the Lower Court failed to consider that in Ex.P3-trip sheet the route has been marked as 156-B whereas the photos-M.O.2 would show that the route Number is 156 and this vital contradiction is fatal to the case of the prosecution. According to the learned counsel appearing for the accused/appellants the trial Court ought not to have relied on the evidence of PWs.1, 2 and 3, as they are interested witnesses, and therefore the judgment passed by the Court below is liable to be set aside.

10. On the above contention, this Court heard the learned counsel appearing for the appellants and the learned Government Advocate(criminal side) appearing for the respondent and perused the materials and evidence available on record.

11. In this appeal this Court is concerned only with the conviction and sentence imposed on the accused/appellants under section 3(1) of the Tamil Nadu Public Property (prevention of Destruction and Loss) Act as the Court below acquitted the accused under section 341 and 353 of Cr.P.C. by giving the benefit of doubt.

12. In order to prove the guilt of the accused/ appellants, even though, PW5-Inspector of Police said to have obtained statement from one Kumaran and one Krishnamoorthy, they are not examined before the Trial Court to prove the guilt against the accused/ appellants. No explanation is forthcoming from the prosecution, as to why, they are not examined as prosecution witnesses. Therefore, it is clear that the witnesses, who are examined before the Court below are only interested witnesses, namely PW1 and PW2 are the conductor and driver of the bus respectively and PW5 is the Investigation Officer.

13. The main ground urged by the learned counsel appearing for the accused/appellants is that in Ex.P3-trip sheet, the route number of the bus was indicated as 156-B whereas the photos-M.O.2 would show that the route number of the bus was 156. Therefore, the very case of the prosecution that the accused pelted stones on the bus bearing route 156-B is very doubtful. Moreover, the prosecution has not

produced the permit to show that the bus in question is a bypass rider and it will not stop at Thamal village. Even as per the case of the prosecution, P.W.1 refused to drop the accused/appellants at Thamal village after collecting the fare of Rs.4/- from each of them. The prosecution also failed to produce before the motor vehicle Inspector to speak about the damage cost and identity of the bus. The prosecution has allegedly marked the stones which were allegedly pelted by the accused/appellants over the bus as M.O.1 series. But they have failed to produce the broken glass pieces of the bus.

14. The Court below failed to take note of the vital aspects before convicting the accused/appellants under section 3(1) of the Tamil Nadu Public Property (prevention of Destruction and Loss) Act. Therefore, I hold that the prosecution has failed to prove the case against the accused/appellants beyond reasonable doubt and resultantly the appellants are entitled to succeed in this appeal. Accordingly, the judgement passed by the Court below convicting the appellants under Section 3(1) of the Tamil Nadu Public Property (prevention of Destruction and Loss) Act and sentencing them to undergo Rigorous Imprisonment for a period of one year, is hereby set aside and the Criminal Appeal is allowed. The bail bonds, if any, executed by the appellants shall stand terminated and the fine amount, if any paid, is ordered to be refunded to them.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate No.II,
Kancheepuram.
2. -do- Through The Chief Judicial Magistrate,
Mayiladuthurai.
- 3.The Additional District and Sessions Judge,
Fast Track Court, Kancheepuram.
- 4.The Inspector of Police,
Baluchetti Chathiram
Kancheepuram District
- 5.The Public Prosecutor,
High Court, Chennai.

Cr1.A.No.184 of 2004

KK(CO)
RVL 21.04.2011