
(2007) 08 MAD CK 0050

In the Madras High Court

Case No : Criminal Appeal No. 918 of 2001

Madasamy and Francis

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 209, 313

Penal Code, 1860 (IPC) — Section 427

Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3(1), 336, 427

Citation : (2007) 08 MAD CK 0050

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : R. Vinayaga Vishnu, for the Appellant; V.R. Balasubramaniam, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—This appeal has been preferred against the Judgment in S.C. No. 21 of 1999 on the file of the District

and Sessions Judge, Uthagamandalam, Nilgiris District.

2. Both the accused have been charged under Sections 427 of IPC and u/s 3(1) of Tamil Nadu Public Properties (Damages and Prevention) Act

(hereinafter referred to as "TNPPDP Act") 1992.

3. The learned Judicial Magistrate, Coonur had taken the case on file as PRC 5 of 1994 and after the accused had appeared before him on

summons, copies u/s 207 of Cr.P.C. were furnished to the accused and since the case is exclusively triable by the Court of Sessions, the learned

Judicial Magistrate had committed u/s 209 of Cr.P.C. On appearance before the learned Sessions Judge, the charges under Sections 427 and 3(1)

of the TNPPDP Act. were framed against the accused and when questioned, the accused pleaded not guilty.

4. On the side of the Prosecution, P.Ws. 1 to 12 were examined. Exs. P1 to P16 were exhibited and M.Os. 1 to 5 were marked.

5. P.W. 1 is the complainant. He is the conductor in Tamil Nadu State Transport Corporation bus bearing Registration No. TN-45-N-0807 and

according to him at about 8.30 p.m., on the date of the occurrence, the bus, who was taken by the driver from Coonur to Thutharmattam and it

reached the destination at 9.45 p.m. and it was stationed at the bus stand along with two other buses bearing Registration Nos. TN-43-N-0243

and TN-29-N-0389 and there was incessant rain at that time and he along with the driver of the bus were taking shelter near a shop. Along with

him, Muniyandi, Kanagasundaram, Arumugam and Mohan, the workers of the depot were also present. At that time, he had heard a sound which

made them to rush to the place of occurrence where they saw A2 Francis breaking the window pan glasses of the bus bearing Registration No.

TN-29-N-0389 with wooden logs, M.O. 1 and M.O. 2 respectively. According to P.W. 1, A1 and A2 have smashed two window glass pans in

TN-29-N-0389 and also six side glasses on their right side and also front and rear glass pans in buses bearing Registration Nos. TN-43-N-0243

and also in TN-45-N-0807. The accused, on seeing P.W. 1 and other witnesses approaching them, took to their heels, but he along with the other

witnesses successfully prevented the accused from escaping, caught hold of them and produced in the police station along with Ex. P1 complaint.

M.O. 1 and M.O. 2 wooden logs were also produced by them under Form 95 which is marked as ExP2. He has assessed the damage to the

State Transport Corporation buses as Rs. 27,500/-.

5a. P.W. 2 Arumugam is the driver of the State Transport Corporation Bus bearing Registration No. TN-29-N-0389. He has also corroborated

the evidence of P.W. 1 to the effect that the bus bearing Registration Nos. TN-45-N-0807, TN-43-N-0243 and TN-29-N-0389 were stationed

at the bus stand, the accused with M.O. 1 and M.O. 2 have smashed all the window screen glasses and window glasses and caused damage to

the State Transport Corporation buses and that he along with P.W. 1 and other witnesses had caught hold of the accused and produced the

accused in the police station and that P.W. 1 had preferred Ex. P1 complaint.

5b. P.W. 3 is another driver of the State Transport Corporation bus and also corroborated the evidence of P.W. 1 and P.W. 2 and had helped

P.W. 1 and P.W. 2 to apprehend the accused and produced them in the police station and that P.W. 1 had preferred Ex. P1 complaint.

5c. P.W. 4 also helped P.W. 1 to P.W. 3 to apprehend the accused at the place of occurrence along with M.O. 1 and M.O. 2. P.W. 5 would

depose that on 19.4.1999 at about 9.30 p.m., he got down from the bus and rushed to the place where the accused had damaged three State

Transport Corporation buses and saw the damages caused to the buses. But he has not specifically identified the accused.

5d. P.W. 12 is the then Inspector of Police, kolakombai police station, who had received the complaint Ex. P1 from P.W. 1 on 19.4.1999 at

about 23.30 hours and registered the case under Kolakombai Police Station Crime No. 93 of 1999 under Sections 336, 427 and 3(1) of

TNPPDP Act. Ex. P13 is the first information report. According to him, both the accused were produced by the complainant and other witnesses

at the time when Ex. P1 complaint was preferred by P.W. 1 and that M.O. 1 and M.O. 2 were also produced by P.W. 1 along with the accused,

which were recovered under Form 95 Ex. P2. On 20.4.1999 at about 00.15 hours, he had visited the place of occurrence and prepared Ex. P3

observation Mahazar and had drawn the rough sketch Ex. P14 in the presence of P.W. 6. Through P.W. 7 Photographer, he had arranged to take

photographs for the scene of occurrence. Photos and negatives are Ex. P8 series. He has also recovered M.O. 3 to M.O. 5 glass pieces from the

scene of occurrence under Ex. P4 to Ex. P6 recovery mahazar in the presence of P.W. 6 and other witnesses. He had made a requisition to the

Motor Vehicle Inspector to inspect the damaged State Transport Corporation buses under Ex. P15.

5e. P.W. 8 is the Assistant Engineer in Tamil Nadu State Transport Corporation, Coonur, who would depose that he had inspected the damaged

State Transport Corporation buses and assessed the damages to the State Transport Corporation buses as Rs. 25,700/- (Rs. 6,400/- to the bus

bearing Registration No. TN-45-N-0807, Rs. 6,100/- to the bus bearing Registration No. TN-45-N-0243 and Rs. 12,600/- to the bus bearing

Registration No. TN-29-N-0389 and he has also included the cost of repair as Rs. 600) Ex. P16 is the assessment report marked through the

Investigating Officer, P.W. 12.

5f. P.W. 9 is the Branch Manager of the Coonur State Transport Corporation Depot. According to him, he had also inspected the damaged State

Transport Corporation buses on 19.4.1999. P.W. 10 is the Motor Vehicle Inspector, who had inspected the damaged State Transport

Corporation buses and issued Ex. P 10 report stating that there is no mechanical defect in the buses.

5g. P.W. 11 is the doctor, who had examined the accused on 20.4.1999 and issued Ex. P11 certificate for A1 and Ex. P12 is the certificate for

A2. On examination, he found the smell of alcohol in their breath. P.W. 12 after completing the investigation has filed the charge sheet against the

accused on 26.5.1999 under Sections 427 of IPC and 3(1) of TNPPDP Act.

6. When incriminating circumstances u/s 313 Cr.P.C. were put to the accused, they would deny their complicity with the crime. The learned trial

Judge, after scanning the evidence both oral and documentary, has held that the charges u/s 427 of IPC and u/s 3(1) of TNPPDP Act have been

proved against the accused beyond any reasonable doubt and accordingly convicted the accused u/s 427 of IPC and sentenced them to undergo

six months simple imprisonment each and slapped a fine of Rs. 5000/- each with default sentence. The learned trial Judge has convicted the

accused u/s 3(1) of TNPPDP Act and sentenced them to undergo one year rigorous imprisonment each and a fine of Rs. 7,000/- each with default

sentence. Aggrieved by the findings of the learned trial Judge, the accused have preferred this appeal.

7. Now the point for determination in this appeal is whether the findings of the learned trial Judge is sustainable for the reasons stated in the

memorandum of appeal?

8. Heard Mr. R. Vinayaga Vishnu, learned Counsel appearing for the appellants and Mr. V.R. Balasubramaniam, learned Additional Public

Prosecutor for the State and considered their respective submissions.

9. The Point:

The learned Counsel appearing for the appellants would contend that the first information report would not have been lodged as alleged by the

prosecution. He would point out that as per the evidence of P.W. 1, the complaint was preferred only at the bus stand, after 11.30 p.m. and it

took half an hour for P.W. 1 and other witnesses to reach the police station along with the accused. But P.W. 12 the Investigating Officer, in his

evidence has admitted that the complaint was preferred by P.W. 1 at 11.30 p.m., on 19.4.1999, which cannot be possible. Relying on this

discrepancy in the evidence, the learned Counsel appearing for the appellants would contend that after due deliberation with the police officials, the

complaint was preferred only at the police station, inducting the accused, who are innocents.

10. No doubt, there is a discrepancy in the evidence of P.W. 1 and the evidence of P.W. 12 regarding the filing of the first information report. But

that itself will not derive us to the conclusion that the case has been foisted against the accused. P.W. 2 and P.W. 3 have corroborated the

evidence of P.W. 1 to the effect that the commission of offence was done only by the accused and that after the rain was stopped, he took the

accused to the police station, after preferring the complaint around 12.00 in the mid night.

11. Both P.W. 2 and P.W. 3 have corroborated the evidence of P.W. 1 to the fact that the State Transport Corporation buses bearing

Registration Nos. TN-45-N-0807, TN-43-N-0243 and TN-29-N-0389 were damaged only by the accused with M.O. 1 and M.O. 2 logs and

they have identified both the accused in the Court by saying that both the accused have smashed the glasses in the window pan and also side

glasses in the buses at about 10.30 p.m., on 19.4.1999 and that after causing damage to the bus, the accused took to their heels and they chased

the accused and caught hold of the accused with M.O. 1 and M.O. 2.

12. There is no motive attributed against the witness to depose falsely against the accused. Both the accused under the influence of alcohol have

committed the offence as seen from the evidence of P.W. 11, the doctor, who had examined the accused on 20.4.1999 at about 3.50 p.m., Under

such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge that both the accused are guilty under Sections

427 of IPC and 3(1) of TPPDP Act.

13. The learned Counsel appearing for the appellants would contend that there is

no bad antecedent against the accused and that due to political motive, demanding to release some of the political people to which party they belong, the accused have damaged the public property inadvertently and that there is no other criminal case is pending against the accused. The learned Counsel appearing for the appellants would contend that both the accused were in jail for more than 31 days. Under such circumstances, I am of the view that sentence alone can be modified by showing some leniency and also taking into consideration that there is no bad antecedent against the accused.

14. In fine, the appeal is dismissed while confirming the conviction under Sections 427 of IPC and 3(1) of TNPPDP Act against A1 and A2 made by the learned District and Sessions Judge, Uthagamandalam, Nilgiris District in S.C. No. 21 of 1999, the sentence alone is modified to that of the period already undergone instead of six months simple imprisonment each u/s 427 of IPC and one year rigorous imprisonment each u/s 3(1) of TNPPDP Act. The fine amount will sustain.