
(2015) 06 MAD CK 0130
In the Madras High Court
Case No : Criminal Appeal No. 308 of 2007

Manivannan and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (2015) 06 MAD CK 0130

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : Henrietha Chinna Thambi, Legal Aid Counsel, for the Appellant; H.F. Shabana, Government Advocate (Crl. Side), Advocates for the Respondent

Final Decision : Allowed

Judgement

P. Devadass, J.

1. A1 to A3 in S.C. No. 372/2005 on the file of the learned Additional Sessions Judge, (Fast Track Court No. III), Vridhachalam are the appellants.

2. Appellants were prosecuted in the said case in the said court. Ultimately, they were convicted and sentenced as under:

All the sentences were directed to run concurrently. Fine amounts were paid.

3. The case of the prosecution runs as under:

(i) On 14.06.2003, at about 10.55 a.m., on the Mangalore- Vridhachalam route, PW1 Subramanian drove the Star Bus TN.27-B-4599, owned by PW4 Jahir Hussain. A1 to A3 traveled on foot-board. PW.1 asked them to come inside the bus. However, they did not. When the bus came near the Primary Agricultural Society at Adari, A1 to A3 scolded PW1 in filthy language. A1 had assaulted PW1. A1 to A3 have damaged the mirror in the bus worth about Rs.3000/-. The occurrence was witnessed by PW2 Bazir Ahamed. At about 2.30 noon, at the Sirupakkam Police Station, PW1 gave Ex.P1 complaint to PW6 Pazhamalai, S.I. of

Police. He registered this case for offences under Sections 294(b), 323 and 3 and 4 of Tamilnadu Public Prevention (Damage and Destruction) Act. (Ex.P.4 F.I.R).

(ii) PW6 took up his investigation. He visited the scene place. Prepared Ex.P2 Observation Mahazar in the presence of PW3 Annadurai and another person. He drew Ex.P5 Rough Sketch. In the presence of said witnesses, he collected M.O.1 broken mirror pieces. PW7 Dr.Kasthuri treated PW1 and found abrasions on him. Ex.P6 is Accident Register copy. PW6 arrested the accused. Sent them to court for remand. PW.5 Sarathi repaired the damaged portion in the bus. The damage was estimated at Rs.3000/-. Subsequently, PW8 Krishnan, Inspector, continued the investigation. He completed it and filed the Final Report against the accused in the committal court for offences under Sections 294(b), 341, 323, 324 and 3(1) of TNPPD Act.

(iii) Upon consideration of the case-records and upon hearing both, the learned Additional Sessions Judge, Vridhachalam, framed charges. The appellants pleaded not guilty to the charges.

(iv) To substantiate the charges, prosecution examined PWs.1 to 8, marked Ex.P1 to Ex.P6 and exhibited M.O.1.

(v) On the incriminating aspects in the prosecution evidence, the accused were examined under Section 313 Cr.P.C.

(vi) They denied the offences. They did not examine any witness nor mark any document on their side.

(vii) Appreciating the above evidence and considering the submissions of both sides, the trial court convicted and sentenced the appellants as already stated.

4. The learned counsel for the appellants would submit that there are many material contradictions in the evidence of PW.1. The appellants were total stranger to him. In such circumstances, giving their names and other particulars in the F.I.R. is highly doubtful. His cross examination revealed that he did not know the contents of Ex.P1, which was stated to have been written by Veerappan, the bus conductor. But, Veerappan has not been examined. PW2, who is relative of the bus owner PW4 is a got up witness. Nothing about his presence in Ex.P1. The Investigating Officer admits that he did not obtain any M.V.I report from the Motor Vehicle Inspector as regards damages in the bus. There are so many infirmities in the prosecution case. Prosecution failed to establish the charges leveled against the accused beyond all reasonable doubts.

5. On the other hand, the learned Government Advocate (Crl. Side) would submit that PW.1 is an injured cum eye witness. He is the author of F.I.R. Injury having been found on him has been spoken to by PW7 Doctor. Medical evidence corroborates the testimony of PW1. PW2 also corroborated PW1. Evidence has been adduced to show that the damage has been caused to the bus. In the circumstances, the trial court, has rightly convicted and sentenced them accordingly.

6. I have anxiously considered the rival submissions, perused the impugned judgment and also the evidence.

7. Now, the question before us is whether the prosecution has established the charges under Sections 341, 294, 324 and 3(1) of TNPPD Act against A1, under sections 341, 294, and 3(1) of TNPPD Act against A2 and under sections 341, 294, 323 and 3(1) of TNPPD Act as against the accused beyond all reasonable doubts.

8. PW1 has been employed as a bus driver by PW.4. On 14.06.2003, morning at about 10.30 a.m., the bus was flying on the Mangalore- Vridhachalam route. The alleged occurrence is stated to have taken place near the Primary Agricultural Cooperative Society in Aadari Village.

9. The appellants belongs to the said village. In the F.I.R, Ex.P4, PW1 alleges that he has been insulted by obscene words by the accused and A1 had beaten him and they have also caused damage to the bus.

10. In his complaint, Ex.P1, PW1 has furnished the names of all the accused. In his cross examination, he admits that prior to the occurrence, he did not know their names. In his evidence before the trial court, he has stated that when he tried to nab them, they have ran away. Thereafter only after half an hour, PW1 lodged the complaint with the S.I. of Police.

11. At that time, as per the evidence of PW1, one Veerappan was the bus conductor, who wrote the complaint and he is totally unaware of the contents of the complaint. As per the prosecution version, the said Veerappan is an eyewitness. However, he has been held back by the prosecution. He has not been examined to corroborate the evidence of PW1.

12. PW2 Bazir Ahamed has been examined, as an eyewitness to corroborate the evidence of PW.1. The learned counsel for the appellants pointed out that PW2 is a relative of the bus owner PW4 and he is a got up witness.

13. PW2 is stated to be a checker. In his evidence, PW2 had stated that at the time of occurrence, he was travelling in the same bus sitting on the rear side. In his evidence, he had repeated the occurrence. PW2 is a superior officer to PW1. However, nothing has been stated in Ex.P1. No murmur about PW2. It is pertinent to note that PW1 has not spoken about the presence of PW2 in the bus. In such circumstances, we are not to brush aside the submission of the learned counsel for the appellants that PW2 is a subsequent addition to strengthen the prosecution version of the case.

14. M.O.1 has been exhibited as a physical evidence to prove that the appellants have caused damage to the bus. PW6, the Investigation Officer, in his cross examination admits that he did not send the bus to the Motor Vehicle Authorities for their examination and M.V.I. report as to the alleged damage caused to the bus.

15. It is pertinent to note that there is variation in the evidence of PW1 and PW7 Dr. Kasthuri as to the allegation that A1 had caused injury to PW1.

16. In the circumstances, it is quite danger to accept the testimony of PW1 to visit the appellants with penal consequences.

17. Thus, we have no hesitation to hold that the prosecution has not established its charges against the appellants beyond all reasonable doubts and consequently the appellants are entitled to the benefit of doubt.

18. In the result, this Criminal Appeal is allowed. The conviction recorded by the learned Additional Sessions Judge, Vridhachalam in S.C. No. 372/2005 and the sentences imposed upon the appellants are set- aside. The appellants shall be refunded their fine amount.