

(2006) 09 MAD CK 0215
In the Madras High Court
Case No : Criminal Appeal No. 600 of 2000

Subramani

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 174, 323, 332, 341
Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 — Section 3(1)

Citation : (2006) 09 MAD CK 0215

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; N. Kumanan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Ashok Kumar, J.—This Criminal Appeal has been filed by the appellant/accused who has been convicted u/s 3(1) of Tamil Nadu

Prevention of Damages and Loss Act and sentenced him to undergo rigorous imprisonment for two years and under Sections 147 and 332 IPC to

undergo rigorous imprisonment for a period of Six months by the learned Principal Sessions Judge, Erode, in S.C.No : 11 of 2000, dated

4.7.2000.

2. The brief facts of the prosecution case are as follows:

(a) On 11.6.1998 at 00.15 hours when P.W.1, Driver was driving the TNSTC bus bearing No. TN.07.N.9361 between Erode to Coimbatore, in

front of AET Matriculation School, the accused 1 to 5 were crossing the road which necessitated him to blow horn and stop the bus. Immediately

all the accused started to abuse P.W.1 and also they pelted stones on the bus, thereby causing damage to the tune of Rs. 1,400/= . A.1 picked up

quarrel with P.W.1 and also beaten him. P.W.5, conductor and P.W.6 and P.W.9 passengers of the bus chased the accused persons. But, A.2 to

A.5 escaped from the scene of occurrence, whereas A.1 was caught red handed. P.Ws 1,5,6 and 9 took him to the Erode Taluk Police Station in

a spare bus and gave Ex.P.1, complaint and a case was registered in Crime No. 302 of 1998 under Sections 174, 341, 323 and 506(ii) IPC and

also u/s 3(1) of TNPPD Act, 1992.

(b) P.W.10, Inspector of Police, took up the investigation, made arrangements to send injured P.W.1 to the Hospital for treatment, thereafter he

visited the scene of occurrence, prepared Rough Sketch Ex.P.8 and Observation Mahazar Ex.P.9 and thereafter he seized the tones and broken

glasses under Ex.P.10 attested by P.W.7. He also arrested the accused 2 to 5 on 11.6.1998 at 9.30 a.m., The Motor Vehicle Inspector examined

the vehicle and issued Ex.P.3 certificate. The Assistant Engineer, TNSTC assessed the damage caused to the vehicle at Rs. 1400/= and the

Revenue loss to the Corporation at Rs. 16,824/=. P.W.2, Doctor examined P.W.1 and issued Medical report Ex.P.2. After completion of

investigation P.W.10 filed final report on 15.7.1998.

(c) Before the Principal Sessions Judge, Erode on behalf of the prosecution, P.Ws 1 to 10 were examined, Exs.P.1 to P.10 and M.Os 1 to 3 were

marked. On behalf of the accused no witness was examined and no document was marked. When the accused were questioned u/s 313 Cr.P.C.,

with regard to the incriminating circumstances appearing in the evidence of the prosecution witnesses as against them, they denied the same as

false.

(d) On a consideration of the oral and documentary evidence, the Principal Sessions Judge, Erode came to the conclusion that no offence has been

made out as against the accused 2 to 5 and acquitted them. However, he found guilty of the offence of the first accused u/s 3(1) of Tamil Nadu

Prevention of Damages and Loss Act and sentenced him to undergo rigorous imprisonment for two years and under Sections 147 and 332 IPC to

undergo rigorous imprisonment for a period of Six months Aggrieved over the conviction and sentence, the first accused has preferred this Criminal

Appeal.

3. A perusal of the records would show that except the evidence of the P.W.1, Driver all other witnesses namely the Conductor, Passengers,

mahazar witnesses turned hostile. Even the evidence of the Driver cannot be believed for the reason that the accused had also sustained grievous

injuries which has not been explained by the prosecution. P.W.1, Driver in his deposition only stated that he is not able to say as to by which

stones thrown by which accused the front mirror of the bus was broken. Thus the appellant cannot be held liable u/s 3(1) of the TNPPD Act.

4. It is also submitted by the learned Counsel for the appellant that the accused persons are unknown to the prosecution witnesses. The occurrence

took place in the mid night. No identification parade has been conducted to fix the accused. In this respect it will be useful to refer to the judgement

of this Court in Shanmuga Thevar v. State by S.I of Police, Nathampatti P.A. reported in 2004 (1) MWN 226 wherein this Court held as follows:

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.... 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.xxx

14.xxx

15. As noted earlier P.Ws. 1 and 2 had not earlier known the appellant/accused. the appellant/accused was arrested at 3.00 pm., on the same day

i.e., on 10.1.1996, by PW.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.

5. But the learned Government Advocate submitted that in this case when A.2 to A.5 successfully escaped from the scene of occurrence A.1 was

caught red handed and therefore no identification parade is necessary. But, according to P.W.1 it is only the first accused dragged him out from the

Driver seat and beaten him. Admittedly, the incident had occurred in the midnight and the light emanated could be only from inside the bus.

Therefore, P.W.1 with the poor lighting could not have seen as to who had dragged him from the Driver seat. Therefore based on the solitary

evidence of P.W.1 it is not safe to conclude that it is the person who was caught red handed i.e., the first accused, had beat him.

6. In Kali Ram Vs. State of Himachal Pradesh, , the Hon"ble Apex Court has held as follows:

One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person

arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show

him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves

itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise

regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to prove the existence of facts which have to be

present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory

presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as

heavy as is normally upon the prosecution to prove the guilt of the accused. if some material is brought on the record consistent with the innocence

of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal.

It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of

that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the doubt of the mind which is either so vacillating

that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule

regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or not warrant acquittal of the

accused by resort to surmises, conjectures or fanciful considerations. There has to be clear evidence of the guilt of the accused and in the absence

of that it is not possible to record a finding of his guilt.

7. Moreover there are several complaints in respect of the same occurrence. But, P.W.5, conductor has denied his counter signing in the complaint

preferred by the Driver as well as he denied the complaint given by the passengers to the Town Police Station. From the evidence of P.W.9 it is

clear that there was a complaint given to the Erode Town Police Station. But no FIR has been registered. The present complaint has been given to

the Erode Taluk Police Station. No reason is attributed by the prosecution as to suppressing the factum of giving a complaint to the Erode Town

Police Station.

8. Apart from that there is also a delay in the FIR reaching the Court because the FIR has been registered at 2.30 a.m., on 11.6.1998 where it

reached the court at 2.30 pm., on 11.6.1998 especially when the court is situated just 2 kms away from the Police station as deposed by the Sub

Inspector of Police. No acceptable explanation has been offered by the prosecution for such a delay though it is not fatal to the case.

9. The very same prosecution evidence has been disbelieved as against A.2 to A.5 and they were acquitted. In the absence of A.2 to A.5 the

conviction u/s 147 IPC may not be proper as there is no material for unlawful assembly resulting in rioting. So also from the evidence of P.W.1

coupled with Ex.P.2, Copy of Accident Register, P.W.1 had sustained only a contusion on the right side shoulder, which is only a simple injury. In

the absence of any trip sheet being recovered or produced as Exhibit in the Court coupled with the fact that A.2 to A.5 have been acquitted of the

same charges, and there being a doubt as to who had beat P.W.1, the conviction of the appellant u/s 332 IPC is also not sustainable.

10. In the result, this Criminal Appeal is allowed setting aside the conviction and sentence of the appellant/first accused passed in S.C.No : 11 of

2000 by the Principal Sessions Judge, Erode. Bail bond executed by the appellant shall stand cancelled.