

Bail Slip

That the Appellant herein/Accused viz Venkatesan was directed to be released on bail as per the Order of this Court dated 08/10/2007 and made in M.P.No.1 of 2007 in Crl Appeal No.879 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.879 of 2007

Venkatesan .... Appellant/Sole Accused

vs.

State By  
Inspector of Police,  
Gurusilappattu Police Station  
Gurusilappattu  
Vellore District

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment made in S.C.No.218 of 2007 dated 11.09.2007 on the file of the Additional District Sessions Court/Fast Track Court, Tirupathur, Vellore District.

For appellant : Mr.C.Prakasam

For Respondent : Mr.P.Govindarajan,  
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 11.09.2007 passed in Sessions Case No.218 of 2007 by the Additional District and Sessions Court, Fast Track Court, Tirupathur, Vellore District are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 18.7.2006 at about 10.30 p.m., in Mettupalayam Village, the accused has set fire to the thatched house of the defacto complainant and thereby caused damage to the tune of Rs.15,000/-. Further, the fire has caused damage to the houses of Devaraj, Rajendran and Ekambaram. After

occurrence, the defacto complainant has given the complaint in question and the same has been registered in Crime No.176 of 2006. The complaint alleged to have been given by him has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.8, has taken up investigation, examined connected witnesses and after completing the same, laid a final report on the file of Judicial Magistrate Court No.3, Thirupathur and the same has been taken on file in P.R.C.No.10 of 2007.

4. The Judicial Magistrate Court No.3, Thirupathur, after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the court of Sessions, Vellore Division and the same has been taken on file in Sessions Case No.218 of 2007 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents has framed a charge against the accused under Section 436 of the IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 8 have been examined and Exhibits P.1 to 6 and Material Objects 1 to 6 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The trial court, after hearing arguments of both sides and after pondering the available evidence on record, has found the accused guilty under Section 436 of the IPC and sentenced him to undergo 5 years Rigorous Imprisonment. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the accused as appellant.

9. The learned counsel appearing for the appellant/accused has befittingly contended that in the instant case, except the mother of the defacto complainant (P.W.3), no other eye witnesses have been examined and even the evidence of P.W.3 is not at all sufficient for coming to a conclusion that the accused has set fire to the house of the defacto complainant and the trial court, without considering the fact that absolutely there is no evidence on the part of the prosecution for the purpose of proving the charge framed against the accused, has

erroneously invited conviction and sentence against him under section 436 of IPC and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

10. The learned Additional Public Prosecutor has contended that P.W.3 is the mother of the defacto complainant and her specific evidence is that the accused set fire to the house of the defacto complainant and the trial court, after considering the evidence given by her, has rightly invited conviction and sentence against the appellant/accused under section 436 of IPC and therefore, the conviction and sentence passed by the trial court need not be set aside.

11. The consistent case put forth on the side of the prosecution is that on 18.7.2006, at about 10.30 p.m., in Mettupalayam Village, the accused has set fire to the house of the defacto complainant and the same has spread to the house of the persons mentioned in the charge.

12. On the side of the prosecution, except P.W.3, no other eye witnesses have been examined. The specific evidence given by P.W.3 in chief examination is that the accused has set fire to the house of the defacto complainant. But, during the course of cross-examination, she has stated that she has come out from the house of one Devaraj, who is none other than her another son and at that time, she has seen the fire and the same has spread to the houses of others. Further, she would say that immediately after seeing fire, she has become unconscious. Therefore, it is needless to state that P.W.3 could not have seen the alleged fact that the accused has set fire to the house of the defacto complainant.

13. On the side of the accused, it has been clearly established that a longstanding animosity has been in existence in between families of the accused and defacto complainant. Further, as stated earlier, P.W.3 is not at all an eye witness and her role has been pressed into service subsequently. Since P.W.3 is not at all an eye witness for the occurrence, absolutely there is no evidence on the side of the prosecution. The trial court, without considering the lack of evidence on the side of the prosecution, has erroneously invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed against the appellant/accused in S.C.No.218 of 2007 by the trial court are set aside. The appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled.

Sd/-  
Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To :

- 1.The Additional District Sessions Court/Fast Track Court,  
Tirupathur, Vellore District.
- 2.-Do- Thro The Principal Sessions Judge,  
Vellore District.
3. Inspector of Police,  
Gurusilappattu Police Station,  
Gurusilappattu, Vellore District.
4. The Judicial Magistrate No.III,  
Thirupathur, Vellore District.
- 5.-Do- Thro The Chief Judicial Magistrate,  
Vellore District.
6. The Superintendent,  
Central Prison,  
Vellore District.
7. The Public Prosecutor,  
High Court, Chennai

+1cc to M/S.C.Prakasam, Advocate sr.66367

CrI.A.No.879 of 2007

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srg 16/12/2015