

Bail Slip

The Appellant/Accused namely Manikandan S/o. Viswanathan was ordered to be released on bail by order of this court dt.05.01.2017 and made in CrI.MP.No.14185/2016 in CrI.A.No.876 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.876 of 2016

1.Manikandan .. Appellant/Accused

Vs

The State rep. By its
The Deputy Superintendent of Police,
Ulundurpet Police Station,
Villupuram District,
Crime No.136/2011 .. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive trial of cases registered under SC/ST (POA) Act, Villupuram in Special Sessions Case No.223/2015 dated 29.11.2016.

For Appellant : M/s.Marxinprabha
for Mr.S.Saravanakumar
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is the sole accused in Spl.S.C.No.223 of 2015 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of cases registered under SC/ST (Prevention of Atrocities) Act, 1989, Villupuram. He stood charged for offences under Sections 436 I.P.C., r/w Section 3(2)(iv) of SC/ST Act. By judgment dated 29.11.2016, the trial Court convicted him under Section 436 r/w 3(2)(iv) of SC/ST Act and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in

default to undergo imprisonment for three years and six months. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2.The case of the prosecution, in brief, is as follows:-

P.W.1 is the resident of Pachaiveli Village in Ulundurpet Taluk. He belongs to Hindu Harijan community which is a Scheduled Caste. On account of a land dispute, there was enmity between the accused and P.W.1 for quite some time. It is alleged that on 30.03.2011, during mid night, when P.W.1 had come out of his house for passing urine, he found the accused nearing his house pouring kerosene and setting fire to the roof of the house. P.W.1 raised alarm. By that time, the house caught fire. The others rushed to the place of occurrence. The accused ran away from the scene of occurrence. The Fire and Rescue service men came to the place of occurrence and extinguished the fire. Thereafter, it is stated that, P.W.1 went to Ulundurpet Police Station and made a complaint at 10.15 am on 31.03.2011. Based on the above, the present case was registered in Crime No.136/2011 for offence under Sections 436 I.P.C., r/w 3(2)(iv) of SC/ST Act, against the accused. P.W.11 who registered the case forwarded Ex.P.1 complaint and Ex.P.7 - F.I.R., to Court, which were received by the learned Judicial Magistrate at 3.15 pm on 31.03.2011.

3.The case was taken up for investigation by P.W.12, the then Deputy Superintendent of Police, Ulundurpettai Division. He went to the place of occurrence; prepared an observation mahazar; rough sketch and recovered some burnt materials and recorded the statement of some witnesses. During the course of investigation, he arrested the accused on 05.04.2011. He obtained the community certificate both for accused as well as P.W.1. On completing investigation, P.W.12, laid charge sheet against the accused.

4.Based on the above materials, the trial Court framed the charge as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 13 documents were exhibited, besides 4 Material Objects.

5.Out of the said witnesses, P.W.1 has stated about the motive of the accused. He has further stated that around 12 in the mid night on 30.03.2011, while he came out of the house for passing urine, he found the accused nearing his house, pouring kerosene on the roof of his house and setting fire on the same. P.W.2 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.3 is the wife of P.W.1. She

has stated that when she was sleeping in the house, she heard the alarm raised by P.W.1 and when she came out of the case, she saw the accused fleeing away from the scene of occurrence and the house was in flames. P.W.4 is the daughter-in-law of P.W.1. She has also stated that on hearing the alarm raised by P.W.1, she came out of the house and found the house in flames but, she has not stated anything about the accused. P.W.5 has stated that he heard about the occurrence. P.W.6 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.7 has also spoken about the above stated facts. P.W.8 has spoken about the preparation of Ex.P.4, in his presence. P.W.9 has turned hostile and he has not supported the case of the prosecution. P.W.10, the then Tahsildar has stated that the accused belongs to Backward Community and P.W.1 belongs to Scheduled Caste. P.W.11 has spoken about the registration of the case. P.W.12 has spoken about the investigation done and the final report filed in this case.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor did he mark any documents on their side.

7. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

8. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. As we have already pointed out, the alleged occurrence took place at 12 mid night on 30.03.2011. It is stated that F.I.R., was registered at 10.15 am on 31.03.2011. Absolutely there is no explanation for this inordinate delay. The F.I.R., had reached the hands of the learned Judicial Magistrate only at 3.15 pm on 31.03.2011. For this delay also, absolutely, there is no explanation. This creates initial doubt in the minds of this Court.

10. P.W.1 has stated that he was sleeping along with P.W.3 and other family members inside the house. Around 12 in the mid night, on 30.03.2011, he went out of the house for passing urine. According to him, he found the accused pouring kerosene and setting fire on his house. But, at the earliest point of time, he has not stated so. He has stated in Ex.P.1 - complaint, that while he was inside the house along with the others family members, the accused had set fire to the house. He has not at all stated that he came out of the house for passing urine and

at that time, he saw the accused setting fire to the house. It has been duly contradicted by Ex.P.1. He has got no explanation to offer for the said contradiction which is very material and which goes to the root of the prosecution case.

11. In view of the said contradiction, in our considered view, P.W.1 would not have seen the accused at all in the scene of occurrence. P.W.2, the wife of P.W.1 has stated that when she heard about the alarm raised by P.W.1, she came out of the house and at that time, she saw the accused fleeing away from the scene of occurrence. When it is doubtful that P.W.1 would have seen the accused, it is difficult to believe P.W.2 also. P.W.4 has stated that when she was sleeping in the house, P.W.1 cried for help and when she came out of the house, she saw the house of P.W.1 in flames. She did not see the accused at all. This version of P.W.4 must be true and thus, nobody would have seen the accused at the scene of occurrence.

12. Apart from that, there is no other evidence. Had it been true that P.W.1 had seen the accused, there would have been no reason for him to make complaint belatedly at 10.15 am on 31.03.2011. Similarly, had it been true that F.I.R., was registered at 10.15 am it would not have taken such time for the F.I.R., to reach the hands of the learned Judicial Magistrate at 3.15 pm.

13. In the absence of any explanation for the delay in registering the F.I.R., and forwarding the same to the learned Judicial Magistrate concerned as well as the fact that there is land dispute between both parties and in the light of the other material contradictions about which, we have discussed already, we are of the view that it is doubtful as to whether the accused would have set fire to the house of P.W.1.

14. Above all, at the earliest point of time, the fire and rescue service men on some information, had reached the place of occurrence and extinguished the fire. The Fire Officer's report must be with the Police. But, the said report has been suppressed by the Police. This creates further doubt in the case of the prosecution. As provided in illustration 'g' to Section 114 of the Indian Evidence Act, the suppression of the Fire Officer's report would give rise to the presumption against the case of the prosecution. Though, it is rebuttable, the same has not been rebutted by the prosecution. Thus, as per the said presumption, the fact remains proved that the accused would not have set fire at all to the house of P.W.1. Thus, in our considered view, absolutely, there is no acceptable evidence to hold that the accused is found guilty of the said charge. The trial Court has however convicted the accused based on the evidence of P.Ws.1 & 2, which in our considered view is not

punishable. Thus, in our considered view, the accused is entitled for acquittal.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the SC/ST Act, Villupuram in Spl.S.C.No.223 of 2015, dated 29.11.2016, are set aside and the appellant/accused is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/accused, shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Special Court for Exclusive
Trial of cases registered under SC/ST
(Prevention of Atrocities) Act, 1989,
Villupuram.

2 The Principal Sessions Judge,
Villupuram

3 The Judicial Magistrate
I, Ulururpet

4 do - Thro The chief Judicial Magistrate, Villupuram

5 The Superintendent, Central Prison, Cuddalore

6 The Deputy Superintendent of Police
Ulururpet Police Station, Villupuram District

7 The District Collector,
Villupuram District

8 The Director General of Police
Mylapore, Chennai 4

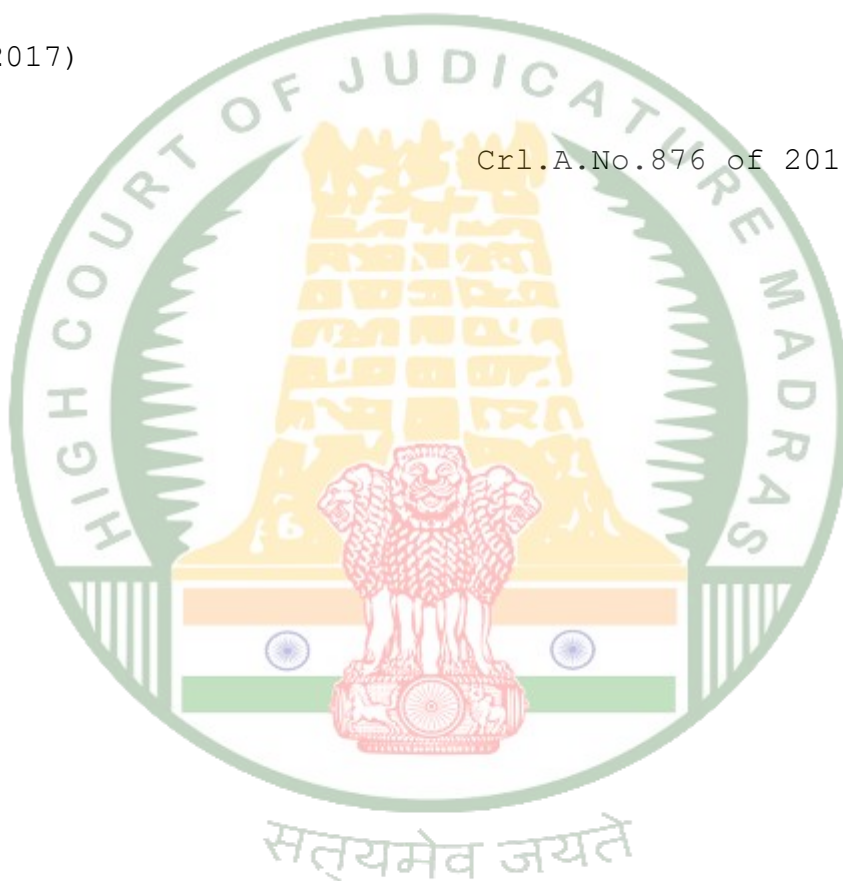
Copy to:
The Section Officer,
Criminal Section High Court,
Madras 104

9.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S. Saravanakumar, Advocate, S.R.No.7211

su(CO)
md(03/03/2017)

Crl.A.No.876 of 2016



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