

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Crl.A.No.360 of 2013

Nandakumar

.. Appellant

vs.

The State Rep. by
Inspector of Police
Kurinjipadi Police Station,
Cuddalore District.

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 (2) Cr.P.C., to call for the records and to set aside the Judgment and Sentence dated 16.04.2013 by the Principal Sessions Judge, Cuddalore in S.C.No.172 of 2012 by allowing this Criminal Appeal.

For Appellant

: Mr.S.T.Raja for
M/s. Om Sai Ram Associate

For Respondent

: Mr.R.Ravichandran
Govt. Advocate (Crl. side)

JUDGMENT

This Criminal Appeal has been filed challenging the conviction and sentence passed by the Principal Sessions Judge, Cuddalore in S.C.No.172 of 2012, dated 16.04.2013 by the first

2. The appellant / first accused has been convicted and sentenced to pay a fine of Rs.1,000/- each for the offences under Section 294 (b), 355 and 323 IPC in default to undergo one month SI for each offences and RI for six months and fine of Rs.1,000/- with usual default clause for offence under Section 3 (1) (x) of SC / ST Act.

3. The brief facts of the prosecution case is that on 11.06.2011 at about 7.15 p.m, near Pethanaickenkuppam bus stop, witness Seshachalam on seeing a lady lying on the side of the road due to road accident, attempted to inform the ambulance and the police and at that time, the appellant / first accused abused in filthy language by degrading the witness mentioning his caste and beat him with chappal and on seeing this, another accused by name Shanmugam also joined with him and attacked the above said witness. The first accused also threatened the above said witness with dire consequences. The witness Seshachalam lodged the complaint, Ex.P.1 in Kurinjupadi Police Station. The Special Sub-Inspector of Police, P.W.9, on receipt of the complaint registered the case in Cr.No.222 of 2011. P.W.10, Mr.Mani, Deputy Superintendent of Police conducted investigation and after examination of witnesses, laid charge sheet.

4. The learned Judicial Magistrate No.III, Cuddalore, committed the case to the Court of Sessions as the offences under SC / ST Act is triable by the Sessions Court.

5. The learned Sessions Judge, after hearing the arguments of both sides and analysing the charge sheet and the records filed along with it, framed charges as against the accused / appellant and other accused and read over the same to the appellant herein and he denied the charges. After examination of the witnesses, on the side of the prosecution he was also questioned under Section 313 (1) (b) Cr.P.C and he denied his complicity with the crime. The learned Sessions Judge, after analysing the evidence convicted and sentenced the accused as aforesaid.

6. The learned counsel appearing for the appellant raised the following points :

"(i) There is delay in lodging the FIR and the delay is not properly explained. There is also discrepancy about lodging of the complaint and the complaint given immediately after the occurrence must have been suppressed.

(ii) The witnesses who spoke about the occurrence are only interested witnesses and

there is no independent witness."

7. The learned Government Advocate (Crl. side) per contra contends that the delay and discrepancy with respect to the FIR are trivial in nature and the witnesses who were actually in the scene of occurrence have deposed about the incident and the trial Court has rightly convicted and sentenced the appellant / accused. Therefore, no interference is required in this appeal.

8. Admittedly P.W.1, the victim who lodged the complaint is a practising Advocate. The other eye witnesses who support the case of the prosecution are P.W.2, P.W.4 and P.W.8. Admittedly P.W.2 is Sister's husband of P.W.1. P.W.8 is admittedly residing in the same street where P.W.1 is living. P.W.4 though in chief examination spoke about the occurrence, during cross-examination he deposed that he said so as tutored by the police. Considering the relationship of P.W.2 and P.W.8 with P.W.1, this Court has to meticulously analyse their evidence with other available circumstances.

9. As rightly pointed out by the learned counsel appearing for the appellant, the occurrence though took place on 11.06.2011 at 11.15 p.m, the complaint was lodged and case was registered only at 20.30 hrs on 12.06.2011. According to P.W.1, the distance between the scene of crime and police station is only 3 kms. As

already pointed out, P.W.1 is a practising Advocate. There is delay of more than 24 hours in lodging the complaint. There is absolutely no explanation for the delay.

10. It is also pertinent to note that P.W.1 says in his evidence that immediately after 15 minutes, he went to the police station and lodged the complaint. P.W.2 in his evidence says that he was examined by the Investigating Officer on 12.06.2011 morning. P.W.8 also says that he was examined at 7.30 p.m, on the date of occurrence itself, i.e., on 11.06.2011. Therefore, suspicion arise that the complaint given by P.W.1 immediately after the occurrence might have been suppressed. Naturally the appellant / accused is entitled to get the benefit of doubt.

11. Considering the above circumstances, the evidence of P.W.1, P.W.2 and P.W.8 cannot be taken as trustworthy. Thus viewing from any angle, this Court is of the view that the prosecution has not proved its case beyond all reasonable doubts and therefore, the conviction and sentences imposed by the trial Court as against the appellant / accused is liable to be set aside.

In fine, this Criminal Appeal is allowed and accordingly, the order of conviction and sentences imposed on the appellant by the

court below is set aside. The fine amount, if any paid by the appellant / accused shall be refunded to the appellant. The bail bond, if any, executed by the appellant/accused, shall stand cancelled.

tsvn

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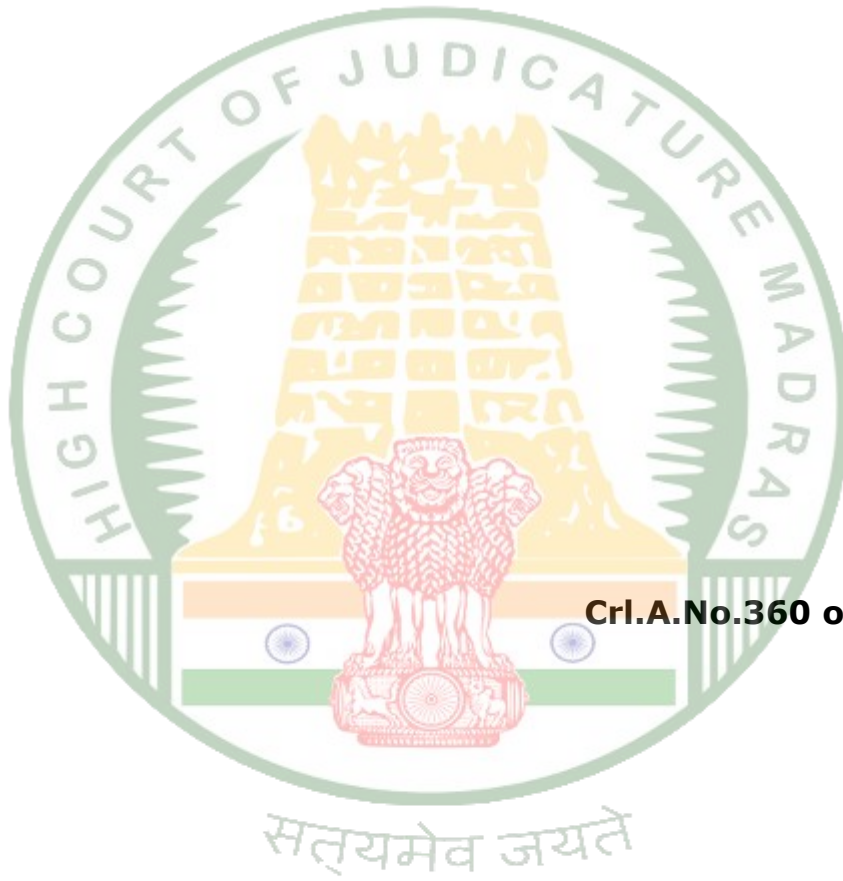
1. The Principal Sessions Judge
Cuddalore
2. The Inspector of Police
Kurinjipadi Police Station,
Cuddalore District.
3. The Public Prosecutor
High Court of Madras.



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P.KALAIYARASAN, J

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