

Bail Slip.

The Appellant/Accused namely Bala @ Balakrishnan be and hereby was directed to be released on bail vide court order dated 19.10.2011 in M.P.1/2011 in CrI.A. No. 645/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No. 645 of 2011

Mr.Bala @ Balakrishnan

.. Appellant

Vs.

State by:
Inspector of Police,
Thookanampakkam Police Station
Cuddalore
Crime No.149/2010

..Respondent

Prayer: Appeal filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence dated 28.07.2011 made in S.C.No.59 of 2011 on the file of the Hon'ble Principal Sessions Judge, Cuddalore.

For Appellant : Mr.M.Jaikumar

For Respondent : Mr.G.Ramar

Government Advocate (CrI.Side)

JUDGMENT

The sole accused in S.C.No.59 of 2011 on the file of the learned Principal Sessions Judge, Cuddalore is the appellant herein. After concluding the trial, the learned Principal Sessions Judge, Cuddalore, convicted the accused and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.10,000/- in default to undergo 1 month Simple Imprisonment under Section 136(1)(a) of Indian Electricity Act.

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

(i). P.W.3 Ramakrishna Reddiyar is the resident of Nallathoor Village. On 02.10.2010, at early morning 2.a.m., he heard the news that the transformer situated near to his land

was opened and the copper coils in the transformer were stolen away. He immediately went to the scene of occurrence and informed the incident to P.W.2 Kumar who is working as a staff in Tamil Nadu Electricity Board. In the same manner, on 03.10.2010 in the early morning, P.W.4 Radha @ Radhakrishnan when he went to his field, he found that the transformer erected near to his land was opened and the copper coil fixed inside the transformer were stolen away. Then, he informed the same to P.W.2, after hearing the news from P.W.3 and P.W.4; P.W.2, immediately went to the scene of occurrence and after seeing the transformer, he confirmed the occurrence. In turn, he intimated the same to P.W.1, Elumalai who is the Assistant Electrical Engineer working in Manjakuppam village, Cuddalore.

(ii). After receiving the information, P.W.1 on 03.10.2010, lodged a complaint before the Sub Inspector of Police, Thookkanampakkam Police Station under Ex.P.1. On receipt of the complaint, P.W.8, the then Sub Inspector of Police had registered the case in Crime No.149 of 2010 under Section 136 (1)(a) of Indian Electricity Act, 2003. Ex.P.6 is the printed F.I.R. After registration of the case, he handed over the F.I.R to P.W.9 for investigation.

(iii). On receipt of First Information Report, P.W.9 (Elumalai), the then Inspector of Police, Reddisavayal Police Station proceeded to the scene of occurrence at Nallathoor, inspected the place, prepared an Observation Mahazar under Ex.P2 in the presence of witnesses P.W.6, Arumugam and one Vellikannu. He drawn the rough sketch under Ex.P7. Later he went to Nadukuppam in which the second offence was happened and prepared an Observation Mahazar (Ex.P.3) and rough sketch (Ex.P.8) in the presence of the same witnesses. Further, he examined the witnesses and recorded the statements.

(iv). On 05.10.2010 at about 11 hours, he arrested the appellant in Nelakuppam Arasa tree in Nathur Main Road, and recorded the confession statement given by him in the presence of P.W.7, Sundararajan and one Raju. In the confession, he told that he is willing to hand over the stolen property now hidden in his house.

(v). Pursuant to the confession, P.W.9, the accused, and the witnesses went over to Door No.433, Kulathu Mettu Street, Nallathoor, and on identification by the accused, P.W.9 recovered the M.O.1 to M.O.4 [which are all the stolen property] under the cover of seizure mahazar (Ex.P.5). The admitted portion of the confession statement given by the accused is Ex.P.4. Thereafter, P.W.9 made arrangements for sending the accused to the Judicial custody. Finally, on 09.10.2010, he filed a final report after completing the investigation under Section 136 (1)(a) of Indian Electricity Act.

3. Based on the above incriminating materials, the Trial Court framed the charges and the accused denied the same. In order to prove their case, on the side of the prosecution as many as 9 witnesses were examined as P.W.1 to P.W.9, and 8 documents were marked as Ex.P.1 to Ex.P.8, besides, 4 material objects.

4. Out of the said witnesses, P.W.1 is working as Assistant Electrical Engineer in Tamilnadu Electricity Board. He has stated on 02.10.2010 at about 5 a.m., P.W.2 informed about the theft of copper wire fitted in the transformer. He has further stated immediately he lodged a complaint before the Police Officials. According to him, the stolen property is worth about Rs.34,000/-.

5. P.W.2 is working as a staff in Tamilnadu Electricity Board has stated in his evidence as, on 02.10.2010, P.W.3 and P.W.4, who are the residents of Nallathoor, informed the theft of copper wire. After verifying the said information, he informed the same P.W.1.

6. P.W.3 and P.W.4 who are the resident of Nallathoor Village. According to them, on 02.10.2010, they found that the copper wire fitted inside the transformer was stolen away. They immediately informed the same to the officers of the Tamilnadu Electricity Board.

7. P.W.5 deposed in the Trial Court that, on 01.01.2010 when at the time, he went to his village, he found that the appellant is attempted to open the transformer. When the same was questioned with him, he has stated that he is the staff in the Tamilnadu Electricity Board.

8. P.W.6 is the witness to the Observation Mahazar prepared by the Investigation Officer.

9. P.W.7 has spoken about the arrest of accused, recording the confession statement given by the accused and about the recovery made by the Investigation Officer.

10. P.W.8 and P.W.9 are the Police Officers who have spoken about the receipt of the complaint, examination of witnesses, recovery of stolen property and laying of final report.

11. The Trial Court with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C., and for which, he pleaded not guilty. Further, he did not choose to examine any witnesses nor did he mark any documents on his side.

12. The learned Trial Court on perusal of the materials placed and on considering the arguments advanced on both sides convicted and sentenced the appellant/accused as stated supra. Challenging the same, the present appeal has been filed by the appellant.

13. Today, when the appeal is taken up for consideration, I have heard the arguments advanced by Mr.M.Jaikumar, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl.Side) for the respondent and also perused the records carefully.

14. The first and foremost contention raised by the counsel appearing for the appellant is that in the Trial Court, the prosecution attempted to prove their case through the eye witness. Accordingly, P.W.5 has been examined for proving the involvement of the accused in the occurrence. But his evidence given in the cross examination shows that he would not see the occurrence as stated by the prosecution. Further, he contended that the contradiction arising in the evidence of prosecution witnesses create a suspicious circumstances over the case of prosecution.

15. On the other hand, the learned Government Advocate (criminal side) would submit that the minor contradiction arising in the evidence of P.W.1 to P.W.9 would not shaken the prosecution case entirely, since the witnesses are examined after a long gap from the date of incident. It is probable that they are given evidence with some presumptive roles.

16. On considering the either side submission, it is true, P.W.5 stated in the chief examination as that on 03.10.2010, in the early hours 3.00a.m., after hearing noise from the land of Mr.Ramachandran, he went and saw the appellant by using the torch light. Further, he stated at the time of seeing the appellant, he was removed the bolt fixed in the transformer. Subsequently, in the cross examination, he has stated as till 06.10.2010, he have not informed anything about the said incident to the Police. Particularly, he stated on 05.10.2010 he saw the arrest and interrogation of the accused by the Police officials. The said circumstances shows, if really the evidence of P.W.5 is true one being the common man he would definitely inform the same to others on 05.10.2010 itself. So, the said evidence creates a doubt whether P.W.5 saw the appellant on 03.10.2010 or not.

17. Accordingly, this Court accept the submission made by the appellant counsel and came to the conclusion that evidence given by P.W.5 is not sufficient to accept the case of prosecution as a true one.

18. In other words, the evidence given by the P.W.1, the defacto complainant and other witnesses via P.W.2 to P.W.4 is not in the form of connecting the appellant with the alleged crime.

19. However, to connect the appellant with the crime, P.W.9 who is the Investigation Officer in this case has stated in the chief examination as, on 05.10.2010, the appellant was arrested and based on the confession given by him, the properties which are marked as M.O.1 to M.O.4 in this case were recovered. Further, he has stated that the said confession statement and recovery mahazar are prepared in the presence of P.W.7. In order to corroborate the said evidence, Sundararajan @ Arul while he was examined as P.W.7, he clearly stated about the time and place in which the appellant was arrested, and about the manner of recovering the stolen property. Particularly, the recovery of tool box under M.O.3 confirms the case that by using the said tools, the appellant committed the offence.

20. In this regard, the learned counsel appearing for the appellant made a submission before this Court that the appellant being a single person and also not having knowledge about electrical goods it is impossible to commit the offence as stated in the prosecution. Further, he submit that at the time of committing the offence, the appellant is aged about 26 years.

21. On considering the said argument with the nature of offence committed by the accused, it is common that special knowledge is not necessary for opening the transformer, for which, P.W.1 stated that after switching off the transformer, it is very easy to open the transformer. Further, as per the evidence given by P.W.5, the alleged occurrence had happened in early hours, i.e 3'o clock. In the said time, it is very easy for the appellant to remove the 30 bolts. So the submission made by the learned counsel for the appellant is basically not correct.

22. Moreover, in the Trial court, on the side of the appellant, it was not established that the Police Officer who registered the case is having the enmity with the appellant. In the said situation, it not necessary for foisting the false case against this appellant, particularly, by collecting the material object from the Tamilnadu Electricity Board. Therefore, in the instant case, based on the evidence put forth by the prosecution, the Trial Court correctly decided the issue involved in this case and passed an order of conviction. So, the interference is not necessary in the conviction and sentence passed by the Sessions Judge, Cuddalore.

23. In the light of the above discussion, I am of the considered view that the judgment rendered by the learned Principal Sessions Judge, Cuddalore, in S.C.No.59 of 2011 dated 28.07.2011 is correct and it does not need any interference.

24. In the result, the Criminal appeal is dismissed. The trial Court is directed to take steps to secure the accused and made arrangements for sending him to the prison for serving the remaining period of sentence. Further ordered to set off the period already undergone by the accused/appellant under section 428 of Cr.P.C

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

msv
To

1. The Judicial Magistrate No.I, Cuddalore.
 2. The Chief Judicial Magistrate, Cuddalore.
 - 3.The Principal Sessions Judge,
Cuddalore.
 4. The Inspector of Police,
Thooskanampakkam Police Station
Cuddalore.
(Crime No.149/2010)
 - 5.The Public Prosecutor,
Madras High Court,
Madras
 6. The Section officer
Criminal Section
High Court, Madras 104.
- +1 CC to Mr.K.M. Elango,. Advocate sr 44373.

Cr1.A.No.645 of 2011

KJI (CO)
SP(01/11/2018)