



Bail Slip

The Petitioner/Accused namely Logu @ Loganathan S/O Sekar directed to released on bail made on 04/02/2013 in CRL.MP.01/13 in CRL.A.No.97/13 on the file of this Court.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.97 of 2013

Logu @ Loganathan

.. Appellant/Accused

Vs.

The Union Territorial,
rep. by its
The Station House Officer,
Neravy Police Station,
Karaikal,
Puducherry.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Cr.P.C. to call for records, set aside the conviction and sentence passed in S.C. No. 80 of 2012 dated 10.01.2013 by the learned Additional Sessions Judge, Karaikal.

For Appellant	: Mr.R.Murugabharathi
For Respondent	: Mr.D.Bharatha Chakravarthy
	Public Prosecutor (Puducherry)

JUDGMENT

The sole accused is the appellant herein. The appeal is directed against the conviction and sentence passed on 10.01.2013 in S.C. No. 80 of 2012 by the learned Additional Sessions Judge, Karaikal.

The brief facts of the case leading to the appeal are as follows;

2. PW1 Selvaraj is residing in Niravi Village near Karaikal. The appellant herein is the son-in-law of PW1. PW3 P. Palanivel and PW4 P. Sharmila are the son and daughter of PW1 respectively. PW5 D.Siva and PW6 P. Marimuthu are the



neighbours to PW1. PW7 Murugesan is the photographer doing photography business in Karaikal. PW8 Pravin Kumar is the Inspector of Police, who registered the case and laid charge sheet after completing investigation.

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3. Admittedly, prior to the alleged occurrence, the son of the PW1 eloped with the sister of the accused and married her in Tirumanamjeri, due to which the appellant got angry against PW1.

4. On the fateful day i.e. on 09.06.2012 at about 23.45 hrs, when PW1 was inside his hut, some unknown persons had set fire and caused damage to the entire hut. At that time, the petitioner and others were trying to put off the fire. Due to setting fire, the entire hut was burned, for which PW1 lodged a complaint before PW8. Before that, PW2 came there and told that some unknown person with a scar mark on the forehead, came with a bottle of petrol. On 10.06.2012 at about 8 a.m. the Sub Inspector of Police, Neravy Police Station received the said complaint and registered a case in Crime No. 69 of 2012 for the offences punishable under Section 436 of IPC. FIR was marked as Ex.P4 and the complaint given by PW1 was marked as EX.P1. Immediately after registering the case, PW8 went to the scene of occurrence and prepared observation mahazar and rough sketch in the presence of witnesses, namely Siva and Manikandan further he recovered one litre empty plastic bottle and match sticks under the seizure mahazar. The seizure mahazar was marked as Ex.P2 and crime details form was marked as Ex.P3. Thereafter, he examined witnesses and recorded statements under Section 161 Cr.PC. On 13.06.2012 he arrested the appellant in Karaikal and recorded the confession statement and thereafter the appellant was sent to judicial custody. Further, PW8/investigation Officer took photographs of the scene of occurrence through PW7/photographer.

5. In the trial Court, after examining eight witnesses, after marking five Exhibits and after marking seven material objects as M.O 1 to M.O 7, the learned Additional District and Sessions Judge, Karaikal came to the conclusion that the appellant herein was found guilty for the offence under Section 436 IPC and awarded a sentence of three years rigorous imprisonment and to pay fine of Rs.5000/-, in default, two months simple imprisonment, against which, the present appeal has been preferred.

6. Today, when this appeal came up for hearing, Mr.R.Murugabharathi, learned counsel appearing for the appellant and Mr.D.Bharatha Chakravarthy, learned Public Prosecutor (Puducherry) are present.



7. The first and foremost contention raised by the learned counsel for the appellant is that the evidence let in by the prosecution witnesses is creating suspicion in the registration of the case itself. Particularly as per the evidence of PW1 and other eye witness PW8 went to the scene of occurrence on the day of occurrence. Further he examined the witness on the same day, but his evidence shows that he went to the scene of occurrence after registering the case, thereby the entire case of prosecution is an unbelievable one.

8. On the other hand, the learned Public Prosecutor (Puducherry) would make a submission that this is not probable for the Sub Inspector of Police to go to the scene of occurrence after registration of the case, since at the time he went to the scene of occurrence, the hut which belongs to PW1 was in the burning stage, so the evidence with regard to the registration of the case by PW8 has not at all diluted the case of prosecution as alleged by the learned counsel for the appellant.

9. Considering the either side submissions based on the evidence given by PW1 and PW8, it is an admitted fact that this case has been registered by the respondent police only after receiving the complaint from PW1. As per the evidence of investigation officer/PW8, the said complaint was received from PW1 on 10.06.2012 at about 8 a.m. . On the other hand, the eye witnesses examined on the side of prosecution namely PW1 to PW5 have stated in the cross examination that on the date of the occurrence i.e. on 09.06.2012 at about 23.45 hrs, the investigation officer was present in the scene of occurrence and examined them.

10. It is natural on the part of the respondent police that being the police officers considering the urgency, it is their duty to go to the scene of occurrence with Fire Service people particularly for setting out the fire. But the provisions of law would clearly instruct the police officers that the witnesses present at the scene of occurrence have to be examined only after registration of the case. Further, for the registration of the case, entire happenings are not necessary. In this case, in the FIR marked as Exhibit P4 through PW8 in which, it was clearly stated that the information to the alleged occurrence was received by the police station only on 10.06.2012 at 8.00 am, which clearly shows that the investigating officer does not have any knowledge about the incident prior to the registration of the case. Suppose, the time which was mentioned in the column that the information received was earlier to the time of receiving the complaint, that may probablise that the police officers could have arrived at the scene of occurrence immediately after hearing the news on considering the seriousness of the case. But in Ex.P4, it was



mentioned that the information received at 8.00A.M. The First Information report is nothing but a document which sets the law in motion. Without considering these aspects, the trial Court convicted the accused.

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11. In the said circumstances, the learned Public Prosecutor (Puducherry) would submit that prior to the alleged occurrence, PW2 saw the accused near to the place of occurrence. Further, as per his evidence, at that time, the accused was having with a petrol bottle. The said circumstances clearly prove that the appellant alone committed the offence.

12. On the other hand, the learned counsel appearing for the appellant vehemently denied the submissions made by the learned Public Prosecutor (Puducheery) and submitted that if really PW2 saw the appellant, it is very easy for him to tell the name of the accused to the other witnesses. But, in this case, as per the evidence given by the PW2 and other witnesses, the name of the appellant was not intimated by PW2 to the other witnesses. So, only in order to take revenge, PW1 had lodged a complaint against the appellant and thereby, the case has been registered.

13. Now, on going through the entire submissions made by either side, it is true that PW2 alone saw the appellant near to the place of occurrence. Since, the alleged occurrence happened in a village, in which PW1 and PW2 were residing, it is very easy for PW2 to know the name of the appellant. But in this case, the evidence given by the prosecution witnesses clearly elicited that immediately after the occurrence, PW2 has met other witnesses. But, PW2 did not tell the name of the appellant to the other witnesses. Therefore, not mentioning the name of the appellant creates a doubt, whether PW2 saw the appellant at the time of occurrence or not.

14. In other words, the other witnesses examined on the side of the prosecution, clearly stated in the cross examination that they have not seen the accused at the time of occurrence. In order to prove the case of prosecution in criminal cases, the prosecution must prove their case beyond reasonable doubt. But in this case, the two aspects that are already discussed above creates a doubt over the case of prosecution. In the said circumstances, this Court of the view that without analysing the said facts, convicting the appellant is nothing but erroneous.

15. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant in S.C. No. 80 of 2012 dated 10.01.2013 by the learned Additional Sessions Judge, Karaikal is set side and the appellant/accused is acquitted of the charge. The bail bond, if any, executed by the



appellant/accused shall stand canceled. The fine amount, if any, paid by appellant/accused shall be refunded to them.

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Sd/-
Assistant Registrar(CO)

//True Copy//
Sub Assistant Registrar

To

1.The Judicial Magistrate No.II
Karaikal

2.The Chief Judicial Magistrate
Puducherry(For information)

3. The Additional Sessions Judge,
Karaikal,

4.- do- The Principal Sessions Judge Puducherry

5.The Station House Officer
Neravy Police station
Karaikal,
Karaikal District Puducherry

6.The Public Prosecutor,
Puducherry.

+1cc to Mr.R.Murugabharathi, Advocate, S.R.No.34938

+1cc to the Spl Government Pleader, S.R.No.34975

Cr1.A.No. 97 of 2013

VBA(CO)
GSP(19/07/2018)