

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2019

PRONOUNCED ON : 20.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.783 of 2011

K.Durai

Appellant

Vs

State Rep. by its,
The Inspector of Police,
Panruti Police Station,
Panruti,

Respondent

Prayer:- This Criminal Appeal is filed under Section 374 Cr.P.C., against the judgment and order passed by the learned Sessions Judge, Cuddalore in S.C.No.45 of 2010 dated 11.11.2011.

For Appellant : Mr.K.Balasubramaniam

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

JUDGMENT

This Criminal Appeal is filed against the judgement passed by the learned Sessions Judge, Cuddalore in S.C.No.45 of 2010, dated 11.11.2011.

2.The appellant was tried for found in possession of 4 kg of aluminium of Electricity board. Which is an offence under section 136(1)(a) of the Indian Electricity Act. The trial court found the appellant guilty of the said charge and he was sentenced to undergo one year rigorous imprisonment.

3.The case of the prosecution is that, Karthikeyan (PW-3) of Melkavarapattu, Panruti have agricultural land at Melkavarapattu village. On 02.02.2004, when he went to his land to irrigate, found the motor not functioning. On verifying, he found 4 lines of electrical wire cut and hanging. This was informed to the Lineman. Arumugam (PW-2) the Lineman went to the spot and found aluminium wire has been stolen. Hence, intimated it to the Foreman - Dhanapal. Both Arumugam and Dhanapal went to the office of the Junior Electrical Engineer of TNEB at Kozhipakkam, Cuddalore and preferred complaint to PW-1 - Chandran Junior Electrical Engineer about the theft of aluminium wire from the Kavarapattu S-1 transformer.

4. In the inspection done by PW-1 along with PW-2 and Foreman – Dhanapal, it was found that 560 metres of aluminium wire about 125 kg valued about Rs.2,500/- was stolen. A complaint along with rough sketch was given to the Sub-Inspector of Police, Panruti. PW-5 Sub-Inspector of Police attached to Pudukottai Police Station arrested the appellant on 10.03.2004 near the bus stop in Anguchettipalayam. The appellant gave a statement confessing his guilt in the crime of aluminium electrical wire theft. Based on the confession statement given by the appellant, 4 kg of aluminium electrical wire (M.O-1) was recovered buried in the Kodiyalam river bed, in the presence of witnesses Ramalingam (PW-4) and Kuppasamy.

5. The FIR based on the complaint Ex P-1 given by PW-1 was registered on 14.03.2004 in Cr.No.196/2004 by the Panruti Police Station. The investigation was taken up by Mr. Pethaiyan (PW-6). The appellant who was accused in the theft case registered in the Pudukottai Police Station was taken into custody in this case on 24.03.2004 and remanded. On completion of investigation, PW-6 filed the final report.

6. Considering the above evidence let in by the prosecution, the trial Court found the appellant guilty and convicted him for offence under Section

136 (1)(a) of Indian Electricity Act and sentenced him to undergo one year rigorous imprisonment.

7. Aggrieved by the conviction and sentence, the Criminal Appeal is filed on the ground that, the trial Court failed to consider the contradictions between the prosecution witnesses cutting the root of the prosecution. The alleged date of theft is the night of 02.02.2004. The complaint - Ex.P-1 though dated 03.02.2004, it was received by the respondent Police only on 14.02.2004 and the FIR registered only on 14.02.2004. The copy of the FIR was forwarded to the Magistrate concerned only on 03.03.2004. While PW-1 say he gave the complaint Ex P-1 in person on 03.02.2004, PW-6 say he received the complaint on 14.02.2004 by post. The inordinate delay in registering the FIR, the contradiction in the manner and date on which the complaint received and forwarded to the Magistrate has lead to foisting of false case. The trial Court has failed to take note of these material contradictions and falsehood in the prosecution case.

8. PW-4 Ramalingam, witness to the confession statement and recovery mahazar has deposed that when he saw the accused, he found him in possession of three bags. The mahazar Ex P-4 does not disclose anything about the bags. The Puthupettai Police has arrested the appellant

and seized the property marked as M.O.1. PW-5 Sub-Inspector of Police attached to Puthupettai Police station who arrested the accused and recovered M.O.-1 admits in his cross examination that he did not recover any property from the appellant in connection with Puthupettai police station case. According to PW-5, the independent witnesses to the mahazar PW-4 and Kuppusamy came in a two wheeler. Whereas, PW-4 had said that he and Kuppusamy went to the spot by walk.

9.Per contra, the learned Government Advocate (crl.side) would submit that, the offence took place during the night of 1st and 2nd of Feb 2004. Karthikeyan - PW-3 has noticed the theft first. He informed it to the Lineman. Lineman inturn to the Foreman and then to the Junior Engineer of TNEB.

10.The law was set into motion by filing the complaint by PW-1 on the next day. The delay in registering the FIR and the failure to forward the complaint immediately to the learned Judicial Magistrate concerned will not vitiate the trial. The appellant involved in multiple cases of electrical wire theft cases. When he was arrested by Puthupettai Police, the Police who arrested him stumbled upon the information regarding theft of aluminium wire near the land of PW-3. Thus, the investigation by the Panruti Police

station came into picture. M.O.1 aluminium wire weighing 4 kg is part of the wire stolen weighing approximately 125 kg. The accused confessed his guilt and gave information leading to recovery of M.O-1 concealed in the river sand. The prosecution having proved the guilt of the accused, the trial Court judgment is to be confirmed.

11.Heard the learned counsel for the appellant and the learned Government Advocate (crl.side) appearing for the State. Records perused.

12.The theft of electric wire has been noticed by PW-3 on 02.02.2004 when he tried to switch on his electrical motor in the field. Promptly, he has reported it to the Lineman - PW-2. After inspecting the spot along with the Foreman - Dhanapal and PW-2, the Junior Engineer of TNEB (PW-1) has written a letter dated 03.02.2004 (Ex P-1) to the Sub-Inspector of Police, Panruti, reporting about the theft and given it to the Police. Based on Ex P-1, the Police has registered the FIR – Ex.P-5 on 14.02.2004. The appellant was arrested by PW-5 on 10.03.2004 in connection with the cases registered at Puthupettai Police Station Crime Nos. 134/04, 135/04 and 135/04.

13.PW-5 in his deposition has said that, while interrogating the appellant, he confessed his guilt in connection with Crime No.196/04 on the

file of Panruti Police Station. Pursuant to his confession, 4 kgs of the aluminium wire (MO-1) concealed in the river of Kodiyalam was recovered on 10.03.2004 at about 14.15 hrs. The recovery of M.O. 1 is proved through the mahazar witness - PW-4 . In the seizure mahazar - Ex P-4 dated 10.03.2004, drawn on the spot of recovery, the Panruti Police Station Crime No.196/04 is mentioned. Subsequently, the file has been transferred to Panruti Police station by PW-4.

14. In the said circumstances, though, there is some contradictions regarding the date of lodging the complaint - Ex P-1 and receipt of it by Panruti Police Station, the fact remains the procedural delay in registering the FIR has not prejudiced the appellant anyway. The trial Court has pointed out the lapse and has viewed that the said lapse will not affect the culpability of the accused.

15. The overall evidence of the witnesses proves the theft of aluminium wire of TNEB, reporting the same to the Department and in turn, PW-1, the Junior Engineer of the Department lodging the complaint regarding theft of aluminium electric wire. The recovery of a portion of it from the appellant based on the information given by him is well proved through the evidence of PW-4 and PW-5. Therefore, this Court holds that the finding of the trial court is based on evidence and deserve to be confirmed.

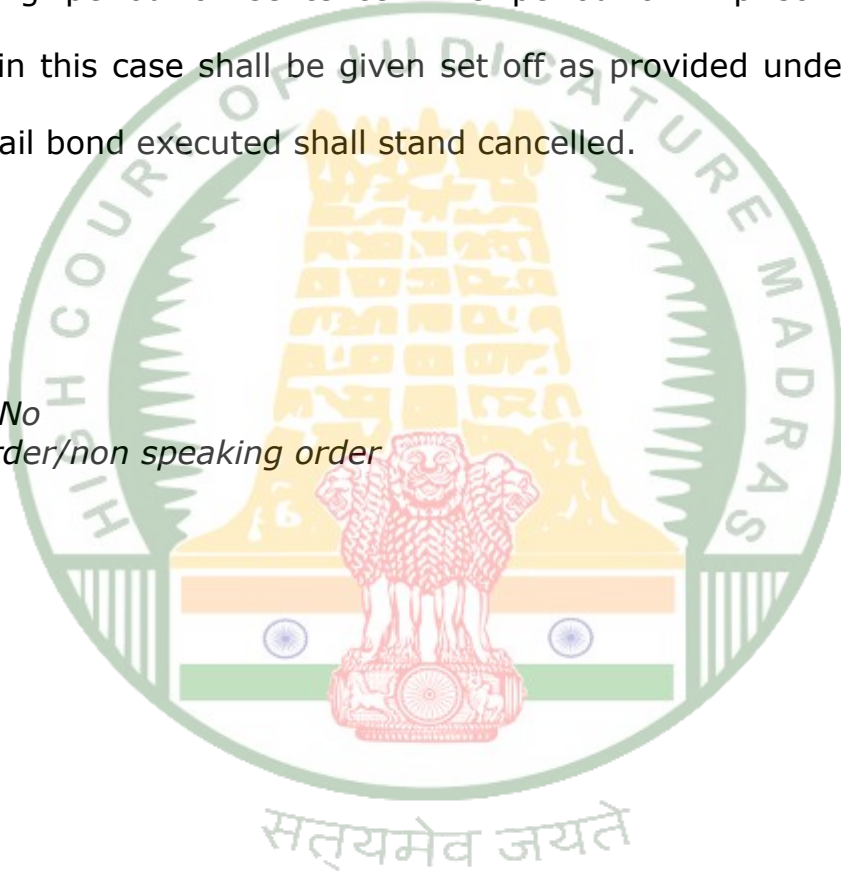
16. In the result, the Criminal Appeal is dismissed and the judgment of the trial Court dated 11.11.2011 in S.C.No.45 of 2010 is confirmed. The trial Court is directed to secure the accused and confine him to prison to undergo the remaining period of sentence. The period of imprisonment already undergone in this case shall be given set off as provided under section 428 of Cr.P.C. Bail bond executed shall stand cancelled.

jbm

Index: Yes/No

Speaking order/non speaking order

20.03.2019



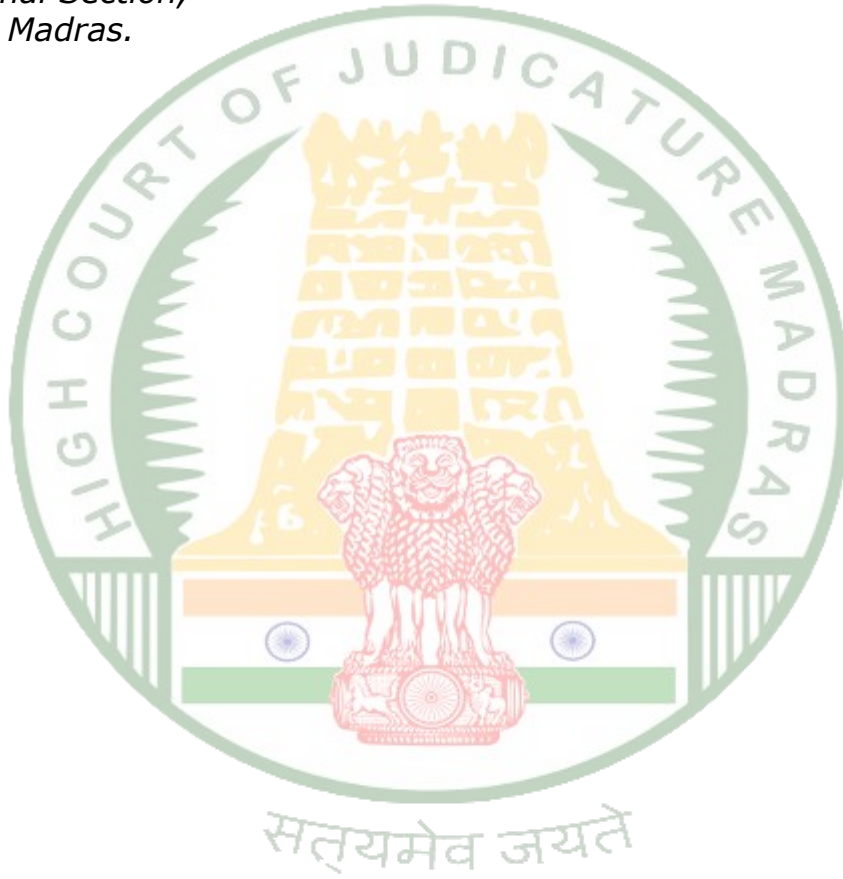
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To

1. The Sessions Judge,
Cuddalore.

2. The Public Prosecutor,
High Court, Chennai.

3. The Criminal Section,
High Court, Madras.



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G.JAYACHANDRAN.J.,

jbm



Pre Delivery judgment made in
Crl.A.No.783 of 2011

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