



BAIL SLIP

The Appellant / Sole Accused namely Manoharan, S/o. Natarajan was released on bail by this Hon'ble Court made in MP No.1/2013 in Crl A(MD)No.89/2013 dated 10.04.2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.A. (MD)No.89 of 2013

Manoharan

... Appellant/Sole Accused

Vs.

State Rep. by,
The Inspector of Police,
Uppiliyapuram Police Station,
Thuraiyur Taluk,
Trichy District.

... Respondent/Complainant

Prayer: Criminal Appeals filed under Section 374 of Cr.P.C, to set aside the order of conviction, fine and sentence imposed on the appellant by the learned I Additional Assistant Sessions Judge, Trichy, by means of his judgment dated 02.03.2013 made in S.C.No.162 of 2012.

For Appellant : Mr.K.Sivabalan

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 436 of I.P.C. and sentenced to undergo seven years rigorous imprisonment and levied with fine of Rs.5,000/- vide judgment dated 02.03.2013 in S.C.No.162 of 2012, on the file of the learned I Additional Assistant Sessions Judge, Trichirappalli.

2.The case of the prosecution is that on 14.12.2011 at about 11.00 p.m., the appellant set fire to the thatched hut in the brick kiln of P.W.1/Srinivasan. As a result, articles worth about Rs.1,50,000/- in the thatched hut were burnt. In this regard, P.W.1/Srinivasan lodged Ex.P.1/complaint before Uppiliyapuram Police Station on 15.12.2011. Crime No.361 of 2011 was registered for the offence under Section 436 of I.P.C. Investigation was taken up and



final report came to be filed against the appellant for the offence under Section 436 of I.P.C. before the learned Judicial Magistrate, Thuraiyur. The case was committed to Sessions Court and made over to the file of the learned I Additional Assistant Sessions Judge, Trichirappalli in S.C.No.162 of 2012. Charge was framed against the appellant. The appellant denied the charge and claimed to be tried.

3.The prosecution examined as many as nine witnesses and marked Exs.1 to 8. M.O.1 to M.O.4 were also marked. On the side of the accused no evidence was marked.

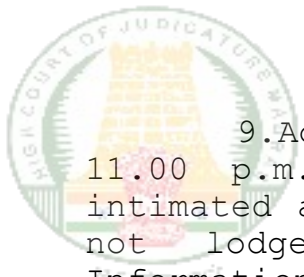
4.The learned Trial Judge after detailed consideration of the evidence on record found the appellant guilty of the offence with which he was charged and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

5.Heard the learned counsel on either side and perused the evidence on record.

6.P.W.1 is the owner of the brick kiln. According to him, one Senthilkumar of the same village had filed a criminal case against the appellant/Manoharan and that in the said criminal prosecution, P.W.1 had deposed in favour of Senthilkumar. As a result, the appellant entertained a inimical motive against P.W.1. On the morning of the occurrence date, the appellant is said to have held out a serious threat against P.W.1. While so, during the night on 14.12.2011, the occurrence in question had taken place.

7.On the next day, P.W.2 and P.W.3 namely., Sathish and Saravanan came to P.W.1 and told him that they saw a person entering the brick kiln in a cycle the previous night. P.W.1 thereupon entertained suspicion that the entire thing could have been the handiwork of the appellant. He therefore took P.W.2 and P.W.3 namely., Sathish and Saravanan to the place where the appellant was there. P.W.2 and P.W.3 identified the appellant as the person, who was seen entering the brick kiln that previous night. Based on inputs given by P.W.2 and P.W.3, the appellant lodged Ex.P.1/complaint before Uppiliyapuram Police Station. Based on the same, Crime No.361 of 2011 came to be registered.

8.It is true that all the three witnesses supported the prosecution case in toto. But then, what must be seen is whether the testimonies of P.W.2 and P.W.3 can command the confidence of this Court. They are not direct eye witnesses. The prosecution case is not based on ocular evidence. In other words, nobody say the appellant setting fire to the brick kiln of P.W.1. What the prosecution claims is that prior to the occurrence P.W.2 and P.W.3 had seen the appellant entering the brick kiln.



9. Admittedly, the occurrence took place at about 11.00 p.m. on 14.12.2011. The Fire Station was immediately intimated and Fire engine rushed to the spot. But then, P.W.1 did not lodge any information before the police immediately. Information before Uppiliyapuram Police Station came to be lodged only on the next day i.e., 15.12.2011 at about 01.30 p.m. Thus there is a gap of more than 11 hours. The station is located at a distance of 12 kilo metres from the occurrence spot.

10. P.W.2 and P.W.3 are not hailing from Erakudi village. They hail from K.Karupampatti village. They were returning to their village in a two wheeler. It was night time. Therefore, they could not have had the occasion or the opportunity to have noticed closely, as to who was entering the brick kiln of P.W.1. It is admitted in the course of cross examination of P.W.2 that P.W.1's brick kiln was located adjacent to the main road. There is no separate route to reach or access the brick kiln. P.W.2 and P.W.3 would in unison claim that on hearing about the fire accident in the brick kiln of P.W.1, they went to P.W.1 and told him that they had seen a bald headed, lungi wearing person entering the brick kiln the previous night. They would further claim that thereupon, P.W.1 took them to the spot where they saw and identified the appellant as the person, who was seen by them near the brick kiln in the previous night. The testimony of P.W.2 and P.W.3 are highly artificial and do not inspire the confidence of this Court. P.W.1 had admitted that he had a strained relationship with the appellant. Therefore, the possibility of false implication cannot be ruled out. As already pointed out, it is not a case that rests entirely on ocular evidence. The prosecution rests its case on the testimony of P.W.2 and P.W.3, having seen the appellant a short while prior to the occurrence near the brick kiln. P.W.1 had not lodged any police complaint immediately, but rather chose to file the same based on the inputs alleged to have been supplied by P.W.2 and P.W.3, I am of the view that it would be unsafe to convict the appellant on their testimony. The Court below ought not to have convicted the appellant based on the deposition of P.W.2 and P.W.3. The impugned judgment is set aside and the appellant is acquitted and the criminal appeal stands allowed. The fine amount, if any, paid by him shall be refunded. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)



1.The I Additional Assistant Sessions Judge,
Trichy.

2.The Inspector of Police,
Uppiliyapuram Police Station,
Thuraiyur Taluk,
Trichy District.

3.The Judicial Magistrate, Thuraiyur,
Trichy District.

4.The Chief Judicial Magistrate,
Trichy.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.SIVABALAN, Advocate (SR-80472[F] dated 07/08/2019)

Crl.A. (MD)No.89 of 2013
07.08.2019

_KK/SAR/27.09.2019/4P-7C/