

BAIL SLIP

The Appellant/Accused namely, Lingam, S/o. Lakshmanan, aged 42 years was released on bail as per the order of this Court made in CRL MP(MD).No.5580 of 2016 in CRL A(MD)No.255 of 2016, dated 12.07.2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.07.2021

DELIVERED ON : 30.07.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.255 of 2016

Lingam : Appellant/Accused No.1

Vs.

State represented by
The Inspector of Police,
Anjugramam Police Station,
Kanniyakumar District.
(Cr.No.58 of 2010)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 347(2) of Criminal Procedure Code, to call for the records from the lower Court and to duly set aside the judgment passed by the Fast Track Mahila Court, Kanniyakumari at Nagercoil, Kanniyakumari District in S.C.No.134 of 2012, dated 30.06.2016.

For Appellant : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu

For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side).

JUDGMENT

This Appeal is filed as against the order of conviction and judgment of imprisonment passed against the appellant by the learned Sessions Judge, Fast Track Mahila Court, Kanniyakumari at Nagercoil, Kanniyakumari District in S.C.No.134 of 2012, dated 30.06.2016.

2.Heard Mr.V.Kathirvelu, learned Senior Counsel for Mr.K.Prabhu, learned Counsel for the appellant and Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) for the respondent.

3.The case of the prosecution is briefly as follows:

3.1.PW-1, Maheshwari and PW-3, Ramachandran are husband and wife and they were residing in a thatched house at Arasaradi Vinayagar Street, Pottalkulam, Alagappapuram Village, Agastheesvaram Taluk, Kanniyakumari District, within the local limits of Suchindram

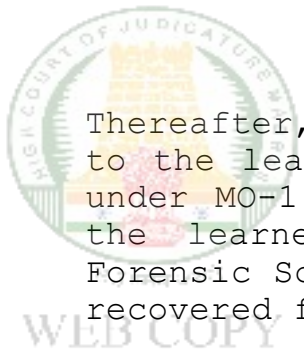


Police Station. The accused Lingam is residing with his family and a neighbour to PW-1, Maheshwari and PW-3, Ramachandran. There had been disputes between PW-1, Maheshwari and PW-3, Ramachandran and accused Lingam, based on which, there had been police complaint. On 10.02.2010, the accused came to the house of the PW-1, Maheshwari and PW-3, Ramachandran by around 05.00 pm and shouted at them, you bastard and bitch, get out of here, vacate the house, otherwise, I will kill you by putting fire on your house.

3.2. On 11.02.2010, intervening night 12.30 am, they heard some sound outside. Therefore, PW-1 woke up her husband, PW-3, Ramachandran and her children. When they came out of the house, they saw their house burning. Therefore, PW-1, Maheshwari, and PW-3, Ramachandran, went to the Anjugramam Police Station on 11.02.2010 by around 12.00 am and lodged a complaint under Ex-P1. The Sub Inspector of Police, Anjugramam Police Station, PW-6, Gowri Manohari, had received the complaint under Ex-P1 and registered a case in Cr.No.58 of 2010 of Anjugramam Police Station under Section 438 IPC, under Ex-P5. The original complaint under Ex-P1 and the FIR under Ex-P5 were sent to the Court of the learned Judicial Magistrate-I, at Nagercoil and copy of the FIR and original complaint were sent to the office of the Circle Inspector of Police, Suchindram Police Station, under whose jurisdiction the Anjugramam Police Station is located.

3.3. On receipt of the complaint under Ex-P1 and FIR under Ex-P5 by the Circle Inspector of Police, Suchindram Police Station, PW-7, Inspector of Police, Mookkan, had proceeded to the scene of occurrence, the house of PW-1, Maheshwari and PW-3, Ramchandran, by around 13.00 hours and in the presence of witnesses PW-4, Ramadas and one Kumar, he had prepared observation mahazer under Ex-P2 and the rough sketch under Ex-P6. He had recovered partially burnt mixy jar, cycle break, mirror, melted aluminium vessel, partially burnt umbrella, partially burn emergency bulb, partially burnt door and door frame, burnt eversilver dumbler, plates, burnt cloths, burnt cycle bell, burnt copper pot, burnt almira and burnt raw rice under seizure mahazer, Ex-P3, in the presence of the same witnesses.

3.4. He had enquired PW-1, Maheshwari, PW-3, Ramachandran and the witnesses to the observation mahazer, rough sketch and seizure mahazer, PW-4, Ramadass and one Raghu and recorded their statements. On the same day by around 03.30 pm, he had on suspicion, arrested the accused, Lingam from the Punnarkulam Vilakku Road bus stop in the presence of witnesses, Balamurugan and Pandi. In the presence of witnesses, the accused, Lingam, had confessed to the crime. The Accused was brought to the Police Station and the seized articles from the scene of crime were forwarded to the Court of the learned Judicial Magistrate at Nagercoil after formalities under Form-95 and the accused along with the remand request was forwarded to the Court of the learned Judicial Magistrate and the accused was remanded.



Thereafter, PW-7, Inspector of Police, had sent a requisition letter to the learned Judicial Magistrate, to forward the seized articles under MO-1 to MO-19 for forensic analysis and report. Accordingly, the learned Judicial Magistrate, Nagercoil, had also addressed Forensic Science Laboratory for forensic examination of the articles recovered from the house of PW-1, Maheshwari, MO-1 to MO-19.

3.5.MO-1 to MO-19 were properly sealed and sent to the Forensic Science Laboratory along with escort police. The accused were remanded by the learned Judicial Magistrate. Thereafter, the Inspector of Police, PW-7, had examined the witnesses, Balamurugan, Pandi, and PW-6, Gowri Manohari, Sub Inspector of Police. Thereafter, PW-7, the Inspector of Police, Mookkan, was transferred. Therefore, the successor Inspector of Police, PW-8, Ilango, took charge of the office of the Circle Inspector of Police, Suchindram. He had also perused the case diary file and enquired with the witnesses. Since the witnesses had deposed, what had been stated to the earlier Inspector of Police, the PW-8, Ilango had not recorded their statements. Having satisfied with the case diary file regarding the investigation, he had filed the final report of the investigation before the Court of the learned Judicial Magistrate at Nagercoil, under Section 173(2) Cr.P.C., as against the accused for the offences under Sections 447, 506(2) and 436 IPC r/w Section 4 of the Tamil Nadu Properties (Prevention of Damages and Loss) Act r/w Section 32 of IPC.

3.6.The learned Judicial Magistrate, Nagercol had taken cognizance of the final report laid by PW-8, Inspector of Police, Ilango and numbered the case as P.R.C.No.13 of 2012 The learned Judicial Magistrate issued summons to the accused. On appearance of the accused, copies were furnished to the accused under Section 207 Cr.P.C. The accused were heard regarding the resources to engage a Counsel independently. Since the accused stated that they are capable of engaging Counsel to defend them and the case being triable by the Court of Session, the case records were sent to the Court of the learned Principal District and Sessions Judge, Kanniyakumari at Nagercoil and the accused were bound over to the Court of the learned Principal District and Sessions Judge, Kanniyakumari at Nagercoil.

3.7.On receipt of the case records from the Court of the learned Judicial Magistrate in P.R.C.No.13 of 2012, the learned Principal District and Sessions Judge, Kanniyakumari at Nagercoil took the case on file and numbered it as S.C.No.134 of 2012. Since the offence committed against the woman, the case was made over to the file of the Special Judge, Fast Track Mahila Court, at Nagercoil and the accused were bind over to the Special Judge, Fast Track Mahila Court, at Nagercoil.

3.8.On appearance of the accused, the learned Special Judge,

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Fast Track Mahila Court, at Nagercoil, had framed the charges against the accused under Sections 294b, 506(2) and 436 IPC and Section 4 of the Tamil Nadu Properties (Prevention of Damages and Loss) Act. The charges were read over and explained in Tamil to the accused. The accused pleaded not guilty and claimed to be tried. Therefore, trial was ordered.

3.9. During trial, the prosecution had examined the witnesses, PW-1 to PW-8 and marked Ex-P1 to Ex-P7 and MO-1 to MO-19. From the evidence before the learned Trial Judge, the incriminating portion of the evidence against the accused was put to them under Section 313 Cr.P.C. and they were examined. The accused denied the evidence against them. The accused mentioned that the case had been foisted against them based on suspicion. The accused had not let in any evidence.

3.10. After the proceedings under Section 313 Cr.P.C., the prosecution was heard. The learned Counsel for the accused also argued. After hearing both parties and on assessment of the entire materials available, the learned Special Judge, Fast Track Mahila Court, at Nagercoil, on appreciation of the evidence, had arrived at a just conclusion that the charges framed against the Accused No.1 were proved by the prosecution only against the offence under Section 436 IPC. Therefore, the first accused was convicted for the offence under Section 436 IPC and was sentenced to undergo imprisonment for three years and fine of Rs.8,000/- and in default three months simple imprisonment and the charges against the Accused Nos.2 and 3 having not been proved beyond reasonable doubt, they were acquitted from the charges under Section 294(b), 506(2) and 436 IPC r/w Section 4 of Tamil Nadu Properties (Prevention of Damages and Loss) Act. Aggrieved by the judgment, dated 30.06.2016 by the learned Special Judge, Fast Track Mahila Court, at Nagercoil, the Accused No.1 had filed this Criminal Appeal.

4. The grounds of appeal are as follows:

1. The Judgment of the lower Court is against law, the weight of evidence in and the broad probabilities of the case.

2. The Judgment of the lower Court has to be set aside since PW.1 and 3 are shown as eye-witnesses. But actually there is no eye witness. The P.W.1 after seeing the fire in her house she came out with P.W.3 and she has seen the accused 1 to 3 running away from the occurrence place. The accused no.1 house is adjacent house to the P.W.1 house. Already motive was there. As per P.W.4 evidence already accidental fire took place. The defence also taken a plea that this is accidental fire. Though the occurrence took place at 00.30 hrs, but P.W.1 given a written complaint only 12 noon. Though the accused are neighbours she has taken 11.30 hrs to report the matter.



The delay has not been explained by the prosecution.

3.The judgment of the lower court has to be set aside since P.W.1 in her cross examination admitted that already she has informed to the police and police arrived to the scene of occurrence at 06.00 a.m., whereas, report itself at 12 noon so the earliest information given by the P.W.1 is totally suppressed in this case. The P.W.1 evidence based upon motive surmises and conjectures.

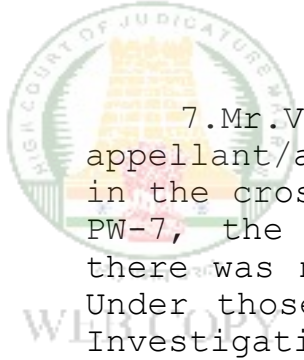
4.The judgement of the lower court has to be set aside since P.W.3 evidence is totally contra to the PW.1 evidence. The P.W.3 also came out from the house along with the P.W.1 and noticed the fire but he has not mentioned anything that the accused no.1 to 3 where ranaway from the scene of occurrence. So the P.W.1 evidence not corroborated by any one of the witnesses. The P.W.1 is the motivated witnesses.

5.The judgment of the lower court has to be set aside since the P.W.1 and 3 evidence partly believed by the lower court hence she acquitted the accused No.2 and 3. once lower Court partly believed the evidence of P.W.1 and 3 the benefit must be given to the this appellant also.

6.The appellant reserve his right to file additional grounds in any to be urged at the time of arguments."

5.Mr.V.Kathirvelu, learned Senior Counsel appearing for the Appellant had submitted the written arguments. He had also made oral arguments briefly. As per the grounds of appeal by Mr.V.Kathirvelu, learned Senior Counsel for the appellant/accused, the accused and prosecution witness PW-1 and PW-3 are neighbours. There had been dispute among them pending before the Court. While so, suspecting that their house was put to fire by the accused, they had falsely foisted the case under Section 294b, 506(2) and 436 IPC r/w Section 4 of Tamil Nadu Properties (Prevention of Damages and Loss) Act. When the house was on fire on the intervening night of 10.02.2010 and 11.02.2010, the accused herein, who were neighbours, had come out of the house, just like the inmates of the house, the complainant PW-1, Maheshwari, PW-2 Balamurugan and PW-3, Ramachandran. Along with the other neighbours, the accused family also helped in putting out the fire in pouring water and they had not set fire to the house.

6.The house is situated under the high tension electric wire. It might have been caused by spark from the electric line above the thatched roof. Suspecting the accused, PW-1, Maheshwari, had preferred the complaint under Ex-P1. Based on the complaint, the police had registered a false case and created evidence as though the accused herein was a man to set fire on the thatched house of PW-1, Maheshwari and PW-3 Ramachandran.



7.Mr.V.Kathirvelu, learned Senior Counsel for the appellant/accused invited the attention of this Court to the portion in the cross examination of PW-1 to PW-8. In the cross examination, PW-7, the Inspector of Police, Mookkan, specifically stated that there were no witnesses to the occurrence, as per his investigation. Under those circumstances, merely on presumption and surmises, the Investigation Officer had laid charge sheet against the accused. The accused Nos.1 to 3 were of the same family. On mere suspicion, a case had been registered by PW-1, Maheshwari. Based on the complaint, the police had arrested the accused, as though he set fire to the thatched house of PW-1, Maheshwari. Based on the evidence of the witness, PW-8 in his cross examination, Mr.V.Kathirvelu, learned Senior Counsel for the appellant/accused prays this Court to set aside the judgment of the learned Special Judge, Fast Track Mahila Court, at Nagercoil, dated 30.06.2016, as perverse and acquit the accused from the charges.

8.Mr.V.Kathirvelu, learned Senior Counsel for the Appellant had invited the attention of this Court to the evidence of PW-4, Ramadas, stating that in the intervening night between 10.02.2010 and 11.02.2010, when the thatched roof was burning, the neighbours of PW-1, Maheshwari and PW-3, Ramachandran, including PW-4, Ramadas, had helped in putting out the fire in pouring water. He had stated that even prior to this occurrence, there had been fire accidents in the neighbourhood spark from electricity line. He had admitted the same. In the evidence of PW-3, Ramachandran, he had stated that the neighbours came to the rescue of put out the fire.

9.Also, Mr.V.Kathirvelu, learned Senior Counsel for the appellant/accused invited the attention of this Court in the portion in the cross examination of PW-1, PW-3 and PW-4 that the accused is residing just adjacent to the house of PW-1 and PW-3. All the houses are thatched houses in the poromboke lands. They are put up under the high tension wire running through that place. Therefore, on the ground of suspicion, the accused had been implicated by PW-1, Maheshwari and PW-3 and Ramachandran. The witnesses are related to each other. PW-4 Ramadas was a Village Administrative Officer. He had clearly admitted that there had been prior incidents. No same person will set fire to his neighbour's house, when he himself living in a thatched roof house. Therefore, the complaint itself is based on suspicion. The occurrence took place in the night. The complaint was given in the next day. When the house was on fire, the neighbours themselves come to the rescue and put out the fire. The police and Fire service came to the spot as per evidence of PW-4. While so, on mere suspicion, PW-1, Maheshwari had stated that on the 10th evening, the accused Lingam came before the house and threatened that he will set fire to the house and kill all of them. That is the only words included to give motive to the accidental fire and implicated the accused. Fire accidents do happen any way.



But attributing motive to someone, who is not in term with the complainant, cannot be accepted by a Court of Law.

10.Also, Mr.V.Kathirvelu, learned Senior Counsel for the appellant/accused invited the attention of this Court to the cross examination of PW-7 and PW-8, where, they had stated that there was no witness on the date of occurrence and at the time of occurrence. It is the specific evidence of PW-7, the Inspector of Police, that none of the witnesses, he had examined, had implicated the accused.

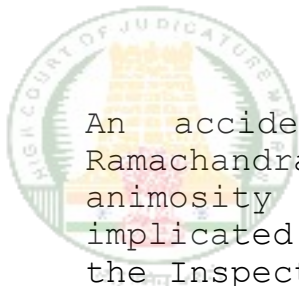
11.Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) submitted his written arguments. As per his submissions, when the thatched house was burnt on the intervening night of 10.02.2010 and 11.02.2010, hearing the commotion, PW-1, Maheshwari, and PW-3, Ramachandran and their children come out. At that time, they saw people running away from the house. Therefore, it was a handy work of the accused. To prove the prosecution case, the prosecution had examined PW-1 to PW-8 and marked Ex-P1 to Ex-P7 and MO-1 to MO-19. The learned Trial Judge had discussed all the points in the judgment in Paragraph Nos.18 to 26 and arrived at conclusion that the prosecution had proved its case beyond reasonable doubt. Therefore, the learned Trial Judge had not committed any error. The judgment of the learned Trial Judge cannot be considered as perverse and the appeal lacks merits and is to be dismissed.

Point for consideration:

Whether the order of conviction and judgment of imprisonment passed by the learned Sessions Judge, Fast Track Mahila Court, at Nagercoil, in S.C.No.134 of 2012, dated 30.06.2016, is set aside as perverse and the accused is to be acquitted from all the charges levelled against him?

12.On perusal of the entire materials available before the learned Trial Judge and the reasoning given by the learned Trial Judge in Paragraph Nos. 18 to 26 attributing motive on the accused and arrived at a conclusion that the accused alone set fire to the house of PW-1, Maheshwari and PW-3 Ramachandran, is found unreasonable and perverse, particularly, in the light of the evidence of PW-4, Ramadas, and in the light of the evidence of PW-3, Ramachandran, husband of de-facto complainant, and PW-7, Mookkan, Investigation Officer, who had stated that none of the witnesses implicated the accused. All the witnesses admitted that the electric line passing through the upper portion of the house of PW-1, Maheshwari and PW-3, Ramachandran and others in the neighbours.

13.Usually, where electric lines pass through, there is a possibility of the electric line coming into the contact with each other due to strong wind. Under those circumstances, sparks may emanate from the electric lines. Therefore, there is a danger of the nearby trees or thatched houses or thatched shed getting fire.



An accidental fire was used by PW-1, Maheshwari and PW-3, Ramachandran, on mere suspicion and thereby, the neighbour, who had animosity with PW-1, Maheshwari and PW-3, Ramachandran, had been implicated is found justifiable considering the evidence of PW-7, the Inspector of Police.

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14. Under those circumstances, the benefit of doubt should accrue to the accused. Therefore, the finding of guilt recorded by the learned Trial Judge ignoring the admissions in the cross examination of PW-3, Ramachandran, PW-4, Ramadas, and PW-7, Mookkan, Inspector of Police, is found perverse. No man shall be punished for an offence based on mere suspicion. When the witnesses admitted that the witnesses and the accused are neighbours in poramboke land, where high tension electric lines pass through, then the arguments of Mr.V.Kathirvelu, learned Senior Counsel for the appellant/accused and the defence of the accused that electric spark caused the fire cannot be rejected as fertile imagination.

15. It is to be noted that the fire accident occurred on the intervening night of 10.02.2010 and 11.02.2010 in the earlier hours, when people are expected to be sleeping. Hearing the commotion, the neighbours had rushed to the rescue of the victims. If they had remained in-different, their houses also will be engulfed in fire. They will also suffer damages. Therefore, no man will do such act, accepting the fact that even though there had been animosity between two families. Therefore, in the light of the above discussion, the arguments put forth by Mr.V.Kathirvelu, learned Senior Counsel for the appellant is accepted and the arguments of Mr.T.Senthil Kumar, learned Government Advocate (Crl.side) relying on the reasoning of the learned Trial Judge in Paragraph Nos.18 to 26 in the judgment, is rejected.

The point for consideration is answered in favour of the appellant/accused and against the prosecution. The judgment of conviction and order of imprisonment passed by the learned Sessions Judge, Fast Track Mahila Court at Nagercoil, in S.C.No.134 of 2012, dated 30.06.2016, against the appellant, is set aside.

In the result, the appeal is allowed. The accused is acquitted from all the charges levelled against him. The bond already executed by the accused after the judgment of conviction, shall be cancelled.

Sd/-

Assistant Registrar(Writs)

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Sub Assistant Registrar(CS)

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To

1.The Sessions Judge, Fast Track Mahila Court,
Kanniyakumari at Nagercoil, Kanniyakumari District.

2.The Judicial Magistrate No.III, Nagercoil.

3.The Inspector of Police,
Anjugramam Police Station, Kanniyakumari District.

4.The Superintendent, Central Prison,
Palayamkottai.

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

6.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.K.PRABHU, Advocate (SR-24841[F] dated 30/07/2021)

judgment made in
CRL.A.(MD)No.255 of 2016
30.07.2021

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TR(17.08.2021) 9P 9C