



CRL.A(MD).No.349 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.349 of 2018

S.Kabilan

... Appellant

Vs.

The Inspector of Police,
Nachiyarkovil Police Station,
Thanjavur District.
(Crime No.196 of 2014)

... Respondent

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentenced passed in S.C.No.123 of 2016 dated 05.07.2018 by the learned Additional District and Sessions Judge (FTC), Kumbakonam.

For Appellant : Mr.S.Muthukumar

For Respondent : Mr.M.Sakthi Kumar,
Government Advocate (Crl.Side)

JUDGMENT

This appeal has been filed to set aside the conviction and sentenced passed in S.C.No.123 of 2016 dated 05.07.2018 by the learned Additional District and Sessions Judge (FTC), Kumbakonam.



CRL.A(MD).No.349 of 2018

2.The appellant is the sole accused in S.C.No. 123 of 2016 on the file of the learned Additional District and Sessions Judge (FTC), Kumbakonam (herein after called “*trial court*”) has preferred this appeal challenging the following conviction and sentence imposed against him.

Offence	Sentence of imprisonment
under section 294 (b) of I.P.C.	To undergo rigorous simple imprisonment for 3 months
Under section 3(i) of the Tamil Nadu Public Properties (Prevention of Damage and Loss) Act	To undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 5000/- in default to undergo simple imprisonment for a further period of 3 months.

3.The respondent police has filed the final report against the appellant with allegation that on 25.06.2014 at 21.00 hrs., the appellant caused damage to the water pump situated at Mariamman Kovil Street, Nachiyarkovil, Sivapuram Village and scolded the public and also challenged them saying no one is allowed to take water. P.W.1/Village Vice President made a complaint to the respondent police with the said allegation of damages to the water pipe worth about Rs.1000/- and the respondent police registered a case and arrested the accused and conducted



CRL.A(MD).No.349 of 2018

investigation by examining various witnesses and collecting various documents including damage certificate and filed the final report before the learned Judicial Magistrate. The same was taken on file in P.R.C.No. 10 of 2016 by the learned Judicial Magistrate, and summoned the accused and served the copies under section 207 of Cr.P.C. and committed the case to the Sessions Court since the offence was triable by the Sessions Court under section 207 of Cr.P.C for further proceedings in accordance with law. The learned sessions Judge took it on file in S.C.No. 123 of 2016 and framed the necessary charges and read over to the appellant and explained to him. The appellant pleaded not guilty and stood for trial.

4.The prosecution has examined P.W.1 to P.W.9 and marked Ex.P1 to Ex.P6 and Marked M.O.1. The learned trial judge questioned the appellants under section 313 of Cr.P.C., by putting the incriminating materials appearing against the accused in the evidence of the prosecution witnesses. The accused denied the same as false and they pleaded that a false case has been foisted on them. The appellant/accused specifically stated during the questioning under Section 313 of Cr.P.C, that there was a land dispute between himself and one Baskara Durai and therefore, to support the said Baskara Durai, PW1/Vice President and other persons



CRL.A(MD).No.349 of 2018

falsely implicated him in the said occurrence. The learned trial judge after considering the entire evidence convicted the appellant for the above alleged offences by passing the impugned judgment. Challenging the same, the appellant has filed this appeal.

5.The learned counsel appearing for the appellant would submit that the evidence of P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 are not credible. P.W.1 specifically deposed that he reached this occurrence place after hearing. P.W.4 also deposed that he was not present at the occurrence place at the time of the occurrence. In view of that the presence of other witnesses also is doubtful. Therefore, the prosecution has not proved the presence of the appellant in the scene of the occurrence causing damages to the water pipe. The appellant also specifically pleaded that the villagers got annoyed on account of the land dispute between himself and the said Baskara Durai and hence, the villagers excommunicated him and hence, a false case was registered against him. Therefore, he seeks acquittal.

6.The learned Government Advocate (Crl. Side) on instructions, and also upon perusal of the records and impugned judgment, would submit that P.W.1, P.W.2, P.W.3, P.W.4 and P.W.5 clearly deposed about the



CRL.A(MD).No.349 of 2018

occurrence and their evidence are cogent and trustworthy and there is no reason to disbelieve their version. Therefore, the learned trial judge rightly convicted the appellant. Hence, he seeks to dismiss the appeal.

7.This Court considered the rival submission and perused the records.

8.According to P.W.1, he was the Village Vice President. He made a complaint against the appellant about the damages caused to the water pipe and the abusive words used by the appellant, to the respondent police. According to P.W.1, the said complaint was written by his uncle Ganesan. In his cross examination, he admitted that there was over writing in Ex.P1, complaint. He further admitted in his cross examination that he reached the occurrence place after the occurrence i.e, “நான் போகும் போது சம்பவம் நடந்து முடிந்திருந்ததால் யார் உடைத்தார்கள் என எனக்கு நேரடியாக தெரியாது”. He further deposed that P.W.4 president only directed him to file a case against the appellant under the PPD L Act. He also admitted the fact of excommunication of the appellant. Further, P.W.4 also deposed in similar way that he was not present in the scene of the occurrence at the time of the occurrence and also affirmed the excommunication of the appellant.



CRL.A(MD).No.349 of 2018

The remaining witnesses also affirmed the said excommunication. The appellant also explained during the 313 of Cr.P.C. that there was a land dispute between himself and one Baskara Durai and hence, the vice president and president colluded together and filed the false case. In view of the above discussion, the explanation of the appellant during the 313 of Cr.P.C questioning that a false case was registered against him is plausible one. Apart from that, P.W.1 and P.W.5 deposed that they were not present at the scene of the occurrence. In such circumstances, the presence of the remaining witnesses are also doubtful. The occurrence took place during night hours and hence, without any concrete evidence to prove the presence of the accused in the scene of the occurrence, this Court is unable to accept the case of the prosecution that the appellant was in the said occurrence. Apart from that, the witnesses also have motive against the appellant and they admitted that there was excommunication of the appellant and hence, the case of the appellant that he was falsely implicated is well founded. Therefore, in all aspects, the prosecution has not proved the involvement of the appellant in the occurrence. Hence, this Court holds that prosecution has not proved the case beyond reasonable doubt. Therefore, the appellant is entitled to acquittal.



CRL.A(MD).No.349 of 2018

9. Accordingly the appeal is allowed on the following terms:-

9.1. The judgment passed by the learned Additional District and Sessions Judge (FTC), Kumbakonam, in S.C.No.123 of 2016, dated 05.07.2018, is set aside.

9.2. The appellant is acquitted from all the charges in S.C.No.123 of 2016, dated 05.07.2018, passed by the learned Additional District and Sessions Judge (FTC), Kumbakonam.

9.3. Fine amount paid by the appellant shall be refunded to the appellant forthwith.

9.4. Bail bond executed by the appellant shall stand cancelled.

27.11.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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CRL.A(MD).No.349 of 2018

K.K.RAMAKRISHNAN,J.

vsg

To

- 1.The learned Additional District
and Sessions Judge (FTC),
Kumbakonam.
2. The Inspector of Police,
Nachiyarkovil Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.

Order made in
CRL.A(MD).No.349 of 2018

27.11.2024