



Crl.A.(MD)No.1003 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.10.2025

Pronounced on : 31.10.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.A.(MD)No.1003 of 2023

Esakkiammal @ Pappa

... Appellant/
Sole Accused

Vs.

The State represented by
The Inspector of Police,
Surandai Circle,
Surandai Police Station,
Tenkasi District.
(Crime No.36 of 2016)

... Respondent/
Complainant

Prayer : This Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records pertaining to the judgment dated 23.08.2023 passed by the learned Additional District and Sessions Judge (FTC), Tenkasi in S.C.No. 773 of 2017 and set aside the same.

For Appellant : Mr.V.Sasi Kumar

For Respondent : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)



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JUDGMENT

The Criminal Appeal is directed against the judgment of conviction made in S.C.No.773 of 2017 dated 23.08.2023 on the file of the Additional District and Sessions Court, Tenkasi.

2. The case of the prosecution is that the defacto complainant / P.W.1 (hereinafter referred as 'P.W.1') is residing in Colony Street, Keela Vellakal and the appellant / sole accused (hereinafter referred as 'accused') is residing on the backside of the P.W.1's house, that P.W.1 dumped hayricks in the vacant site belong to him on the backside of his house, which was objected to by the accused, that on 22.02.2016 at about 10.30 p.m., the accused poured kerosene and set fire to the hayricks and damaged 40 bundles of hayricks causing loss to the tune of Rs.12,000/- and that thereby the accused had committed the offences under Section 435 IPC and Section 4 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act.

3. The learned Judicial Magistrate, Alangulam, took the charge sheet on file in P.R.C.No.68 of 2017 and furnished the copies of records under



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Section 207 Cr.P.C. on free of costs. The learned Magistrate finding that the offence under Section 4 of TNPPDL Act is exclusively triable by the Court of Sessions, after compliance under Sections 208 and 209 Cr.P.C., had committed the case to the file of the Principal Sessions Court, Tirunelveli and the same was taken on file in S.C.No.773 of 2017 and thereafter, the same was made over to the Court of Additional District and Sessions Court, Tenkasi.

4. The learned Sessions Judge, on hearing both the sides and on perusal of records, being satisfied that there existed a *prima facie* case against the accused, framed charges under Section 435 IPC and Section 4 of TNPPDL Act against the accused and the same were read over and explained to her and on being questioned, she denied the charges and pleaded not guilty.

5. The prosecution, to prove its case, examined 8 witnesses as P.W.1 to P.W.8, exhibited 8 documents as Ex.P.1 to Ex.P.8 and marked 2 material objects as M.O.1 and M.O.2.



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6. The case of the prosecution emerging from the evidence adduced by the prosecution, in brief as follows:

(a) P.W.1-Sivadasan is the husband of P.W.3-Suba Devi and they are residing in Keela Vellakal. P.W.1, who is an agriculturist and also a cattle breeder, on 21.02.2016 bought 65 bundles of hayricks at the cost of Rs.300/- per bundle for feeding the cows and dumped the same on the backside of his house. The accused, who was residing nearby the house of P.W.1, raised objections stating that dust will blow from the hayricks. P.W.1 replied that he is dumping the hayricks in his place. The accused warned that she will set fire if dumped. On 22.02.2016, P.W.1 went to his field for watering and while he was returning by 10.30 p.m. along with P.W.2-Samy, they found that the accused was standing near the hayricks and when they attempted to reach the accused, she poured kerosene and set fire and immediately thereafter, went inside the house and locked it. P.W.1 along with P.W.2 and P.W.3 poured water and put off the fire but in the meanwhile, 40 bundles of hayricks got damaged and caused a loss to the tune of Rs.12,000/-. P.W.1 informed the above incident to the Village Headman on the next day morning but he advised him to lodge a police complaint. P.W.1 went to Surandai Police Station and lodged a complaint



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under Ex.P.1.

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(b) Thiru.Jeyapandian, the then Special Sub Inspector of Police, Surandai Police Station, who is no more, received the complaint from P.W.1 and registered a case in Crime No.36 of 2016 under Section 435 IPC and Section 4 of TNPPDL Act and prepared the First Information Report under Ex.P.3. P.W.7-Tmt.Selvi, the then Sub Inspector of Police, who was holding the charge of the Sub Inspector of Police, Surandai Police Station, took up the investigation and at about 12.00 noon, she went to the occurrence place and prepared observation mahazar under Ex.P.4 in the presence of P.W.4-Murugan and one Papanasam and also drew a rough sketch under Ex.P.5. P.W.7 examined the witnesses and recorded their statements. She arrested the accused at about 15.00 hours in Surandai – Pavoorchatram road near Vellakal bus stop and at that time, the accused voluntarily gave a confession statement. P.W.7 recorded the confession statement in the present of P.W.5-Sudalaikani and one Navaneethakrishnan and on the basis of the admitted portion of the confession statement under Ex.P.6, when the accused was taken to her house, she had taken out one litre size empty plastic bottle along with lid M.O.1 and a match box M.O.2 and the same were recovered under the cover of seizure mahazar under



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Ex.P.7. After returning to the police station, P.W.7 sent the accused to remand and the case properties to the Court through Form-95 under Ex.P8.

(c) P.W.8-Thiru.Perumal, the then Inspector of Police, Surandai Circle had taken up the case for further investigation and directed P.W.6-Kodeeswaran, photographer to take photos at the occurrence place, who in turn, took the photos and submitted four photographs along with CD under Ex.P.2 series. P.W.8 went to the occurrence place and examined the witnesses and since they have reiterated the same statement given to P.W.7, he did not record their statements again. After completing the investigation, he filed the final report against the accused for the offences under Section 435 IPC and Section 4 of TNPPDL Act. With the examination of P.W.8, the prosecution closed their side evidence.

7. When the accused was examined under Section 313(1)(b) Cr.P.C. with regard to the incriminating aspects found as against her in the evidence adduced by the prosecution, she denied the same as false and stated that a false case has been foisted against her. Though the accused has stated that she is having defence evidence, she has not let in any evidence subsequently.



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8. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned judgment dated 23.08.2023 convicting the accused for the offence under Section 435 IPC and sentenced her to undergo simple imprisonment for three months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month and by holding that the offence under Section 4 of TNPPDL Act was not proved, acquitted the accused under Section 235(1) Cr.P.C. Aggrieved by the impugned judgment of conviction and sentence for the offence under Section 435 IPC, the accused has preferred the present appeal.

9. Whether the impugned judgment of conviction and sentence imposed on the accused in S.C.No.773 of 2017 dated 23.08.2023 on the file of the Additional District and Sessions Court, Tenkasi is liable to be set aside? is point for consideration.

10. The learned counsel appearing for the accused would submit that the trial Court, while acquitting the accused from the charge under Section 4 of TNPPDL Act for causing damages to the property, ought not



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to have convicted the accused for the offence under Section 435 IPC, that the alleged destroyed hayricks were not at all recovered during the investigation and the prosecution has not offered any reason or explanation for such non-production and that the photographs and the CD under Ex.P.2 series were rightly not considered by the trial Court as it was no accompanied by the certificate under Section 65(B) of Indian Evidence Act.

11. The learned counsel appearing for the accused would further contend that though the incident was alleged to have occurred at about 10.30 p.m. on 22.02.2016, complaint was lodged at 11.00 a.m. on 23.02.2016, that the prosecution has not shown any reason or explanation for the delay in lodging the complaint, that though the prosecution has alleged that M.O.1 and M.O.2 were recovered in pursuance of the admitted portion of the confession taken from the accused, P.W.5-one of the confession recovery witness turned hostile and the prosecution has not chosen to examine the other witness Navaneethakrishnan and that M.O.1 and M.O.2 are easily available articles and since the same were not sent for chemical analysis, the alleged recovery cannot be given any weightage.



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12. The learned counsel appearing for the accused would further contend that P.W.3-wife of P.W.1, in her evidence, admitted that P.W.1 came to know about the incident only from one Ramesh, who is residing nearby and that the learned trial Judge, without considering the above material aspects, has come to an erroneous decision that charge under Section 435 IPC stood proved.

13. The learned Government Advocate (Criminal Side) appearing for the respondent police would submit that P.W.1 and P.W.2 gave evidence categorically that both of them had witnessed the occurrence, that P.W.3 has given clear evidence about the motive for the accused to commit the alleged offence, that the accused herself gave a voluntary confession statement and only on that basis, an empty plastic bottle along with lid and a match box were recovered from the house of the accused, that the learned trial Judge, considering the evidence available on record in proper perspective, has rightly convicted the accused and that therefore, there is nothing to interfere with the impugned judgment.

14. At the outset, it is pertinent to note that even according to the



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P.W.1, there existed previous enmity between him and the accused. P.W.1 during his cross-examination would say,

“என்னுடைய குப்பைக்கிடங்கினால் எதிரியின் வீட்டில் தூசி படுவதால் எங்கள் ஊரில் சொல்லி எங்கள் குப்பைக்கிடங்கிற்கும் எதிரி வீட்டிற்கும் இடையில் தகரத்தை வைத்து மறைத்து தடுப்பு போட்டேன் என்றால் சரிதான். ஊரில் என் மேல் எதிரி புகார் சொன்னதால் எனக்கும் எதிரிக்கும் இடையே முன்பகை வந்தது என்று சொன்னால் அவர்கள் தான் பகையாக நினைத்து கொண்டார்கள். நான் நினைக்கவில்லை.□

15. P.W.2, in his cross-examination, would admit,

□எதிரிக்கும் சிவதாஸனுக்கும் இடையே குப்பைக்கிடங்கிலிருந்து தூசி எதிரி வீட்டிற்கு வருவது சம்பந்தமாக விரோதம் உண்டு.□

16. According to the prosecution, P.W.1 bought 65 bundles of hayricks on 21.02.2016 and dumped the same behind his house and at that time, the accused objected, warning she had set them on fire, if dumped, citing dust issues. P.W.1, in his complaint under Ex.P.1, has stated that the said incident was known to two persons Murugaraj, S/o.Singadurai and Jegan, S/o.Subramanian, but his chief examination, named only



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Murugaraj, S/o.Singadurai. Whatever it is, the prosecution did not examine the said witnesses. But the fact remains that there existed previous enmity between the accused and P.W.1 prior to the occurrence.

17. It is the specific case of the prosecution that P.W.1 and P.W.2, while returning home after watering their lands, witnessed the alleged occurrence. It is pertinent to note that P.W.1 and P.W.2 are closely related. P.W.2, in his evidence, would admit that he did not need to pass through the occurrence site to reach home, but he would claim that he went to P.W.1's house to drop off tools. P.W.1 would also admit that P.W.2 had no reason to pass through the occurrence site to reach his house. As rightly pointed out by the learned counsel appearing for the accused, P.W.1 would say that there is a distance of 7 feet between the house of the accused and P.W.1's waste dumping area but P.W.2 would say that distance was only 3-4 feet. P.W.3 would admit that the accused's house is situated on the south of their waste dumping area and the accused's house is at a distance of 3-5 feet away from that place.

18. It is pertinent to mention that, as rightly pointed out by the



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learned counsel appearing for the accused, P.W.3, in her cross-examination, would admit that the counsellor, who is residing nearby, alone had informed the incident to her husband-P.W.1 but thereafter, she denied the same.

□கவுன்சிலர் ரமேஷ் என்பவர் சொல்லி தான் எங்கள் கணவருக்கு எங்களுடைய வைக்கோல் போரில் தீ பிடித்த விபரம் தெரியும் என்றால் சரிதான். சாட்சி இப்போது இல்லை என்று கூறுகிறார்.□

19. P.W.1 in his evidence, would testify that he, P.W.2, and P.W.3 put out the fire, but P.W.3 would state that they, along with street residents, extinguished it. P.W.1's complaint (Ex.P.1) also mentioned the street residents' involvement, yet the prosecution didn't examine any of them. As rightly pointed out by the learned counsel appearing for the accused, except for P.W.2, a close relative, no independent witnesses were examined, despite P.W.3's admission that Counsellor Ramesh was the first to see the occurrence and informed her husband. The prosecution has not explained why Ramesh was not examined.

20. As already pointed out, it is the specific case of the prosecution



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that the accused gave a voluntary confession statement and the same was recorded by P.W.7 in the presence of P.W.5 and one Navaneethakrishnan and on the basis of the admitted portion of the alleged confession, the accused was taken to her house and she had taken out M.O.1-bottle and M.O.2-match box from her house, which were recovered in the presence of the same witnesses under the cover of seizure mahazar. P.W.5 one of the confession and recovery witness, not supporting the case of the prosecution, has turned hostile. Though he was subjected to cross-examination by the prosecution, nothing was elicited in their favour. The prosecution, by alleging that the other witness Navaneethakrishnan was out of station, has not chosen to examine him. Though the admitted portion of the confession of the accused was shown to be marked through P.W.7, the alleged admitted portion of the confession was not at all referred. As rightly pointed out by the learned counsel appearing for the accused, the recovered articles, empty bottle and match box are common household articles, easily available.

21. The prosecution claims kerosene was poured and hayricks were set on fire, but they have taken no steps to prove kerosene was used.



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Admittedly, they did not recover burned hayricks or any materials from the scene indicating kerosene use.

22. The learned counsel appearing for the accused would contend that, as per the prosecution, the accused's house is near P.W.1's waste dumping area and the hayricks. Given this proximity, it is implausible the accused poured kerosene and set fire, risking her own home and surroundings.

23. As rightly contended by the learned counsel appearing for the accused, the alleged previous enmity is a double-edged sword, usable by either side. Without independent witnesses and the prosecution's failure to examine nearby resident Counsellor Ramesh, it's doubtful P.W.1 and his relative P.W.2 witnessed the occurrence.

24. On considering the entire evidence available on record, this Court finds that the prosecution failed to prove the charge under Section 435 IPC, but the learned trial Judge overlooked material aspects, focussing on irrelevant points, leading to an erroneous conviction. Hence, the impugned judgment of conviction and sentence is liable to be set aside



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and the accused is to be acquitted of the charge.

25. In the result, the Criminal Appeal is allowed and the impugned judgment of conviction and sentence imposed by the learned Additional District and Sessions Judge, Tenkasi in S.C.No.773 of 2017, dated 23.08.2023 is set aside. The appellant is not found guilty under Section 435 IPC and is acquitted under Section 235(1) Cr.P.C. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged. Fine amount if any paid, shall be refunded to the appellant.

31.10.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The Additional District and Sessions Judge,
Tenkasi.
- 2.The Inspector of Police,
Surandai Circle,
Surandai Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,

15/17



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Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
Crl.A.(MD)No.1003 of 2023

Dated : 31.10.2025