

**HON'BLE SRI JUSTICE M.S.K. JAISWAL**

**CRIMINAL REVISION CASE No. 114 OF 2007**

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**ORDER:**

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This Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') by the revision petitioner/accused challenging the judgment dated 20.01.2007, passed by the learned VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry, in Criminal Appeal No.231 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioner/accused for the offences punishable under Section 435 of the Indian Penal Code, 1860 (for short 'IPC'), vide judgment dated 28.09.2006 in C.C.No.71 of 2000 by the learned Additional Judicial Magistrate of First Class, Ramachandrapuram, were confirmed.

2. The revision petitioner herein is the accused in the above said C.C. The allegations are that the petitioner/accused set fire to a thatched cattle shed on a canal bund, along with others at Yerrapothavaram village, which belongs to P.Ws.1 and 2. The further case of prosecution is that just in front of the hut, which is said to have caught fire, the accused is having his land, which was being cultivated by him even though that land belongs to Sri Venugopalaswamy Devasthanam. The petitioner/accused was insisting P.W.1 and his father to remove the cattle shed from there. In that connection, there were some disputes. On the intervening night of 20.02.2000 and 21.02.2000, out of six huts on the canal bund, the hut of P.W.1 was found ablaze, which was seen by P.W.3 and informed to P.Ws.1 and 2, and thereafter on 21.02.2000 at about 6.00 P.M. in the evening the complaint was filed; on the basis of which, the F.I.R was registered and the investigation was taken up.

3. During the course of trial, on behalf of the prosecution P.Ws.1 to 8 were examined and exhibits P.1 to P.6 and M.Os.1 and 2 were marked. No defence was produced by the accused. After full-fledged trial and after hearing both the parties and on perusal of the material on record, the learned Additional Judicial

Magistrate of First Class, Ramachandrapuram, by judgment dated 28.09.2006, acquitted the accused for the offence punishable under Section 506 IPC, but convicted him for the offence punishable under Section 435 IPC and sentenced him to undergo rigorous imprisonment for a period of two years and also to pay fine of Rs.500/- in default of payment of fine amount, he shall undergo simple imprisonment for one month.

**4.** The petitioner/accused preferred Criminal Appeal No.231 of 2006 on the file of the Court of the learned VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry. By judgment dated 20.01.2007, the learned Sessions Judge dismissed the appeal confirming the conviction and sentence passed by the trial Court. Aggrieved of the said judgment, the present revision case is filed.

**5.** The contention of the learned counsel for revision petitioner/accused is that admittedly there are political disputes in between the prosecution witnesses and the accused and that both of them belong to different political parties. On the canal bund there were six huts, which were being used for tying the cattle. The petitioner/accused is said to have a grouse against those hut dwellers on the ground that the cattle, that was being tied in the cattle sheds, was destroying paddy crops, belonging to the petitioner/accused, which were in front of the huts. The learned counsel further submits that taking advantage of the hut of the complainant being found ablaze and in view of the political differences and after due deliberations, the present complaint was filed with a delay of about 18 hours. He further submits that except for the evidence of P.W.3 absolutely there is no evidence whatsoever to connect the accused with the crime. The evidence of P.W.3 cannot be believed for the reason that he claims to have seen the accused coming from the direction of the huts in the midnight, but he could not give the other details, which creates any amount of doubt about his presence at that spot in the midnight. Therefore, P.W.3 is a planted witness and on the solitary testimony of P.W.3 only both the Courts below have held that the petitioner committed the crime. Therefore, the learned counsel submitted that the petitioner/accused is entitled to acquittal.

**6.** On the other hand, the learned Assistant Public Prosecutor submits that both the Courts below have concurrently held that the petitioner has committed the

crime, and hence, convicted and sentenced the accused. The judgments of the Courts below, based on proper appreciation of the oral and documentary evidence on record, warranting no interference, and hence, the revision is liable to be dismissed.

7. Now, the point for determination is --

**Whether the accused had made out valid and sufficient grounds for his acquittal? And, if so, whether the impugned judgment is liable to be set aside?**

**8. POINT:**

P.Ws.1 and 2 are the son and father and P.W.3 is said to be the person, who at one point of time rendered services to P.Ws.1 and 2. On a canal bank there are six huts, one of which belongs to P.W.1. Those cattle sheds were being used by the villagers to keep their cattle, and adjacent to the cattle sheds there were agricultural fields. The accused is having his land, which is in front of the cattle sheds. On the ground that the cattle being kept in the cattle sheds are destroying crops, there used to be disputes between the accused and the hut dwellers to remove the huts from there. It is true that P.Ws.1 and 2 informed the accused that they will remove their hut as and when the other five huts were removed there from.

9. Coming to the incident, the case of the prosecution is that four days prior to the alleged date of incident on the same issue P.Ws.1 and 2 on the one hand and the accused had verbal exchange in the matter of removal of the cattle sheds. In the intervening night of 20.02.2000 and 21.02.2000, the cattle sheds belonging to P.Ws.1 and 2 were found burnt and this was noticed by P.W.3, who in turn informed P.Ws.1 and 2, who came there and found the huts were burnt. However, since no cattle were available in the cattle sheds, and since there was none to draft the complaint, the complaint could not be filed immediately. However, on 21.02.2000 at about 6.00 P.M. in the evening the complaint came to be lodged; on the basis of which the crime was registered. Having registered the crime at 6.00 P.M. on 21.02.2000, the F.I.R reached the jurisdictional Magistrate at 10.30 A.M. on 22.02.2000. The delay of lodging the F.I.R and its reaching the Magistrate would, in an ordinary circumstance, not

affect the case of the prosecution, fatally provided the other circumstance support the case of the prosecution witnesses. Admittedly, there are political differences in between the prosecution witnesses and the accused. Both of them are dabbling in politics; one belongs to the congress party and the other belongs to the Telugudesam Party. P.Ws.1 and 2 are not eye witnesses to the incident and they were no where near when the huts were set ablaze. The fate of the accused hinges on the testimony of P.W.3, who is said to be present and who have seen the accused coming from the direction of the hut which was burnt. A careful perusal of the evidence of P.W.3 makes it doubtful for holding that he is a person, speaking the truth and he is placing all the facts before the Court. The incident is said to have taken place in the midnight at 12.00 to 12.30 and P.W.3 claims to have been coming after watching the second show movie and at that place while he was attending calls of nature he has seen the accused coming from that direction and accordingly, he suspected that it is the accused, who set fire to the hut. P.W.3 could not name the theatre, where he went that night or could remember the movie and failed to furnish the other information with regard to his going over to the theatre to see movie and returning at that dead end of the night. That apart, P.W.3 denied that he has at any point of time worked with P.Ws.1 and 2, but, however, P.W.3, would have it that one point of time P.W.3 rendered services to them in agricultural operations. The conduct of P.W.3 in saying that the accused coming from the direction of the huts, which were burnt by itself, cannot be taken as conclusively establishing that it is the accused, who set fire to the hut. A perusal of the sketch shows that just in front of the huts there is a land of the accused. Even if P.W.3 might have seen the accused coming from the direction of the huts, which were burnt, that itself cannot be taken as presumption or concluding that the accused was coming after commission of the crime, since he was having his land just opposite to the hut. If P.W.3 has seen the accused coming from the direction, it cannot be said that it is the accused, who might have caused fire to the hut. The evidence of P.W.3, at best, creates a suspicion against the accused, but as it is well settled suspicion howsoever strong, cannot take the place of proof. Both the Courts below have failed to consider this aspect in proper perspective and have found the accused guilty for the offence punishable under Section 435 I.P.C. The evidence on record do not establish the case of the accused beyond reasonable doubt and the

accused is entitled to benefit of doubt. The point is answered accordingly.

**10.** In the result, the Criminal Revision Case is allowed, and the conviction and sentence imposed by the learned Additional Judicial Magistrate of First Class, Ramachandrapuram in C.C. No.71 of 2000 by order dated 28.09.2006, as confirmed in Criminal Appeal No.231 of 2006 on the file of the Court of the learned VI Additional Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry, is hereby set aside. The bail bonds of the accused stands cancelled. Fine amount, if any, paid by the accused shall be returned to him.

Miscellaneous petitions pending, if any, in the Criminal Revision Case shall stand closed.

**M.S.K.JAISWAL, J**

Date: 08.06.2015

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**HON'BLE SRI JUSTICE M.S.K. JAISWAL**

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