

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.243 of 2008

ORDER:

This criminal revision case by the petitioner/Accused under Sections 397 and 401 of the Code of Criminal Procedure ('the CrPC' for brevity) is directed against the judgment dated 14.02.2008 in Criminal Appeal No.86 of 2007 of the learned III Additional Sessions Judge, Warangal.

2. By judgment dated 05.10.2007 in S.C.No.282 of 2007, the learned I Additional Assistant Sessions Judge, Warangal [holding Full Additional Charge of the post of III Additional Assistant Sessions-cum-Judge, Fast Track court] found the accused guilty of the offence punishable under Section 436 read with Section 511 of the IPC and had convicted him of the said offence under Section 235 (2) of the CrPC and sentenced him to undergo rigorous imprisonment for five years and pay a fine of Rs.1,000/- and suffer simple imprisonment for a period of one month in default of payment of the said fine amount. The learned Additional Sessions Judge while dismissing the appeal and while confirming the conviction of the accused for the aforementioned offence had modified and reduced the sentence from five years to four years while maintaining the sentence of fine as imposed by the trial court.

3. I have heard the submissions of the learned counsel for the petitioner/Accused and the learned Public Prosecutor representing the respondent-State. I have perused the material record.

4. The learned counsel for the petitioner/Accused contended that the courts below had erred in placing reliance on the highly interested and discrepant testimonies of PWs 1 to 4 and that the learned Judges had failed to take note that there is no direct evidence with regard to sprinkling of kerosene on the back side door of the house of PW1 and that the circumstances relied upon by the prosecution are not sufficient to conclude that the accused had sprinkled kerosene on the back side door of the house

of PW1 and that the courts below had failed to take note that exhibit P2, which is said to be crime detail form and which contains a rough sketch of the scene of offence does not show any door or the window on the back side of the house of PW1 and that therefore, there is any amount of doubt as to whether any kerosene was sprinkled on the back side door of the house of PW1 and that the learned Judges of the Courts below had failed to take note that the circumstances do not indicate that there was an attempt to set fire to the back side door of the house of PW1 and that as per the evidence of PWs 1 and 2, there is no way to enter into the house except the main door and that being the case, the question of attempting to set fire to the back side doors of the house of PW1 does not arise and that the courts below ought to have seen that there was enmity between PWs 2 and 3 and the petitioner and a case was also instituted against PWs 2 and 3 by the brother of the petitioner and due to which PWs 2 and 3 have developed grudge against the petitioner/accused and are waiting for a chance to implicate him in a case and that the learned Judge of the court below had failed to notice that the alleged motive for the petitioner/accused for attempting to set fire to the house of PW1 is not convincing and natural and that the learned Judge of the court below ought to have seen that from a mere seizure of bottle, an inference cannot be drawn that there was an attempt to set fire to the back side door of the house of PW1.

5. The learned Public Prosecutor had contended that the prosecution by adducing necessary and required standard of evidence was successful in bringing home the guilt of the accused and that the courts below had rightly appreciated the evidence on record and recorded concurrent findings of fact and that there are no omissions or contradictions in the evidence of the witnesses who had deposed on the side of the prosecution and that the well-reasoned findings in the well-considered judgments of the courts below do not call for interference and that there is no merit in any one of the contentions of the revision petitioner and that therefore, the revision is devoid of merit and is liable to be dismissed.

6. Now the points for consideration are –

1. Whether the prosecution was successful in bringing home the guilt of the accused for the offences with which he is charged by adducing necessary and required standard of evidence?
2. Whether the accused is entitled to be acquitted in the facts and circumstances of the case? And if so, whether the judgment impugned is liable to be set aside under facts and in law?

7. POINTS:

7. (a) In this case of 'attempted mischief by fire', the case of the prosecution including the substance of the charge, in brief, is as follows: - "On the complaint of the husband of one Mekala Durga that the accused is creating annoyance to his wife in his absence, a panchayat was held by the elders including PW1 and in that panchayat, the accused was admonished by PW1 who had played an active role. In that panchayat, the said Durga and others slapped the accused. Therefore, the accused bore grudge against PW1 and was waiting for an opportunity to cause some harm to him. On the intervening night of 25/26.01.2007 at about 01.30 hours the accused, who is of bad character went to the house of PW1 and sprinkled kerosene on the back side door of the house of PW1 and tried to set it afire. But, in the meantime, PW1 who is an RMP doctor had woken up when some patient had come to his house at that time for treatment for asthma. After attending to the said patient, PW1 having sensed the smell of kerosene had woken up his wife and searched in the backyard after switching on the light in the backyard and had found the accused who was hiding in the bathroom (without doors) and caught hold of the accused red-handed. However, the accused had pushed away PW1 and had escaped. On hearing hues and cries and the galata, PW2 and LW4-D.Bhadraiah rushed to the scene. On the report lodged by PW1, the subject crime was registered and was investigated into and a charge sheet was laid against the accused."

7. (b) To bring home the guilt of the accused, the prosecution had examined PWs 1 to 6 and exhibited exhibits P1 to P4 and MOs 1 and 2.

During the course of cross-examination, exhibit D1, which is a portion of 161 CrPC statement of PW1 was marked. No evidence, either oral or documentary, was adduced on the side of the defence.

7. (c) PW1, who is said to be an RMP doctor and who is the victim, had testified as under: 'He knows the accused and PW2-K.Shankara Murthy and LW4-Damera Bhadraiah, PW3-Samala Thiruapathi, LW6-Sheggam Srinivas, LW7-Chandragiri Srinivas and PW4-Velpula Cyhinna Raiaiah. LW2-Kuthuru Swathi is his wife. On the midnight of 25.01.2007, i.e., early hours of 26.01.2007 at about 1.00 AM, an asthma patient came to his house and woke him up. He had treated the patient and went to another room to sleep. At that time, he had sensed the smell of kerosene emitting from his house. Then, he had woken up his wife and had enquired with her whether kerosene is there in the house. She had stated that there is no kerosene in the house. Then, he had put on the light outside the house and opened the back door of the house and had found that kerosene was poured on the doors of his house. Then, he had searched here and there and found a person in the bathroom of his house. He went there and caught hold of him. He is the accused herein. Then, PW1 had raised hue and cry. His wife and neighbours came to his rescue. On seeing them, the accused managed to escape by pushing him aside and ran away from the house. By the side of the house, there is a cooking gas cylinder. There was a panchayat in the village that the accused is having illicit intimacy with a woman in the village. The accused had suspected that PW1 had informed the village elders about his illicit relationship and as such, he wanted to take revenge against PW1 and therefore wanted to set fire to his house. Therefore, PW1 had lodged exhibit P1 report with the police.' In the cross-examination of PW1, the following points are elicited: 'Mylaram village is at a distance of about 1 Km from my village. Doctors might be available in Mylaram village. I do not have any licence or certificate to work as an RMP doctor. Previously, I was having a certificate, but I had lost the same. I do not know the name of the patient who came to me on that day but they belong to lambada caste. I went to the police station at about 12 Noon. LW 2 (wife of PW1) and PW2 came to the

scene of offence at the time of the incident. By the time, they came to the scene, the accused had run away from the scene of offence. PW2 is the Upa-Sarpanch of the village. LW4-D.Bhadraiah is doing agriculture. I do not know the political party of PW2. At present, an independent is the Sarpanch of the village. He is taking support of the Congress Party. I got scribed the complaint by one Shankar. I mentioned in my complaint that the accused is having illicit relationship with a woman and that I informed the elders. I do not know any case that was said to have been filed against PWs 2 and 4 stating that they beat the brother of the accused. I am having a two room house. There are doors on the front side and back side of the house. There is fencing around my house with bushes. The said bushes are about four to five feet height. There are houses present around my house. The houses of my neighbours do not have the compound walls. From the time of the incident till I went to the Police Station I was present in my house only as my relatives came to me and enquired about the incident. When I first switched on the light, it did not light up. Thereafter, I changed the bulb and saw the accused. I have stated to the police that I removed the bulb from my house, but I did not state that I removed the bulb in front of my house as in exhibit D1.' He had denied the following suggestions: 'It is not true to say that LWs 2 to 8 belongs to Telugu Desham Party. LW5 (PW3) belongs to Reddy community. It is not true to say that the accused belongs to the Congress Party and as we belong to Telugu Desham Party, we have foisted a false case against the accused. The accused ran away by passing through the bushes. It is not true to say that by bribing the police we have foisted a false case against the accused.'

PW2 had also stated that he knows the accused and PW1 and other witnesses. His version is as follows: 'On the night of 25.01.2007 at about 1 AM, when he was sleeping in his house, he heard the sound of some galata. Then, he woke up and came out of the house and had seen the accused running away from the house of PW1. He had enquired as to what had happened. At that time, PW1 had informed him that the accused herein poured kerosene on the back doors of his house.' In his cross-examination, the following points were elicited: 'I am the Upa Sarpanch of the village. I belong to TD Party. The house of PW1 is situate by the side of my house.

There are bushes and compound wall in between my house and PW1's house. The animals or people do not cross the bushes and the compound wall. If a person has to come out of the house of PW1, he has to come out from the main door. By the time, I went to the house of PW1, he and his wife were present there. PW1 is not working in any political party. He is an RMP doctor and an LIC agent. By the time I went to the house of PW1, I found Sprite bottle and slippers. I did not go to the police station along with PW1.' He had denied the following suggestions: 'It is not true to say that on 26.01.2007 I along with others beat the brother of the accused herein. It is not true to say that the police filed a case against me and others for beating the brother of the accused and we paid fine in Mulugu Court. It is not true to suggest that the accused did not commit any offence and that as PW1 moves in our company every time, we have got foisted a false case against the accused through him.' **PW3**, who is said to be an agriculturist, had also stated that he knows PW1 and the accused and the witnesses. According to his version, the police had summoned him and LW6-S.Srinivas to the house of PW1 for a panchanama and that at that time, they had observed that there were slippers and a kerosene bottle emitting kerosene smell at the scene of offence and that kerosene smell was emitting from the doors of the house of PW1 and that the police had drafted the scene of offence panchanama and had read over and explained the contents of the same to him and that thereafter, he (Pw3) and LW6 had affixed their signatures on the panchanama, exhibit P2. Though exhibit P2 was referred to as panchanama in the evidence of PW3, it is a crime detail form containing the rough sketch of the scene of offence. In the evidence, the Kerosene bottle-MO1 and the chappal-MO2 were exhibited. It was elicited in his cross-examination that he had earlier worked as Upa-sarpanch and that he belongs to Telugu Desham Party and that his wife had contested in the elections on BC certificate, but her nomination was cancelled. He had further testified that the accused does not belong to Congress Party and that PW1 does not work in Telugu Desham Party along with them and that they went to the scene of offence as police called them for panchanama and that at that time, along with him 20 to 25 people were present there and that the police had obtained his signature on

two papers, i.e., two slips and that MO1 is bearing one of the slips and that at the time of panchanama the police had obtained his signature on the slips and that along with him, another panch also had signed on the said slips and that the panchanama was drafted in front of the house after observing the scene and that there is a compound wall around the house of PW1 and that the compound wall and bushes are of about 5 to 6 feet height and that there is a gap in the bushes where from a person can pass through. He had denied the following suggestion: 'It is not true to say that as a congress candidate prevented him from contesting, they have foisted a false case against the accused.' **PW4** had testified that police had summoned him and PW3 to Gandhi Nagar bus stand and that by the time the ASI of Police and other constables were also present there along with the accused and that he had asked the accused as to what happened and why he was in the custody of the police and that at that time, the accused had confessed that there was a panchayat for the reason that the accused is having illicit intimacy and that the accused had suspected that PW1 had informed the elders about his illicit intimacy and that therefore, he wanted to beat PW1, but, he did not have an opportunity to attack him and so, on the previous night, he had consumed liquor and took a kerosene bottle to the house of PW1 and poured kerosene on the doors of the house of PW1. Thus, according to him the accused had made a confessional statement. PW5 is the ASI of Police, who had laid the charge sheet.

7. **(d)** I have carefully gone through the entire evidence on record. The accused in this case is charged with the offence punishable under Section 436 read with 511 of the IPC, i.e., 'attempted mischief by fire' with an intention to destroy the house of PW1. The penal provision of law says that the punishment that can be imposed is imprisonment for life or of a term of imprisonment of either description which may extend to ten years besides fine. According to PW1, the motive for the offence was that there was a panchayat that the accused was having illicit relationship with a woman and that the accused had suspected that PW1 had informed the elders about his relationship with the woman and therefore, he bore grudge against PW1.

The confessional statement of the accused in the presence of the police as spoken to by PW4 showing his complicity is of no avail and therefore, the evidence of PW4 has to be discarded. Except PW1, either PW2, who was the upa-sarpanch of the village or PW3, who was a former sarpanch of the village and who had acted as a panch at the time of the observation of the scene of offence did not speak of any such panchayat held in the village in regard to the illicit relationship of the accused with any woman. Therefore, on this motive aspect, except the self-serving and interested statement of PW1, there is no other evidence brought on record. In fact, the case alleged by the prosecution in this regard is contrary to the evidence of PW1. In the prosecution case, it is alleged that the husband of one Durga had complained to the elders that the accused is causing annoyance to his wife in his absence and that on that a panchayat was held and that in that panchayat, PW1 had acted as an elder and had admonished the accused and that at that time, the said Durga and others have slapped the accused and that therefore, the accused bore grudge against PW1. However, PW1 testified that information was given to the elders about illicit intimacy of the accused with a woman of the village and that the accused had suspected PW1 as the person who had given the information about his illicit intimacy to the elders. Thus, the evidence of PW1 which is at variance with the evidence collected during the course of investigation does not inspire confidence. For somebody to indulge in an act like attempt of Arson, there must be a strong motive against the victim. Therefore, it is for the prosecution to prove such motive. In this case, neither Durga nor her husband nor any other panchayat elder was examined to prove the alleged motive of the accused. Neither Durga nor her husband nor any other such elder was cited as a witness. The PWs 2 and 3, who are the Upa-Sarpanch and the former Sarpanch of the village did not make a whisper about the motive, which was attributed to the accused. On the other hand, the defence is that due to political rivalry the case was foisted against the accused. Moreover, a criminal case was filed against PW2 and others for beating the brother of the accused. It is also borne out by the evidence of PW4 that a police case was filed against PW4 and others stating that they have beat the brother of the accused and the said accused in that case paid

fine imposed by a competent court. PW2 had also admitted that a criminal case was filed against him and others for beating the brother of the accused and they had paid fine in Mulugu Court. Therefore, there is a reason for both PWs 2 and 4 for speaking against the accused and their evidence as such cannot be said to be credible evidence. PW3 is only a panch witness said to be present at the time of the observation of the scene of offence. I shall advert to his evidence at a later stage.

7. (e) Coming to the incident proper, the incident was said to have occurred at about midnight, i.e., at about 1 AM on 26.01.2007. According to PW1, on that night, when an asthma patient came to his house and woke him up, he had treated that patient and that at that time while he was returning to his room to sleep he had sensed the smell of kerosene in the house and then he had woken up his wife and enquired with her as to whether kerosene was there in the house and that on that she had stated that there is no kerosene in the house and hence PW1 had put on the light outside the house and had opened the back door of the house and had found that kerosene was poured on the back doors of his house and had then searched and found the accused in the bathroom without door in the backyard. Therefore, his wife is the best witness to support his version. But, she was not examined as a witness though she was cited as LW2. To believe the version that PW1 is an RMP doctor, no certificate of his practice was filed. He had admitted that he was not having the certificate. Therefore, whether a patient came to his house on the midnight of the incident with a complaint of asthma and woke him up is also doubtful. Be that as it may, according to PW1, after noticing kerosene on the back door of his house, he had searched here and there and found the accused in the bath room of the house and went and caught hold of him and he had also raised hue and cry and that on that his wife and neighbours came to his rescue and on seeing them, the accused had managed to escape by pushing him aside and had run away from his house. So, according to his version in the examination-in-chief, he had caught hold of the accused and raised hue and cry and on hearing his hue and cry, his wife and a neighbour came and on seeing them, the accused had escaped.

But, in his cross-examination, he had admitted that by the time, LWs 2 and 3 came to his house, the accused had run away from the scene of offence. So, there is no possibility for LW2, the wife of PW1 and LW3, i.e., PW2 to see the accused running away from the house of PW1 after pushing PW1 away. Even PW2 did not state that after he came to the house of PW1 on that night, on hearing his cries, the accused had run away after pushing PW1. According to his version, while he was sleeping, he heard a galata and therefore, he had woken up and came out of his house and found that the accused was running away from the house of PW1. Therefore, his version is that even before he came to the house of PW1, he saw the accused running away and that later, he came to the house of PW1 and enquired as to what had happened. Further, PW1 in his evidence had only stated that he saw a cooking gas cylinder by the side of his house. He did not make a mention of either a sprite bottle or a bottle containing kerosene near the back door of his house. He did not also make a mention that chappals were found at the scene. Even PW2, who came to the house of PW1 immediately on hearing some galata, did not speak of the presence of a bottle containing kerosene at the back door of the house of PW1. So, it remained unexplained as to how a kerosene bottle emitting kerosene smell had appeared at the scene of offence. PW2 in his cross-examination only had stated that he had found a sprite bottle and slippers. He did not state that the sprite bottle contained kerosene or it was emitting the smell of kerosene. He did not state as to whom the slippers belonged. Though it is the case of the prosecution that in the presence of PW3, the panch witness, a kerosene bottle and chappals were seized at the time of the observation of the scene of offence, PW3 did not state that kerosene bottle is a sprite bottle. The police did not send the content of the MO1 to FSL and obtain a report in regard to the contents of MO1 bottle. Mere marking of a bottle with liquid without any proof that the content of the bottle is kerosene and mere marking of chappals without any proof as to whom the said chappals belonged, is of no avail to the case of the prosecution. Be that as it may, if really, the accused had come to commit an offence about midnight and poured kerosene on the back door of the house of PW1, he would not have stayed back hiding in the bath room once PW1 had

switched on the light. Further, even according to PW1's version in his cross-examination, when he switched on the light, the light did not light up and therefore, he changed the bulb and then saw the accused. In the darkness of the night, how he had changed the bulb in the backyard is not explained. Further, during the process of changing the bulb by bringing it from inside the house and placing it in the bulb holder, there was a lot of time for any person like the accused to escape from the scene of offence, if really one was present there. According to the case of the prosecution, the accused did not do so. All these circumstances cumulatively would show that the case of the prosecution is doubtful and the accused is entitled to a reasonable benefit of doubt. Moreover the evidence of PW2, who had supported the case of the prosecution, is unreliable as he is inimical to the accused as he was prosecuted along with others on the charge that he and others have beaten the brother of the accused. Therefore, his evidence has to be viewed with suspicion. The incident had happened on the intervening night of 25/26.01.2007. Exhibit P1 report was lodged at 12 noon on 26.01.2007.

The scene of offence observation in the presence of panchas was said to have been done by PW5 on the next day and at that time, a panchanama was said to have been prepared according to the version of PW3. PW3 had in fact stated that he and LW6 had signed on the panchanama. However, no such panchanama was exhibited, and only crime detail form is exhibited as exhibit P2. After a careful analysis of the evidence, this court finds that the prosecution could not adduce necessary and required standard of evidence to record a finding of guilt against the accused for the offence punishable under Section 436 read with 511 of the IPC, as rightly contended by the learned counsel for the accused. I have carefully gone through the judgments of the courts below. The courts below have simply accepted the prosecution version without examining the inherent improbabilities in the case of the prosecution, which are rightly urged before this Court by the learned counsel for the accused. This court is of the considered view that the courts below had failed to appreciate the evidence in proper perspective and had failed to give cogent and convincing reasons in support of the findings recorded while overruling the contentions of the accused and that

therefore, there is no legality or propriety in the findings of guilt recorded successively by the courts below against the accused. Therefore, this Court finds that there are compelling and substantial reasons calling for interference and that the findings in the judgments of the courts below, which are unreasonable, brook interference to meet the ends of justice. Accordingly the points are answered in favour of the accused and against the prosecution.

8. In the result, the Criminal Revision Case is allowed and the impugned judgment passed in Criminal Appeal No.86 of 2007 confirming the judgment of the trial court in S.C.No.282 of 2007 finding the accused guilty is set aside. The accused is acquitted of the offence punishable under Section 436 read with 511 of the IPC. The bail bonds of the accused shall stand cancelled and the fine amount, if any, paid shall be refunded to the accused after the further appeal or revision time is over.

M. SEETHARAMA MURTI, J

19th January 2015
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