

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

Criminal Revision No.392 of 2011

Mani @ Manikandan
Petitioner/Appellant/

..

Accused

Vs

State rep. By
Inspector of Police,
Kadathur Police Station,
Crime No.3 of 2009,
Erode District.

..Respondent/Respondent/
Complainant

Prayer:- Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. to call for the records relating to the conviction imposed on the judgment dated 24.02.2011 made in C.A.No.145 of 2010 on the file of the Additional Sessions Court/Fast Track Court No.II, Govichettipalayam, confirming the conviction imposed in the judgment dated 28.10.2010 made in S.C.No.112 of 2009 on the file of the Assistant Sessions Court/Sub-Court, Gobichettipalayam and set aside the same by allowing this Criminal Revision Petition.

For petitioner : Mr. N.Manokaran

For Respondent : Mr.R.Sekar,
Government Advocate (Crl.

Side)

O R D E R

The accused in the Sessions Case in S.C.No.112/2009 on the file of the learned Assistant Sessions Judge, Gobichettipalayam, Erode District is the revision petitioner.

2. Before the said court, he was tried for an offence under Section 436 of IPC.

3. The case of the prosecution in brief runs as under:

(1) P.W.2 is the sister of P.W.1. In connection with white washing the wall, dispute arose between her and the wife of the accused. Wordy altercation took place between them. In this connection, on the side of Vasanthi @ Vaijeyanthi, a complaint has been lodged in Kadathur Police Station.

police. Mediation was conducted. On 07.01.2009, at about 6 p.m., the accused set fire to P.W.1's hut situate in Vadakku Thottam in Kasipalayam in Pallipalayam Road in Gobichettipalayam Taluk. It was witnessed to by P.Ws.3 and 4. P.W.1 lodged Ex.P1 complaint with P.W.10 Sub-Inspector of Police. She registered this case (Ex.P.9 FIR). P.W.11 Inspector investigated the case. He has recorded the statement of material witnesses under 161 Cr.P.C. He prepared Observation Mahazar (Ex.P.5) in the presence of P.W.6 and another witness. P.W.7 photographed the scene site. Concluding the investigation, police filed final report as against the accused for an offence under Section 436 IPC.

4. To establish the charge, prosecution examined P.Ws.1 to 11, marked Ex.P.1 to Ex.P.10 and exhibited M.Os.1 to 4.

5. Relying on the said evidence, the trial court convicted the accused under Section 436 IPC and sentenced him to 5 years R.I. and fined him Rs.3,000/-, in default, to undergo 6 months S.I.

6. Aggrieved, the accused has directed appeal in C.A.145 of 2010 before the learned Additional Sessions Judge (Fast Track Court No.2), Gobichettipalayam. After hearing both sides, the learned Appellate Judge, dismissed the Criminal Appeal. That is how this criminal revision by the accused.

7. According to the learned Counsel for the Revision Petitioner, the accused has been implicated in this case. Prosecution case suffers from many infirmities and improbabilities. The evidence of P.W.10 S.I. of Police shows that on the occurrence day at about 6 p.m., the accused was in Kadathur Police Station. In such circumstances, he could not have set fire to the hut.

8. Learned Counsel for the Revision Petitioner further contended that P.W.3 is nephew of P.W.1. P.W.4 is the employer of P.Ws.1 and 2. They are interested witnesses. Their evidence is artificial. They cannot be believed.

9. The learned Counsel for the revision petitioner further contended that the offence is alleged to have taken place on 07.01.2009 at about 6 p.m. However, the F.I.R. has been lodged after two days of delay. No explanation has been given for this long delay. After much deliberation, P.W.1 fabricated the F.I.R. Because of the prior enmity, he has implicated the accused. These aspects were completely overlooked by the trial court as well as the appellate court. Both the courts have not properly appreciated the evidence. This has resulted in rendering wrong finding and sentencing of the accused.

10. On the other hand, the learned Government Advocate (Crl. side) submitted that in connection with white washing the wall, a dispute arose between the sister of P.W.1 and the wife of the accused. Even a day prior to the occurrence, quarrel arose between both sides. The accused developed enmity towards P.W.1 and thus set fire to P.W.1's hut. It was witnessed to by P.Ws.3 and 4. The trial court has rightly appreciated the evidence and punished the accused. There is no occasion to interfere with the findings recorded by both the courts.

11. I have anxiously considered the rival submissions, perused the impugned judgments and also the entire materials on record.

12. Now the question is whether the findings recorded by both courts suffers from legality calling for our interference under Section 397 r/w.401 Cr.P.C.

13. It is an alleged case of mischief by fire.

14. The prosecution version is that the accused, who is having grudge against P.W.1, on 07.01.2009, at about 6 p.m., set fire to P.W.1's hut and it was witnessed to by P.Ws.3 and 4.

15. The alleged occurrence was on 07.01.2009, at about 6 p.m., in Kasipalayam, in Gobichettipalayam Taluk. On the very same day, in connection with a prior dispute, there was a compromise between both sides at Kadathur Police Station in the presence of P.W.10 S.I. of Police. The distance between the scene village and Kadathur Police Station is 15 about kms. P.W.1 had stated that during the mediation talks took place at the Kadathur Police Station, the accused was standing near the police station. The accused having been seen in the police station on 07.01.2009 between 6 p.m. and 8 p.m. also has been spoken to by P.W.10 Sub-Inspector of Police.

16. As per the F.I.R., the setting of fire to P.W.1's hut took place on 07.01.2009, at about 6 p.m. However, at that time, in Kadathur Police Station, which is at a distance of 15 Kms from the scene place, the accused was present. In such circumstances, it is highly doubtful and improbable that he had set fire to the hut of P.W.1 in the scene village. This aspect has been missed by both the courts below.

17. P.Ws.3 and 4 are eye witnesses in this case. P.W.3, is 13 years old. He is son of P.W.1's sister/P.W.2. Under P.W.4, P.Ws.1 and 2 are employed. The evidence of the alleged eye-witnesses P.Ws.3 and 4 is artificial. It is not safe to relay on them. This aspect has also been missed by both the courts below.

18. The F.I.R. has to be launched without delay. It is intended to prevent embezzlement of truth, story-telling and implicating innocent persons in a case. The unexplained delay in lodging the FIR goes to shake the credibility of the prosecution witnesses.

19. Now, in this case, already, as between P.W.1 and the accused, there is strong enmity. Even on the prior day, there was wordy quarrel between the woman folk. In this connection, a police complaint was also lodged. However, as regards the alleged occurrence that took place on 07.01.2009, at about 6 p.m., the complaint has been lodged only on 09.01.2009 at 12.30 Noon. As regards this delay, no explanation by the prosecution. In the facts and circumstances of this case, the said delay assumes signal importance. This aspect also has been missed by both the courts below.

20. In appreciating the evidence adduced before the court, both the courts below have taken into account evidence which they ought not have taken into account. They have also omitted to consider evidence which they should have considered. This has resulted in recording a wrong finding. The findings of both the courts below suffers from legality and propriety. Thus, the sentence passed on such findings must go.

21. In view of the foregoing, it is ordered as under:
- (1) This Revision is allowed;
 - (2) The conviction and sentence awarded by the trial court and the Appellate Court are set aside;
 - (3) The accused is not guilty under Section 436 of IPC;
 - (4) The fine amount shall be refunded to him.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge, Erode
 2. The Additional Sessions Judge, (formerly, Fast Track Court No.II), Gobichettipalayam, Erode.
 3. The Chief Judicial Magistrate, Erode.
 4. The Assitant Sessions Judge/Subordinate Judge, Gobichettipalayam,
 5. The Superintendent, Central Prison, Coimbatore.
 6. The Inspector of Police, Kadathur Police Station, Gobichettipalayam, Taluk, Erode District.
 7. The Government Advocate, High Court, Chennai.
- + 1 cc to Mr.N.Manokaran, Advocate SR.66011

CrI.R.C.No.392 of 2011

GJII(CO)

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Eu 19.12.16