

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.617 of 2009

JUDGMENT:

1. This revision case is filed by the petitioner-accused against the judgment dated 26.3.2009 passed by the V Additional Sessions Judge, Tirupati, in CrI.A.No.85 of 2007.

2. The case of the prosecution is as follows:

The petitioner-accused was working as Secretary in Primary Agricultural Co-operative Society (PACS), Rompicherla. P.W.1-de facto-complainant was the manager of DCC Bank, Chinnagottigallu and personal in-charge of PACS, Rompicherla. It is alleged that the accused had misappropriated the salaries of the staff of the Society to a tune of Rs.30,000/-. On the complaint made by the staff to P.W.1, he announced the date of auditing of the society funds as 19.2.2004. Expecting that he would be in trouble if the audit officers verify the records, the petitioner-accused planned to set fire to the records of the society. He purchased 20 litres of kerosene through P.W.6 to execute his plan three days prior to 19.2.2004. In the intervening night of 18/19.2.2004 at about 3.30 a.m., the accused entered into the office, opened the locks, heaped the records and furniture, poured kerosene and set fire. On the report made by P.W.1, a case was registered. After completion of the investigation, charge sheet was filed against the accused for the offence under Section 436 IPC. The learned Judicial Magistrate of First Class, Piler took cognizance of the same and made over the same to the Court of Sessions. The Court of Sessions numbered it as S.C.No.277 of 2004 and made over the same to the Assistant Sessions Judge, Piler for trial.

3. The trial Court framed a charge under Section 436 IPC against the accused, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 17 were examined and

Exs.P1 to P14 and M.Os.1 and 2 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found the petitioner-accused guilty for the offence under Section 436 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of three months. Aggrieved by the same, the petitioner-accused filed appeal viz., Crl.A.No.85 of 2007 before the V Additional Sessions Judge, Tirupati. The learned Additional Sessions Judge dismissed the appeal confirming the judgment of the trial Court. Hence the petitioner filed this revision.

6. Learned Counsel for the petitioner submitted that there is no eye witness to the incident and that the circumstances have not been proved by any cogent and convincing evidence and that there was an allegation of misappropriation of funds of the society prior to the incident and therefore, the question of custody of keys of the society with the accused does not arise and that the Courts below convicted the accused basing on mere surmises and conjectures.

7. The learned Additional Public Prosecutor submitted that the prosecution has proved the guilt of the petitioner-accused beyond all reasonable doubt and that the Courts below have properly appreciated the evidence and that the circumstantial evidence adduced by the prosecution clearly proves the guilt of the accused and that the judgment under appeal does not warrant any interference.

8. Perused the material available on record. The evidence of P.Ws.1, 6, 7, 8 to 12 supports the case of the prosecution. Nothing was elicited from the cross-examination of the above witnesses to disprove their testimony. The circumstances stated by all the witnesses unerringly pointed out the guilt of the accused beyond all reasonable doubt. In view of the evidence of the above witnesses and

in view of the concurrent findings of both the Courts below, this Court is of the view that the judgment under appeal does not warrant any interference.

9. At this stage, the learned Counsel for the petitioner submitted that the petitioner was in prison for a considerable period and he is aged about 62 years and therefore, a lenient view may be taken.

10. Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the petitioner, this Court is inclined to modify the sentence of imprisonment imposed by the Courts below.

11. In the result, the conviction recorded by both the Courts below, against the petitioner-accused for the offence under Section 436 IPC is confirmed. However, the period of sentence of five years rigorous imprisonment imposed against the petitioner-accused for the said offence is modified to that of the period, which the petitioner-accused has already undergone, while confirming the fine amount with default sentence.

12. Accordingly, the Criminal Revision Case is partly allowed. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:11th August, 2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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