

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.11 OF 2008

JUDGMENT:

This Criminal Appeal, under Section 378(3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the State against the judgment, dated 24.10.2005, in Sessions Case No.245 of 2005 on the file of the II Additional Assistant Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry whereunder and whereby, respondent Nos.1 to 5/A-1 to A-5 were found not guilty of the offence punishable under Section 436 read with 34 I.P.C. and acquitted for the said offence under Section 235(1) Cr.P.C.

2. Case of the prosecution, in brief, is as follows:

The *de facto* complainant - P.W.1 is a resident of Kotha Atchieyyapalem and prior to the incident, a canal was dug at Kotha Atchieyyapalem under Pushkara Ethipothala (Lift Irrigation) Scheme in which 20 families sustained loss on account of it including the houses of the accused. The authorities have given compensation through cheque and there were differences in the amounts distributed by the authorities and A-1 to A-5 suspected that P.W.1 is responsible for the same and bore grudge against him. On 5.6.2005, L.Ws.1 to 3 slept on the pial in front of their house and at about 10:30 P.M. or 11:00 P.M., they saw big flames in the rear side of the house. All three woke up and raised cries and went there and in the light of the flames, saw A-1 to A-5 fleeing away. The neighbours also gathered there and put off the flames, but could not succeed. On 6.6.2005, at about 3:00 P.M., P.W.1 gave a report under Ex.P-1 to the Station House Officer, Seethanagaram Police Station regarding the incident. After completion of investigation, the Sub Inspector of Police, Seethanagaram Police Station laid the charge sheet against the

accused in Crime No.56 of 2005 of Seethanagaram Police Station before the Court of III Additional Judicial First Class Magistrate, Rajahmundry for the offence punishable under Section 436 I.P.C.

3. The learned Magistrate had taken cognizance of the case in P.R.C.No.100 of 2005. Since the offence under Section 436 I.P.C. is exclusively triable by the Court of Sessions, the learned Magistrate followed the procedure contemplated under Section 207 Cr.P.C. and accordingly, committed the case to the Court of Sessions, East Godavari Division at Rajahmundry. The learned Assistant Sessions Judge, East Godavari Division at Rajahmundry has taken the case on file and numbered it as S.C.No.245 of 2005 and made over the said case to the Court of the II Additional Assistant Sessions Judge (Fast Track Court), East Godavari District, Rajahmundry for disposal.

4. On appearance of the accused and also hearing the learned Public Prosecutor and the defence counsel, charge under Section 436 I.P.C. has been framed against A-1 to A-5. The said charge was read over and explained to the accused in Telugu for which, they pleaded not guilty and claimed to be tried.

5. To substantiate the case of the prosecution, P.Ws.1 to 7 were examined and Exs.P-1 to P-10 were marked besides case properties – M.Os.1 to 5.

6. After closure of the evidence on the prosecution side, the accused were examined under Section 313 Cr.P.C. They denied the evidence on the side of the prosecution. On behalf of the accused, none was examined and Exs.D-1 and D-2 were marked.

7. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found the accused not guilty for the offence under Section 436 read with 34 I.P.C. and accordingly, acquitted them. Challenging the same, the State filed the present appeal.

8. The prosecution mainly relied on the evidence of P.Ws.1 to 3, who are the eye witnesses to the occurrence. Even according to them, on the date of occurrence, on hearing the hues and cries, they went to the place where the house was in flames and saw the accused fleeing away from the place of occurrence. The learned trial Judge, after elaborate discussion, acquitted the accused on the following grounds:

There is an inordinate delay in lodging the complaint and the same is not explained. Further, in the evidence of P.W.1, it is clearly stated in the cross examination that the Government has not acquired any land belonging to the accused, but it is the case of the prosecution that the reason for the said occurrence is due to the difference of opinion in between the accused and P.W.1 in connection with the compensation to the persons from whom land was acquired by the Government. The evidence of P.W.1 shattered the case of the prosecution since it is stated by P.W.1 that the Government has not taken any land from anyone of the accused.

9. Heard and perused the material available on record.

10. The prosecution failed to prove the motive, preparation or the execution of the crime. Hence, this Court is of the view that the said findings are in accordance with law and the trial Court rightly acquitted the accused and therefore, the impugned judgment warrants no interference of this Court.

11. Further, in a case of acquittal, if the trial Court consists of two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. In the present case, the learned trial Judge has considered all aspects and acquitted the accused. Hence, this Court

is not inclined to interfere with the judgment of acquittal of the trial Court and the appeal fails and is liable to be dismissed.

12. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 24.10.2005, in Sessions Case No.245 of 2005 on the file of the II Additional Assistant Sessions Judge, Fast Track Court, East Godavari District, Rajahmundry.

13. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

27.7.2016
AMD

THE HONOURABLE SRI JUSTICE RAJA ELANGO

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