

Bail Slip

The Appellant/Accused viz Darmaraj, aged 30 years, S/o.Ashogan, was directed to be released on bail as per order dated 08/04/2015 made on CrI.MP.No.1 of 2015 in CrI.A.160 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

CrI.A.No. 160 of 2015

Darmaraj

...Accused / Appellant

Vs.

State represented by
Inspector of Police,
Sembium Police Station,
Perambur, Chennai - 11.

...Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the conviction and sentence passed by the Learned Sessions Judge, Mahila Court at Chennai dated 18.11.2014 in S.C.No.448 of 2012 convicting the Appellant / Accused under Section 436 of IPC and sentencing him to undergo Three Years Rigorous Imprisonment and an Imposition of fine of Rs.5,000/-

For Appellant : Mr.P.Anbazhagan

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI.Side)

J U D G M E N T

The Learned Sessions Judge (Mahila Court), Chennai while passing the Judgment in S.C.No.448 of 2012 on 18.11.2014 after analysing the entire gamut of oral and documentary evidence available on record came to the conclusion that the Appellant / Accused guilty in respect of an offence under Section 436 of IPC and awarded Three Years Rigorous Imprisonment besides imposing a fine of Rs.5,000/-. In default of payment of fine, he was directed to undergo further Six Months Simple Imprisonment. Also he was given the benefit of Section 428 of Cr.P.C.,

2. Assailing the legality, validity and correctness of the Judgment dated 18.11.2014 in S.C.No.448 of 2012 passed by the trial court, the Appellant / Accused has focussed the instant Appeal by taking a plea that the trial court had committed an error in not taking note of the necessary facts, which point out that the offence under Section 436 of IPC was not made out.

3. The Learned Counsel for the Appellant urges before this Court that there is no direct evidence in the main case in S.C.No.448 of 2012 on the file of trial court and in fact resting on surmises and conjectures. The trial court had found the Appellant / Accused guilty under Section 436 of IPC and imposed upon him the necessary punishment. The Learned Counsel for the Appellant contends that P.W.1 (on his re-examination on 01.04.2014) had stated before the trial court that he does not know whether on the date of occurrence, the Appellant / Accused had set fire to the hut.

4. In effect, the plea of the Learned Counsel for the Appellant is that the evidence of P.W.1 (in re-examination) does not support the case of prosecution and as such, his evidence is to be discarded by this Court.

5. Advancing his arguments, the Learned Counsel for the Appellant submits that P.W.2 (Sister of P.W.1 and Neighbour) in her evidence had deposed that she had not seen the Appellant / Accused setting fire to the hut. As such, it is the stand of the Appellant that evidence of P.W.2 also does not lend support to the case of the prosecution.

6. Lastly, while winding up, the Learned Counsel for the Appellant contends that the evidence adduced by the prosecution in the main case had not led to the only inference of guilt of the Appellant / Accused and inasmuch as there was no direct evidence against the Appellant, in respect of offence under Section 436 of IPC trial court's Judgment of conviction passed against the Appellant in S.C.No.448 of 2012 is clearly unsustainable in the eye of Law.

7. Per contra, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent / Complainant that before the trial court, in the main case on behalf of the prosecution, witness viz., P.W.1 to P.W.12 were examined and Exhibits P.1 to P.7 were marked. Also M.O.1 to M.O.4 were marked. On the side of the Appellant / Accused (Defence Side) no one was examined as a witness and no document was marked. As a matter of fact, the trial court had appreciated the evidence of prosecution witness in a whole some fashion and ultimately found

the Appellant / Accused guilty in respect of an offence under Section 436 of IPC and imposed necessary punishment (including the levy of fine of Rs.5,000/-).

8. In pith and substance, the stand of the Respondent is that since the trial court's Judgment in S.C.No.448 of 2012 does not suffer from any material irregularities or patent illegalities, it may not be displaced by this Court at this distance point of time.

9. At the outset, this Court pertinently points out that the charge levelled by the Respondent / Prosecution against the Appellant / Accused is that the P.W.1, Amulu and the Accused are residing at nearby house and on 30.06.2011 at about 11.30 hrs., the Appellant (Accused) and his wife, Sudha had wordy altercation for quite a long time and approximately at 12.40 hrs, the Appellant / Accused uttered to his wife that he would set fire to her, her children together with the house and by so saying he poured the kerosene by taking out from the plastic bottle on the hut and immediately his wife took the child and came out and at that time, he lit the match stick and put the same on his upper portion of the hut, as a result of which, his house, Complainant's house and the nearby houses of Thangam, Mumtaj and Vivekanandan and also the articles inside the house were burnt on fire and since there was a loss in every house at the rate of Rs.10,000/- in all Rs.30,000/- he had committed an offence under Section 436 of Indian Penal Code.

10. For a fuller and better appreciation of the facts of the main case, this Court makes a useful and pertinent reference to the relevant evidence of prosecution witnesses.

11. It is the evidence of P.W.1 (Complainant) that she knows the Appellant / Accused and that she resides next to his house and on 30.06.2011, she completed her work during night time and when she was at her house, the Appellant after consuming liquor was indulging in quarrel in his house and that they kept quiet because of the reason that the quarrel between the Appellant and his wife would take place quite often.

12. P.W.1 in her evidence adds that when they enquired the Appellant about the quarrel between him and his wife, the Appellant / Accused had asked her as to why was she intervening in the matter and therefore she had not asked anything with him. Furthermore, it is the evidence of P.W.1 that the quarrel, which took place between the Appellant and his wife became worse and it was continuing on that date at that point of time.

13. Besides the above, P.W.1 proceeds to state in her

evidence that when the quarrel was taking place, the Appellant / Accused's wife came out with the child at that time, the Appellant / Accused had raised noise by saying that if she (his wife) went out he would set fire to herself and the child and when his wife came out, the Appellant after lighting the match stick put the same on the upper portion of the hut and at that time, 5 houses, Mumtaj, Vivekanandam, Kalaivani, Soundarajan, Radha and Selvaraj were erased to the ground and that no one took their belongings since they came out after raising noise and that the fire service personnel had doused fire and later when they went inside their house, they found all their articles / belongings were burnt (except the Dress worn by them), and that the complaint given by her was Ex.P1. Further, 7 Photos (M.O.1 Series) were taken by the police at the place of occurrence.

14. P.W.1 (in her cross examination) had deposed that the kerosene bottle which was picked up by the Appellant / Accused and he lit match stick for once and put it on the cloth which was burnt, as a result of which the Hut was set on fire.

15. From the above evidence of the P.W.1, it is candidly clear that P.W.1 had witnessed the occurrence and in fact she had spoken about the role of the Appellant / Accused while setting fire to his hut on the date of occurrence. Her evidence is reliable cogent, coherent and convincing one. As such, this Court without haziness accepts the same.

16. P.W.2 in his evidence (in chief examination) had deposed that on 30.06.2011 a quarrel broke about between the Appellant / Accused and his wife, as a result of which, the Appellant / Accused set fire to the hut with an aid of kerosene and resultantly his wife came out together with her child and in the incident nearby five houses were burnt and his sister (P.W.1) had given the complaint.

17. Significantly, P.W.2 in his evidence (in cross examination) had deposed that he had not seen the Appellant / Accused setting fire to his house, but the Appellant ran away and they saw him on the next day and a complaint was lodged at 9.00 a.m.

18. P.W.3 in her evidence had deposed that the Appellant / Accused is residing nearby her house and daily a quarrel would take place in the Appellant's house between himself and his wife (which would be a continuous affair) and that likewise on 30.06.2011 a quarrel broke out between the Appellant and his wife at about 12.30 in the night and on earlier occasion when

the quarrel took place between them, and the house was set on fire, they went there and doused the flames. Finally, on 30.06.2011 at about 12.00 'o' clock in the night when quarrel broke out between the Appellant / Accused and his wife, a noise was heard in regard to the vessels have been thrown out and when they came out, they saw at that time, the Appellant / Accused took a kerosene bottle and sprinkled the same into his house and after setting fire, he ran away because of the enrage flames, six houses got damaged (including her house) and that when examined by the police, they had stated that the Appellant / Accused ran away after setting fire to his hut.

19. P.W.3 in her evidence had also proceeded to state that after the incident, the Appellant / Accused ran away and got himself hidden in his aunt's house.

20. It is the evidence of P.W.4 that on 30.06.2011 night when he came out, he saw the Appellant / Accused's wife along with her children crying and that the Appellant / Accused ran away from the place and he was informed by the nearby residence that it was only the Appellant / Accused had set fire to the house and ran away from the scene of occurrence.

21. P.W.5 had deposed in her evidence of P.W.5 that on 30.06.2011 at about 12.30 p.m., in the night a quarrel took place between the Appellant / Accused and his wife and about 12.30, when people raised noise, he came out and saw that five, six houses were burning and nearby people informed him that it was the Appellant / Accused who poured kerosene and set fire to the house as a result of which, all the house got burnt.

22. P.W.6 (Wife of the Appellant) in her evidence had stated that she along with her child was in the house and during night time, since her child was crying, she gave milk to her child and at that time, she heard a noise of roaring from the back side and on the back side, her house was burning and immediately she raised noise and called others and at the said place, only ladies were there, who poured water and dowse the fire and immediately the next house also got burnt in the fire and Gas cylinder was also burnt and immediately the fire service personnel were informed through phone who poured water after arriving at the scene (also helped in bringing the fire under control). P.W.6, Wife of the Appellant was treated as 'Hostile Witness' by the trial court.

23. P.W.7 in his evidence had stated that two years before, one day he was sleeping in his house at about 12.30 p.m., 1.00 a.m. in the night, he heard the noise raised by others and he came out of the house and that he was informed that there was a

quarrel and on the next day, due to the quarrel between the Appellant / Accused and his wife, the Appellant / Accused had set fire and ran away from the scene.

24. P.W.8 in his evidence had deposed that he had seen the Appellant / Accused and since he is aged and that he does not remember that what were the articles seized and that in Ex.P.2, Observation Mahazar his signature was found and in Seizure Mahazar, Ex.P.3 is signature was found and that he was examined by the police.

25. P.W.9 in his evidence had deposed that on 20.06.2011 at about 11.00 p.m., in the night, house was burning and every body went there and saw the same and he also went along with others and on 01.07.2011, the police visited to the scene of occurrence and at that time, when nearby residents had gathered there, the police prepared a Rough Sketch and at the place of occurrence various articles were found and he does not remember that whether the articles produced before the Court were seen at the time and that his signature was in Ex.P.4, Observation Mahazar and in Ex.P.3, Seizure Mahazar.

26. P.W.10, in his evidence had deposed that on 01.07.2011 when he was serving as Fire Service House Officer at Esplanade Station at about 1.05 a.m. from the fire service control room, a call was came in regard to the fire incident and he got information that opposite to the RBCC school, there was an incident on fire he went there together with the Sembiam and Vysarpadi Fire Service Vehicle and he also went to respond with the fire service vehicle on his station bearing no.TN38G 0580 and in the place of occurrence, three huts fired were doused and in the incident no life was lost and the houses of Dharmaraj, Mumtaj and Thangam were damaged in the fire and the loss was estimated at Rs.15,000/- and that he was examined by the Inspector of Police, Sembiam Police Station.

27. P.W.11 in his evidence had deposed that he received the written complaint of P.W.1 at the K.1, Sembiam Police Station on 01.07.2011, when he was serving as Crime Inspector and was also holding additional charge of Inspector of Police, Law and Order, at about 11.00 hrs, registered a case in Crime No.694 of 2011 under Section 436 of IPC and registered the FIR, Ex.P.5 and later went to the scene of occurrence, inspected the same and in the presence of witness, Gopinath and Gopalakrishnan, he prepared Observation Mahazar and Rough sketch and Rough sketch was Ex.P.6 and he also seized the articles M.O.2 to 4 under Seizure Mahazar, Ex.P.7 and transmitted the case properties under Form 95 to the Court. Further, P.W.11 had examined witnesses namely, the complainant, Amulu (P.W.1), Sudha, (P.W.6)

Thangam, Mumtaj, Vivekanandhan, Kalaivani, Radha, Soundararajan and Selvaraj and recorded their statements. Later, he prepared Observation Mahazar and Seizure Mahazar in front of the witnesses and examined the witnesses Gopinath and Gopalakrishnan and recorded their statements and also examined the Station House Fire Officer and recorded his statement and later he handed over the case papers Inspector of Police, Law and Order.

28. P.W.12 (formerly Inspector of Police, K1, Sembiam Police Station) in his evidence had stated that he took up the further investigation of the case registered in Crime No.694 of 2011 under Section 436 of IPC from P.W.11 and after completion of investigation he laid a charge sheet against the Appellant / Accused under Section 436 of Indian Penal Code.

29. It is to be pointed out that to attract an offence under Section 436 of IPC, (i) There ought to be a commission of 'Mischief' by fire or any explosive substance (ii) An act should have been committed intending to cause and knowing it to be likely that the accused will thereby caused the destruction of any building. (iii) Building should be one which is ordinarily used as a place of worship or as a human dwelling or as a place for custody of property.

30. It is to be borne in mind that to bring home an offence under Section 436 of IPC, the onus is on the prosecution to establish the salient features required to be established under Section 426 of IPC. Apart from that, the prosecution is to establish the essential ingredients in respect of an offence under Section 436 of Indian Penal Code. 'Mischief' is defined in Section 425 of IPC. In fact, Section 436 of IPC is attracted when the Mischief cause the results in destruction of a building.

31. To put it succinctly, the term 'Building' does not mean it ought to be either brick-built or mud-built or a building of some such some durable materials. Undoubtedly, ' Mischief by Fire' is not a simple offence.

32. In reality, an intention is a vital element in a charge under Section 436 of IPC. Setting fire to one's own Hut / House or Belonging to another person will endanger the life of others and result in destroying the property. Even a thatched hut made of reeds and mud is a building, provided the same is used for human dwelling or for custody of property, as opined by this Court.

33. Be that as it may, as far as the present case is concerned, it is established on behalf of the Respondent / Prosecution that the Appellant / Accused had set fire to his

house on 30.06.2011 and in this regard the evidence of P.W.1, P.W.3 and P.W.6 are of pivotal assistance to the prosecution and in the fire incident, admittedly, the houses of P.W.1 to P.W.4 got burnt and damaged and the loss was estimated at Rs.30,000/-.

34. At the risk of repetition that in the instant case, the prosecution had adduced evidence through its witnesses that frequent quarrel would take place between the Appellant / Accused and his wife and it appears that the Appellant / Accused is addicted to drinks and used to pick-up quarrel with his wife during night time and on the day of occurrence, he picked up quarrel with his wife, P.W.6 and at about 12.00'o' clock in the night he set fire to the house, because of which the nearby house belonging to P.W.1 to P.W.4 were razed to the ground. In short, the prosecution in the present case, had adduced enough evidence by examining relevant witnesses and in fact the trial court after careful and meticulous examination of the evidence of the said witnesses came to the right conclusion that the Appellant / Accused was guilty in respect of an offence under Section 436 of Indian Penal code. The said finding of guilt, in the considered opinion of this Court does not suffer from any legal flaw.

35. Insofar as the imposition of punishment of Three Years of Rigorous Imprisonment awarded by the trial court in respect of an offence under Section 436 IPC, this Court taking into all the attendant facts and circumstances of the present case and also that on the day of occurrence on 30.06.2011 at the time of commission of offence, the Appellant was in drunken state and hence reduces the punishment of Three Years of Rigorous Imprisonment to that of One and a Half years. However, this Court is not displacing the imposition of fine of Rs.5,000/- imposed by the trial court. Consequently, the Criminal Appeal succeeds, in part.

In fine, the Criminal Appeal is allowed in part. The Learned Sessions Judge, (Mahila Court) Chennai is hereby directed to secure the presence of the Appellant / Accused and to immure him in prison to serve the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

VGI (CO)
RS (23/02/2017)

To

1. The Learned Sessions Judge, Mahila Court
Chennai
2. Thro'The Principal Judge, City Civil Court,
Chennai.
3. The V Metropolitan Magistrate,
Egmore, Chennai.
4. Thro'The Chief Metropolitan Magistrate,
Egmore, Chennai.
5. The District Collector,
Chennai.
6. The Director General of Police,
Mylapore, Chennai.
7. State represented by
Inspector of Police,
Sembium Police Station,
Perambur, Chennai - 11.
8. The Superintendent,
Central Prison, Puzhal, Chennai.
9. The Public Prosecutor,
High Court, Madras.
10. The Record Keeper,
High Court, Madras

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M.VENUGOPAL, J.,

ssd

Crl.A.No. 160 of 2015

01.02.2017



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