

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Cr1.R.C.No.204 of 2013

Rajadurai

... Petitioner/Accused

Vs

The Sub Inspector of Police,
B13 Podanur Police Station,
Coimbatore.
(Crime No.501 of 2008)

... Respondent/Complainant

Prayer:- The Criminal Revision has been filed under Section 397 & 401 of Cr.P.C., to call for the records relating to the judgment of Conviction and Sentence in Calendar Case No.53 of 2009 dated 11.05.2012 on the file of Judicial Magistrate No.VII, Coimbatore as confirmed by the judgment dated 23.01.2013 in Criminal Appeal No.155 of 2012 on the file of the learned III Additional District & Sessions Judge, Coimbatore and set aside the same, thereby allow the present Criminal Revision Case.

For petitioner : Mrs.AL. Ganthimathi

For Respondent : Mr.R.Ravichandran,
Government Advocate
(Cr1. Side)

सरायमेव जयते
O R D E R

The case of the prosecution is that due to previous enmity, on 22.06.2008 at about 2.40 a.m., the accused set fire to the motor cycle bearing Registration No. TN 37-AL-4973 kept in front of house of P.W.1. P.W.1 and P.W.2 saw while the revision petitioner jumping from the compound wall and running away. Accordingly, the defacto complainant lodged the complaint before the respondent police and the same was registered in Crime No.501 of 2008 against the petitioner for offence under Section 435 of IPC. After completing the investigation, charge sheet was filed before the learned Judicial Magistrate No.VII, Coimbatore. The learned Judge has taken the case on file in C.C.No.53 of 2009. After completing trial, the learned Judge has convicted

the accused for offence under Section 435 of IPC and imposed a sentence of 6 months simple imprisonment and to pay a fine of Rs.500/-, in default, to serve two month's simple imprisonment.

2. Challenging the said judgment of conviction and sentence, the petitioner preferred an appeal before the learned District and Sessions Judge, Coimbatore. The learned learned District and Sessions Judge, Coimbatore has taken the Criminal Appeal on file in C.A.No.155 of 2009 and in turn made it over to the learned III Additional District and Sessions Judge, Coimbatore. The learned Judge, after hearing both sides, dismissed the appeal and confirmed the judgment of the learned Magistrate. Challenging the said judgment, the accused has filed the present revision before this Court.

3. The learned counsel for the revision petitioner would submit that in this case, there is no eye witness in the occurrence. Even P.W.1 gave the complaint on suspicion and P.W.1 has not seen the incident, further, he has stated that he and his wife saw the accused scaling the wall, but, P.W.2 told that her husband only saw the incident. Except P.W.1, there is no other eye witness to the occurrence. Both the Courts below have failed to consider these aspects. The learned counsel further contended that due to construction of common drainage, there was previous enmity between the revision petitioner and the defacto complainant. In these circumstances, the defacto complainant has lodged a false case and prosecution has not also investigated the case properly and police have foisted a false case against the revision petitioner. The Courts below have failed to consider these vital aspects.

4. The learned Government Advocate (Crl. Side) would submit that P.W.1 has clearly stated that he has seen some persons setting fire to his vehicle. Immediately, P.W.1, opened the window and informed his wife. At the time, the revision petitioner jumped from the compound wall of the defacto complainant and ran away. At the time, the vehicle was on fire. P.W.1 preferred the complaint with the respondent police. All the prosecution witnesses have categorically stated about the incident. P.W.1 has clearly said that the revision petitioner has set fire to the vehicle. Investigation also clearly revealed that the revision petitioner has set fire to the vehicle and therefore the learned Government Advocate submitted that there is no perversity in the judgment of the trial Court.

5. Heard both side and perused the materials available on record. The case of the prosecution is that due to previous enmity with regard to the construction of the common drainage, the revision petitioner entered into the house of the defacto complainant illegally and set fire to his motor cycle. On

hearing the noise, P.W.1 opened the window and saw the vehicle burning on fire. He immediately call his wife and both of them looked through the window. The revision petitioner scaling the compound wall and running away from the scene.

6. The learned counsel for the petitioner contended that P.W.1 and P.W.2 are interested witnesses and there is no independent witnesses to the occurrence. Under the said circumstances, this Court has to visualize the situation, the incident took place at 2.40 a.m. i.e. little passed midnight. One cannot expect any independent witness at that time. Admittedly the incident has taken place in the house of P.W.1. The revision petitioner is entered into the house and set fire to the vehicle. It is quite natural that only P.W.1 and P.W.2 were present. They have categorically stated that they saw the revision petitioner scaling there compound and running away from the scene. There is absolutely no need to doubt to veracity of the evidence of P.W.1 and P.W.2. Therefore, this Court is of the opinion that the Courts below have analyzed the evidence given by the prosecution and arrived at a correct conclusion in convicting and sentencing the revision petitioner.

7. In the result, the revision fails and the conviction and sentence imposed on the revision petitioner by the Court below is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.VII,
Coimbatore.
2. The III Additional District & Sessions Judge,
Coimbatore.

+1cc to Mr.A.L.Gandhimathi, Advocate Sr.60747

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srg 24/07/2019