

Bail Slip
The accused namely sakthivel, S/O Subramani was released on bail
vide order dt:18/03/2013 in MP.No.1/13 in CRL.R.C.No.363/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE P. VELMURUGAN

Cr1.R.C.No.363 of 2013

Sakthivel

.. Petitioner

Vs

State rep. By
Inspector of Police,
Bommidi Police Station,
Dharmapuri District.
(Crime No.13 of 2005)

.. Respondent

Prayer:- Criminal Revision filed under Section 397 r/w 401
Cr.P.C., against the judgment passed by the learned Principal
District and Sessions Judge, Dharmapuri, in Criminal Appeal No.6
of 2011 dated 30.07.2012 in confirming the judgment passed by
the learned the Assistant Sessions Judge, Harur, in S.C.No.170
of 2006, dated 17.03.2011.

For Petitioner

: Mr.R. John Sathyan
(Legal Aid Counsel)

For Respondent

: Mr. R. Ravichandran
Government Advocate
(Criminal Side)

O R D E R

This Criminal Revision has been filed by the
petitioner/accused who is convicted for the offence under
Section 436 I.P.C., against the Judgment passed by the learned
Principal District and Sessions Judge, Dharmapuri, in Criminal
Appeal No.6 of 2011 dated 30.07.2012 by which confirming the
judgment of the learned the Assistant Sessions Judge, Harur, in

S.C.No.170 of 2006, dated 17.03.2012 wherein the sentence of the accused is to undergo Rigorous imprisonment for a period of two years and to pay a sum of Rs.2,000/- in default to undergo simple imprisonment for six months.

2.The brief facts of the case as follows:

2(i).The case of the prosecution is that the petitioner/accused is the son of P.W.4/Subramani. As the relationship between the petitioner/accused and the P.W.4, the father of the petitioner, was in enmity, the petitioner/accused, on 09.01.2005, at about 2.00 a.m., set fire to the tea shop of his father and there upon it was spreading over to other shops. On account of this, the shop of the petitioner's father and other shops were damaged and the value of the total damages to the shops is as follows:

1. Tea shop run by Subramani
(Father of the petitioner/Accused) - Rs.7000/-
- 2.Tea shop run by Sundaramoorthy -Rs.4,000/-
- 3.Tiffin shop run by Lakshmi-Rs.1,000/-
4. Bangles Shop run by Malliga -Rs.1,000/-
5. Hair Cutting saloon run by Madhu -Rs.7,000/-
6. Cycle Mechanic Shop run by Kala @ Akbar Ali-Rs.1,500/-
7. Cycle Hire Shop cum Beeda shop run by Shameem Basha -Rs.5,000/-
8. Cycle Hire Shop run by Chan Basha-Rs.3,500/-
9. Bunk Shop and S.T.D. Booth run by Sekar-Rs.50,000/-

2(ii) In view of the above, a case has been booked under Section 436 of I.P.C. by the Inspector of Police, Bommididi Police Station, in Cr. No.13 of 2005 and charge sheet was also filed on 16.09.2005 against the petitioner/accused. In this connection, the witnesses' statement were recorded as follows:

(i) P.W.1, Sekar, who was running Beeda Stall there, heard a noise that his shop was under fire. When he came out along with his son, his shop was fully gutted. He came to know that the petitioner had set fire due to estranged relationship over his father P.W.4. His complaint is marked as Ex.P1.

(ii) P.W.2. Unus is an auto driver. He has seen the petitioner/accused setting fire upon his father's shop when he was taking tea in the opposite tea shop of the occurrence place.

(iii) P.W.3 Ravi is also auto driver. He has seen the petitioner/accused standing near the shop of his father while the fire was flaming on the shop.

(iv) P.W.4 Subramani is the father of the petitioner/accused. He did not know who put the fire on his shop. For the purpose of receiving compensation, he has put his signature as a witness.

(v) P.W.5. Sundaramoorthy is having tea stall near the occurrence of the place. He was informed by P.W.3. Ravi that the petitioner/accused set fire to the shop.

(vi) P.W.6. Chandrasekar is a worker in Murugesan Hotel which is situated in front of the place of occurrence. He has put signature as one of the witnesses.

(vii) P.W.7. Sameem Basha is having Cycle Shop in the place of occurrence. On the day of occurrence, he was informed that his shop was burnt. He came to know that the petitioner/accused set fire to the shop. His signature in the complaint against the petitioner/accused is marked as Ex.P.4.

(viii) P.W.8. Shan Basha is also running cycle shop in the place of occurrence. He went to the place of occurrence on the next day after hearing this incident from P.W.2.

(ix) P.W.9. Babu is running a welding shop in the place of occurrence. When he came to the shop, his shop was fully burnt. He was informed that the petitioner/accused set fire in the shop due to quarrel with P.W.4.

(x) P.W.10 Vediappan, who is running Book stall and S.T.D. Booth near the place of occurrence, came to know that the petitioner/accused has set fire to the shops due to difference of opinion with his parents.

(xi) P.W. 11 Pitchai, who was working as Sub-Inspector during the time of occurrence, received complaint from P.W.1 and registered a case under Section 436 I.P.C. against the petitioner/accused. He had taken up the case for investigation and after reaching the place of occurrence, he had prepared an observation magazar in the presence of P.W.6 Chandrasekar and Kumaresan. He has examined all the above said witnessess and recorded the same for the prosecution side.

3. After prosecution was closed with the examination of these witnesses, the petitioner/accused was examined as D.W.1 and he deposed in his evidence that he has filed a divorce petition against his wife before Sub-Court, Dharmapuri, as his wife had illicit relationship with other one. The same was allowed. He was attacked by someone and threatened by the Inspector of Police to pay a sum of Rs.2,00,000/- (Rupees Two lakhs only) to his wife. Otherwise, he will be foisted in a

false case. Further, he deposed that P.W.5, Sundaramoorthy was running tea stall with gas cylinder there. The cylinder could have blasted on the occurrence. On his side, The divorce petition and its order was marked as Ex.D1, the wound certificate dated 13.06.2004 was marked as Ex.D2, the advocate notice with postal receipts were marked as Ex.D3, and the acknowledgment card was marked as Ex.D4.

4. The learned Subordinate Judge, Harur, after considering and perusing the above documents and evidences, convicted the petitioner/accused under Section 436 of I.P.C. and sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo 6 months simple imprisonment.

5. Aggrieved by the conviction and sentence passed by the learned Sub-ordinate Judge, the petitioner/accused preferred an appeal in C.A. No.06 of 2011 on the file of the Principal District & Sessions Judge, Dharmapuri.

6. The learned Principal District & Session Judge has perused all the evidence and documents filed in support of both sides. After analyzing the facts and circumstances of the case and arguments advanced by both sides, the learned Principal District & Session Judge confirmed the sentence by judgment dated 30.07.2012 as ordered by the learned Sub-ordinate Judge, Harur.

7. Aggrieved by the judgment dated 30.07.2012 of the learned Principal District & Session Judge in Criminal Appeal No.6 of 2011, this Criminal Revision No.363 of 2013 has been filed.

8. The learned Counsel for the petitioner would contend that P.W.4, father of the petitioner was treated as hostile by the prosecution, as he did not support the case of the prosecution. As a result, the prosecution failed to establish the motive of the petitioner when the entire prosecution case is based on the motive.

9. The learned counsel for the petitioner would further contend that the main eye witnesses P.W.2 and P.W.3 have not given plausible reason as to why they should be at the place of occurrence at an odd time. Further, the complaint was lodged by the P.W.1 according to statement of the P.W.2 and P.W.3 with a delay of 8 hours even though the police station is within one and half kilometers from the place of occurrence. After registering the case, the police has reached the place of occurrence and investigated about the incidents as well as recorded statements from the witnesses. Therefore, benefit of doubt is possible in this case against the petitioner/accused. On the other hand, the petitioner/accused was not discriminated

by any other witnesses and only the value of damages was complained by them as a result of occurrence. Further, without considering the above said aspects, the learned Principal District & Sessions Judge, has confirmed the sentence against the petitioner/accused. Hence, the judgment dated 30.07.2012 passed by the Principal District & Sessions Judge, Dharmapuri is liable to be set aside.

10. On the contrary, the learned Government Advocate would submit that the accused was booked under Section 436 of I.P.C. after making thorough enquiry with the witnesses. The petitioner/accused set fire on the shop of P.W.4, who is father of the petitioner/accused, with the motive of hostility due to family issue and the fire was spreading over to other shops in that place. The eye witnesses P.W.1 and P.W.2 have confirmed that they have seen the petitioner/accused setting fire on the shop of his father on that night. In the trial, many of the witnesses were examined regarding the incidence and on the prosecution side, Ex.P1. to Ex.P8 and M.01 to M.03 were marked.

11. The learned Government advocate further would argue that the complaint was given by the P.W.1 and P.W.2 and P.W.3 are eyewitnesses. Both the eye-witnesses have seen the petitioner/accused standing in front of the shop of his father and stating that the petitioner/accused has taken away a match box from his pocket and put fire upon his father's shop. They have chased the petitioner/accused to hold him, but they have failed to catch him besides many of the witnesses have confirmed that the petitioner/accused has set fire to the shop for having conflict with his father. The damages have occurred by spreading over the fire to other shops. The value of the damages caused by fire in the shops has been reported by witnesses. P.W.4, Subramani being the father of the petitioner/accused, deposed that the petitioner/accused did not put fire on his shop and turned as hostile by the prosecution. But, all other witnesses stated that the occurrence had taken place due to the act of the petitioner/accused. In the appeal, the learned Appellate Judge has held that the witnesses have deposed in such a way which corroborated with each other evidences and rightly, confirmed the sentence to the accused. Hence, the petitioner is liable to be punished.

12. Heard the learned Counsel for the petitioner/accused and the learned Government Advocate and perused the entire evidences and documents produced by the both sides.

13. There are two eye witnesses to the occurrence. P.W.2 and P.W.3 are the eye witnesses. The De-facto complainant, P.W.1, who has the shop in the place of occurrence, has informed the police station regarding the incident wherein he has stated

that after hearing voice about fire on his shop, he has gone to the place of occurrence and tried to put off the fire. Even though the distance of the police station is one and half kilometer from the place of occurrence and the occurrence had taken place on the night of 08.01.2005, the complaint was given by the P.W.1 on 09.01.2005 at 3.00 A.M. as P.W.1 was busy in putting off the fire on that night.

14. It is also seen that the prosecution witnesses P.W1 and P.W.2 have seen the petitioner/accused at the place of occurrence setting fire on the shop of P.W.4. who is father of the petitioner/accused. But P.W.4 has not given any evidence against the petitioner/accused. Hence, the prosecution has not clearly explained the motive of the incident and the P.W.4, did not implicate the petitioner/accused even though it is stated that the occurrence happened due to misunderstanding with his son. In this circumstances, despite other material evidence, the P.W.2 and P.W.3 are substantial eyewitnesses for the said occurrence. But, the prosecution has clearly proved the motive of the petitioner/accused regarding the quarrel between the petitioner/ accused and P.W.3. Since there is no reason to discard the said eyewitness, the prosecution case is proved beyond reasonable doubt. P.W.1 & P.W.5 to P.W.10 evidences are also corroborated with the evidence of eye witnesses of P.W.2 and P.W.3 and they have no motive against the petitioner/accused. Hence, there is no reason for false implication against the petitioner/accused. Since the evidence of the witnesses is cogent and convincing, which is also supported with the other evidence, this Court is of the view that there is no reason for disbelieving the other witnesses and both the Courts below have rightly convicted the accused. This Court finds no perversity in judgment of the Courts below. Hence, conviction against the appellant is confirmed.

15. Taking into consideration the above aspects, the sentence imposed on the petitioner/accused alone is modified to one year instead of two years.

16. In the result, the Criminal Revision is partly allowed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1. The Assistant
Sessions Judge,
Harur.
2. The Principal District and
Sessions Judge,
Dharmapuri.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Inspector Of Police,
Bommidi Police Station,
Dharmapuri District.
- 5.The Superintendent,
Central Prison,
Salem.
- 6.The Judicial Magistrate,
Dharmapuri.
- 7.The Chief Judicial Magistrate,
Dharmapuri
- 8.The District Collector,
Dharmapuri.
- 9.The director Central of Police,
Mylapur, Chennai-4.

Cr1.R.C.No.363 of 2013

NRI (CO)
GSP(18/12/2018)