

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
04.10.2018	23.10.2018

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)Nos.73 and 507 of 2013

and

Crl.M.P.(MD)No.8004 of 2018

Crl.R.C(MD)No.73 of 2018

R.Antony Raj : Petitioner/Accused No.2

Vs.

The State,
Rep by Inspector of Police,
Eeththamozhi Police Station,
Nagercoil, Kanyakumari District.

: Respondent/Complainant

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in connection with the judgment passed by the learned Sessions Judge, Kanyakumari Division at Nagercoil in C.A.No.138 of 2004 dated 10.09.2012 by confirming the judgment passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil made in S.C.No.265 of 2000 dated 11.06.2004 and set aside the same.

For Petitioner : Mr.N.Sathish Babu

For Respondent : Mr.A.Robinson,
learned Government Advocate(Crl.Side)

Crl.R.C(MD)No.507 of 2013

Jeyaseelan : Petitioner/Accused No.3

Vs.

The State of Tamil Nadu,
Inspector of Police,
Kanyakumari Police Station,
Incharge-Eethamozhi Police Station,
(Crime No.3 of 2000)

:Respondent/Complainant

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records in Criminal Appeal No.138 of 2004 on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil and set aside the sentence and allow this revision petition.



For Petitioner : Mr.Antony S.Prabhakar
For Respondent : Mr.A.Robinson,
learned Government Advocate(Crl.Side)

COMMON ORDER

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The revision petitioners herein are second and third accused in S.C.No.265 of 2000 on the file of the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil and they have found guilty by the trial Court. They were convicted and sentenced to undergo four year rigorous imprisonment with fine of Rs.1,000/- each in default to undergo simple imprisonment for the period of six months for the offence under Section 436 IPC.

2.Aggrieved by the conviction and sentence imposed by the trial Court, they have jointly preferred Crl.A.No.138 of 2004 before the learned Sessions Judge, Kanyakumari Division at Nagercoil. The lower appellate Court confirmed the finding of the trial Court. Hence, Crl.R.C(MD)No.73 of 2013 is preferred by the second accused namely, Antony Raj and Crl.R.C(MD) No.507 of 2013 is preferred by the third accused namely, Jeyaseelan.

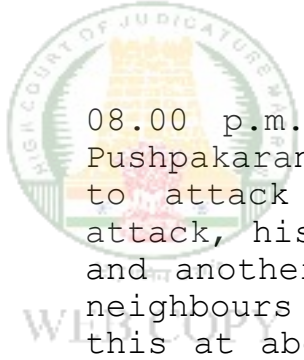
3.The cases projected by the prosecution and defence taken by the accused are one and the same arises from the same judgment. Hence, with the consent of the learned counsel for the revision petitioners, both the criminal revision cases were heard together and common order is passed.

4.The brief facts leading to the criminal revision cases are as follows:-

(i)Based on the complaint given by one S.Ramar to the respondent police on 03.01.2000 at about 23.00 hours, the First Information Report in Crime No.3 of 2000 under Section 436 IPC was registered against the Kamaraj @ Kannan (A1), Antonyraj (A-2) and Jeyaseelan (A-3).

(ii)The crux of the complaint reads as below:-

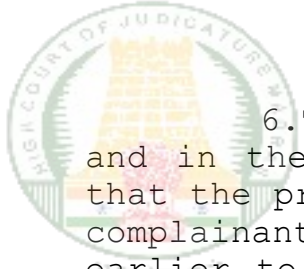
The de facto complainant is running a betel-nut shop in Government poramboke land next to the patta land of Jeyachandran, the father of the first accused. Adjacent to his shop five months before the complaint, few persons of Vadakkukurankudi put up the thatched structure and has started Kamarajar Narpanimandram. According to the de facto complainant he belongs to the different village namely, Vellalan Vilai. So to evict him, they have put up the structure and started causing hindrance to him. On 03.01.2000 at 05.00 p.m., when Pushpakaran, son of the de facto complainant was in the shop, Jeyaseelan, Ansari, Seikuthun and Kamaraj picked up quarrel with him and pulled down the milk pot and ran away. In this connection, on the same day the complainant gave a petition to Eeththamozhi police station at 06.00 p.m. The Head Constable of Eeththamozhi police came to Vadakkukurankudi village and searched for the accused. After Head Constable left the village, at about



08.00 p.m., Ansari came with Aruval to the shop and threatened Pushpakaran how dare he has given a complaint against them and tried to attack Pushpakaran. When Pushpakaran tried to prevent the attack, his right hand thumb got cut. When the de facto complainant and another son Sritharan tried to stop Ansari, he fell down. The neighbours intervened the quarrel, Ansari left the place. Knowing this at about 09.00 p.m., when the de facto complainant was closed his shop, Ansari friend Kamaraj came to the shop and threw two pepsi bottle and left the place threatening that he will set fire to his shop. After closing the shop, the de facto complainant and his son went home. At about 10.00 p.m. One palani came to his house and informed that his shop has been set to fire. When they immediately came to the shop, they found entire shop burned besides the neighbouring shops were also caught fire. In his Estimate, the loss in the accident is to an extent of Rs.40,000/-.

(iii)Based on the above said complaint, the prosecution has registered the case against the offenders. After completion of investigation, the respondent police has filed the final report before the learned Judicial Magistrate for the offence under Section 436 IPC. Since the offence being exclusively triable by the Court of Sessions, the learned Judicial Magistrate has committed the case to the Court of Sessions at Nagercoil and taken on file as S.C.No.26 of 2005 and made over the case to the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil.

5.Before the trial Court, the prosecution has examined nine witnesses and marked ten exhibits and five material objects. P.W.1-Ramar/de facto complainant has narrated the sequence of events took place on 03.01.2000 which started at 05.00 clock morning when the accused picked quarrel with his son and pulled down the milk pot, attack of Ansari at 08.00p.m, visit of Kamaraj to his shop at 10.00 p.m., and threat to set his shop to fire and later the fire at his shop, which is in consonance to his complaint (Ex.P.4). The shattered Tape Recorder and wooden logs were marked as M.O.1 and M.O.2 and his earlier complaint against Ansari marked as Ex.P.3. P.W.2 Suyambu, who saw the fire accident, informed to P.W.1 through his relative Palani, who is P.W.4. The son of the de facto complainant/Pushpakaran, who has been examined as P.W.3, has corroborated the evidence of P.W.1 regarding the enmity between the accused and his father regarding the shop. P.W.5, Vaikundamani is one of the victims in the fire accident, whose shop was also burned in the said accident. P.W.6 (Jeyabal) is one of the witnesses to the observation mahazar and the seizure mahazar of material objects from the place of occurrence and they are identified by him. The observation mahazar is marked as Ex.P.5, the seizure mahazar is marked as Ex.P.6 and the material objects 3 to 5 were seized from the scene of occurrence. The fire on 03.01.2000 late night and defusing of fire is spoken by P.W.7(Sundaram), Fire Station Officer. Considering these evidence, which corroborated the complaint of P.W.1, the trial Court has found all the accused guilty for the offence under Section 436 IPC.



6. The lower appellate Court had re-appreciated the evidence and in the light of the defence raised by the accused, has found that the prosecution has proved the previous enmity between de facto complainant and the accused persons. The incident took place earlier to this case is spoken by P.W.1 and P.W.3 and corroborated by P.W.8 (Kesevan). The Head Constable of Eeththamozhi police has received the complaint given against Ansari regarding the accident which took place on the morning of the incident, which proves the motive. After taking note of the deposition of other witnesses which corroborates the evidence of P.W.1, the lower appellate Court has dismissed the appeal and confirmed the trial Court judgement.

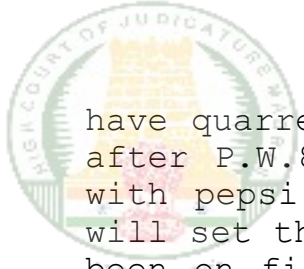
7. In these present criminal revision cases, the accused challenging the concurrent findings on the ground that P.W.1 is not an eyewitness to the occurrence and he came to know about the fire accident only through P.W.4 (Palani) who in turn, is not an eyewitness, but hearsay witness through P.W.2 (Suyambu). Through cross examination of P.W.2 (Suyambu) who claims his presence at the time of occurrence, is dented. Since the prosecution has not proved the guilt of these accused persons beyond reasonable doubt, the judgments of the Courts below is erroneous and the contradiction in the evidence of P.W.1, P.W.2 and P.W.4 in respect of how P.W.1 came to know about the occurrence. Therefore, this should have enured the benefit of doubt in favour of the accused persons.

8. It is also contended by the learned counsel for the revision petitioners that in the fire accident not only the shop of P.W.1, the adjacent shops including the thatched Narpanimandram alleged to have been put up and administered by the accused persons was also damaged. The prosecution has failed to examine all the victims of the occurrence. Further it has failed to note that no person will cause damage to himself and the person alleged to have set fire to P.W.1 shop, would necessarily know that it will spread to the nearby thatched structure of Kamarajar Narpanimandram. Contending that the entire case as false prompted due to political rivalry between P.W.1 and A-3, the learned counsel for the revision petitioners submits that they are entitled for acquittal.

9. Point for consideration:-

Whether there is any error in appreciation of evidences in the Judgments of the Courts below?

10. P.W.1 is the de facto complainant and his shop has been set to fire on the fateful day. This fact is well proved through eyewitness and the evidence of P.W.7 (Sundaram) Fire Station Officer and his report (Ex.P.8). The fire accident which was set to the shop of P.W.1, has spread to the neighbouring shops is not disputed. Prior to this occurrence, on the same day, early morning, one Ansari has picked quarrel with Pushpakaran, son of P.W.1. Pursuant to that quarrel, the complaint was given to Kesevan (P.W.8), Head Constable, Eeththamozhi Police station and he has registered the complaint and went to the occurrence village in search of the accused persons who



have quarrelled with P.W.1 and P.W.2. It is the case of P.W.1 that after P.W.8 left the village, A-1 came to the shop, threatened him with pepsi bottle, throw the bottle on the road and vowed that he will set the shop to fire. Immediately after one hour, the shop has been on fire. P.W.2 has seen the accused persons suspiciously and soon after he also saw the fire emanating from P.W.1 shop. Putting together these evidence, the guilt of the accused persons is well established.

11. Therefore, the plea of the revision petitioners that benefit of doubt should be given to them, has no legs to stand since without any doubt the prosecution has clearly proved the guilt of these accused on all aspects. Hence, this Court finds no error in the findings of the Courts below convicting these accused for the offence under Section 436 IPC.

12. Regarding the sentence, it is contended by the learned counsel appearing for the revision petitioners that since the occurrence has taken place 18 years ago and the damage caused is around Rs.40,000/- which includes damage caused to neighbouring shops of P.W.1 and also the structure of Kamaraj Narpani Mantram, some leniency on sentence may be shown.

13. This Court is of the opinion that in the interest of justice the period of sentence against A-2 and A-3 is reduced to six months rigorous imprisonment from 4 years rigorous imprisonment. The fine amount is enhanced from Rs.1,000/- to Rs.20,000/- each in default to undergo one month rigorous imprisonment. The total fine amount Rs.40,000/- shall be paid as compensation to P.W.1. If P.W.1 is not available the same may be paid to his son P.W.3.

14. With the above directions, these criminal revision cases are partly allowed. The trial Court is directed to secure the revision petitioners and commit them to prison to undergo the remaining period of sentence. Bail bonds, if any, executed by them shall stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Sessions Judge,
Kanyakumari Division at Nagercoil.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The Assistant Sessions Judge Cum Chief Judicial Magistrate,
Nagercoil.



3.The Inspector of Police,
Eeththamozhi Police Station,
Nagercoil, Kanyakumari District.

4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.N.Sathish Babu, Advocate, SR.No.91281

Crl.R.C (MD) Nos.73 and 507 of 2013
and
Crl.M.P. (MD) No.8004 of 2018
23.10.2018

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