



Crl.A.No.107 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE **MR. JUSTICE N.ANAND VENKATESH**

Crl.A.No.107 of 2017

Subban @ Subramani

.. Appellant/Single Accused

.VS.

State by the Inspector of Police
Virinjipuram Police Station
Vellore District.

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to call for the entire records in connection with S.C.No.97 of 2013, on the file of the learned Additional District and Sessions Judge (Fast Track Court), Vellore, Vellore District and set aside the judgment dated 03.01.2017.

For Appellant Mr.E.Kannadasan

For Respondent Mr.L.Baskaran
Government Advocate (Crl Side)

JUDGMENT

This criminal appeal has been filed against the judgment and order passed by the Additional District and Sessions Judge (Fast Track Court), Vellore in S.C.No.97 of



Crl.A.No.107 of 2017

2013, dated 03.01.2017, convicting and sentencing the appellant in the following manner:

Offence	Sentence
Section 204[b] IPC	Rs.500/- fine, in default to undergo three months rigorous imprisonment.
Section 440 IPC	Two years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo three months rigorous imprisonment.
Section 307 IPC	Two years rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo six months rigorous imprisonment.
Section 436 IPC	Seven years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one year rigorous imprisonment.
The aforesaid sentences were ordered to run concurrently and the period already undergone by the appellant was ordered to be set-off u/s.428 Cr.PC.	

2.The case of the prosecution is that there was a pathway dispute between the appellant and his brother and their family. On 13.05.2012 at about 03.30 pm., the appellant is said to have come near the house of PW.1 and had abused PW.1 and his family in filthy language. Thereafter, the appellant is said to have locked the house from outside and poured petrol over the thatched shed and lit it with fire. PW.1, his wife (PW.12), their children PW.1 and P.W.8 were inside the house. They raised an



alarm and the persons who were in and around the property came and doused off the fire and opened the door and thereby PW.1 and his family members came out of the house.

3.After the above incident, PW.1 had given a complaint to the Sub Inspector of Police at Virinjipuram Police Station. A Panchayat was arranged and PW.1 had accepted to give up 20 cents of land in the pathway in favour of the appellant.

4.PW.1 thereafter gave a complaint before the Inspector of Police, Vellore Taluk Police Station on 26.9.2012 at 15.00 hrs. PW.13 on receipt of the complaint (Ex.P.1) registered an FIR (Ex.P.5) in Crime No.313 of 2012 for the offences u/s 294(b), 436, 307 and 506(ii) IPC. He went to the scene of occurrence on 26.09.2012 at about 16.15 hrs and prepared the Observation Mahazar as Ex.P.2 and Rough Sketch marked as Ex.P.6 in the presence of the witnesses (PW.6 and PW.11). He also recovered MO.1 and MO.2 from the scene of occurrence under Seizure Mahazar marked as Ex.P.3. On the same day, the appellant was arrested at about 18.00 hrs and he was produced before the concerned Court and remanded to judicial custody. PW.13 thereafter prepared an alteration report (Ex.P.7) and the offence was altered u/s.294(b), 436, 440, 307, 506(ii) IPC r/w Section 3 and 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act. The investigation officer recorded the statement of witnesses u/s.161(3) Cr.PC. Ultimately, the final report was laid before the Principal Sessions Court, Vellore.



Crl.A.No.107 of 2017

WEB COPY

5.The copies were served on the appellant u/s.207 Cr.PC., and thereafter the case was made over to the Court below. The Court below on being satisfied that there are materials to frame charges against the appellant, framed the charges for offence u/s.294(b), 307, 436, 440, 506(ii) r/w Section 3 and 4 of Tamil Nadu Property (Prevention of Damage and Loss) Act. When these charges were put to the appellant, he denied the same and pleaded not guilty.

6.The prosecution examined PW1 to PW.13 and marked Ex.P.1 to Ex.P.7 and identified and marked MO.1 and MO.2. The incriminating evidence that was collected during the course of trial was put to the appellant when he was questioned u/s. 313(1)(b) Cr.PC., and he denied the same as false.

7.The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence convicted and sentenced the appellant in the manner stated supra. Aggrieved by the same, the present criminal appeal has been filed before this Court.

8.Heard Mr.EKannadasan, learned counsel for the appellant and Mr.L.Baskaran, learned Government Advocate (Crl Side) for the respondent.

9.This Court has carefully considered the submissions made on either side and the materials available on record.



10.PW.1 is the brother of the appellant. He has clearly stated in his evidence that the appellant came near the property on 13.05.2012 at about 3.30 pm, and started abusing in filthy language. The appellant thereafter locked the house from outside. At that time, PW.1 was present along with his wife and children inside the house. The appellant thereafter poured petrol on the thatched shed and lit with fire. On hearing the alarm raised by PW.1 and his family members, the neighbours came and doused off the fire and unlocked the door.

11.The evidence of PW.1 has not been discredited and PW.2, PW.8 and PW.12 have also clearly spoken about the incident and it is perfectly in line with the evidence of PW.1. In view of the same, there is no reason to disbelieve the occurrence and the involvement of the appellant in the occurrence.

12.The main ground that was urged before this Court is that there was a substantial delay in lodging the complaint. The incident had taken place on 13.05.2012 at 3.30 pm and whereas the complaint was given only on 26.09.2012 after nearly four months. The delay has been explained by PW.1 and he has stated that the complaint was immediately given to the Virinjipuram Police Station and thereafter there was some compromise between the parties in the presence of the Panchayatdars and PW.1 agreed to give up 20 feet in the pathway in favour of the appellant.

13.The delay in lodging the FIR cannot always result in doubting the case of the prosecution. The dispute is between the kith and kin and there was some compromise



talks and that is the reason why there was a delay. Hence, the delay in lodging the complaint by itself is not a ground to dislodge the case of the prosecution.

14.The evidence of PW.9 and PW.10 also establishes the fact that there was a pathway dispute between the appellant and PW.1 and there used to be regular skirmishes between them. Hence, the previous enmity between the parties has also been established by the prosecution.

15.PW.1 even in his chief examination and also in the complaint has admitted that after the incident there was some compromise between the parties on the usage of the pathway. This compromise will have nothing to do with the criminal offence that was committed by the appellant.

16.The evidence of PW.7 read with Ex.P.4 clearly shows that the thatched shed was completely burnt and PW.1 had incurred a loss of nearly Rs.60,000/-.

17.The Trial Court has considered the entire evidence in detail and has come to a categorical conclusion that the prosecution has proved the case beyond reasonable doubts. The findings rendered by the Trial Court does not suffer from any illegality or perversity warranting the interference of this Court.

18.Insofar as the sentence is concerned, it was brought to the notice of this Court that the appellant had already undergone incarceration for nearly seven months



and 40 days. The concerned Police Officer, who was present before this Court stated that the appellant is a coolie and that there was no other untoward incident that took place subsequent to the present incident. That apart, a peaceful atmosphere is prevailing in the locality.

19. Taking into consideration the relationship between the parties and the fact that the parties were able to reach a compromise on the pathway dispute and also considering the incarceration already suffered by the appellant, the sentence imposed by the Court below is modified as follows:

<i>Offence</i>	<i>Sentence</i>
Section 204[b] IPC	Rs.500/- fine, in default to undergo three months rigorous imprisonment.
Section 440 IPC	Six months rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo three months rigorous imprisonment.
Section 307 IPC	Eight months rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo six months rigorous imprisonment.
Section 436 IPC	Seven months rigorous imprisonment and to pay a fine of Rs.2,000/-, and also to pay compensation of a sum of Rs.50,000/- to PW.1, u/s.357(3) Cr.PC, and in default to undergo one year rigorous imprisonment.
The aforesaid sentences are ordered to run concurrently and the period already undergone by the appellant is ordered to be set-off u/s.428 Cr.PC.	



Crl.A.No.107 of 2017

20.The appellant has already deposited the fine amount and the same is evident from the order passed by this Court on 04.07.2017 in Crl.MP.No.3008 of 2017 in Crl.A.No.107 of 2017. This fine amount shall be paid as compensation to PW.1. Insofar as the compensation amount is concerned, the same shall be deposited by the appellant before the Trial Court on or before **26.04.2023**. The total amount of Rs.54,000/- [fine Rs.4000/- + Compensation Rs.50,000/-] shall be permitted to be withdrawn by PW.1.

21.In the result, the sentence imposed by the Court below is modified to the extent indicated herein above and this Criminal Appeal is partly allowed.

22.Post this case under the caption "for reporting compliance" on **27.04.2023**.

05.04.2023

KP

Internet : Yes/No

Index : Yes/No

Speaking Order:Yes/No

Neutral Citation :Yes/No



WEB COPY



Crl.A.No.107 of 2017

To

1. Inspector of Police
Virinjipuram Police Station
Vellore District.
2. Additional District and
Sessions Judge (Fast Track Court)
Vellore, Vellore District.
3. The Chief Judicial Magistrate
Vellore (for information)
4. The Superintendent
Central Prison, Vellore.
5. The Public Prosecutor
High Court, Madras.



WEB COPY



Crl.A.No.107 of 2017

N.ANAND VENKATESH,J.

KP

Crl.A.No.107 of 2017

05.04.2023