



Crl. R.C.(MD)No.263 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. R.C.(MD)No.263 of 2019

Nagajothi

.. Petitioner

Vs.

State rep. by
The Inspector of Police,
Thiruchitrampalam Police Station,
Thanjavur District.
(Crime No.28 of 2011).

.. Respondent

Prayer : This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., to call for the records of the Courts below and set aside the judgment and conviction dated 19.03.2019 passed by the learned III Additional District and Sessions Judge, Thanjavur @ Pattukottai in Crl.A.No.23 of 2018, by which confirming the judgment and conviction order passed by the learned Assistant Sessions Judge, Pattukottai, Thanjavur District in S.C.No.185 of 2012, by its judgment dated 16.03.2018 and acquit the petitioner/accused.

For Petitioner	: Mr.S.Deenadhayalan
For Respondent	: Mrs.M.Aasha
	Government Advocate (Crl. Side)

ORDER

This petition has been filed by the petitioner to set aside the judgment and conviction passed by the learned III Additional District and Sessions Judge,



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Pattukottai, Thanjavur District in Crl.A.No.23 of 2018 on 19.03.2019, in confirming the judgment and conviction passed by the learned Assistant Sessions Judge, Pattukottai, Thanjavur District in S.C.No.185 of 2012 on 16.03.2018 wherein this petitioner has been arrayed as accused in the trial Court in S.C.No.185 of 2012 for the offence under Section 436 of IPC and the trial Court convicted the accused and sentenced her to undergo two years rigorous imprisonment and imposed fine of Rs. 15,000/- in which Rs.10,000/- was ordered to be given to P.W.1 as compensation, in default to undergo six months rigorous imprisonment. As against the said conviction and judgment, the petitioner filed a criminal appeal in Crl.A.No.23 of 2018 and the same was dismissed by confirming the judgment and conviction passed by the learned Assistant Sessions Judge, Pattukottai, Thanjavur District through its judgment dated 19.03.2019. Aggrieved by the said judgment, this present Criminal Revision Case is filed.

2.The prosecution case is that on 12.02.2011, at about 04.30 p.m., the accused set fire on the hut of one Subramanian, P.W.1 by pouring kerosene and the same was witnessed by one Manikandan, P.W.2, who is the son of the defacto complainant and he shouted that don't set fire and further the accused threatened him and then set fire on the house of the defacto complainant. Thereafter, the neighbors extinguished the fire and by that time, the house of the defacto complainant was semi



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burnt and one TV, four bags of paddy and a sum of Rs.2,000/- and some clothes were

burnt. The value of the burnt properties would come around Rs.10,000/- Thereafter, on the date of occurrence, the defacto complainant who went for his coolie work at about 06.30 a.m., returned home at 07.00 p.m., and then he came to know about the occurrence through his son and the villagers and thereafter, on the next day, on 13.02.2011, he went to the police station and gave a complaint Ex.P1 and based on the complaint, P.W.5 Bala Subramanian registered FIR, Ex.P4 and thereafter, P.W.6 investigated the case and examined the witnesses and filed final report as against the accused for the offence under Section 436 of IPC. After filing the final report, the committal Court has furnished copies to accused under Section 207 of Cr.P.C. Thereafter, the case has been committed to Principal Sessions Court, Thanjavur and the same was made over to the Assistant Sessions Court, Pattukottai. Thereafter, charges were framed as against the petitioner under Section 436 of IPC and the said charges were read over and explained to the accused and she denied the charges.

3.The prosecution had examined P.W.1 to P.W.6 and marked Exs.P.1 to P. 7 and marked M.O1 to M.O.3 and on the side of the accused, no one was examined and no document was marked. After examination of prosecution witnesses, the accused was examined under Section 313(1)(b) of Cr.P.C., and she denied the evidences.



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4. Upon perusing the oral and documentary evidence, the trial Court found the petitioner guilty for the offence punishable under Section 436 of IPC and sentenced her to undergo two years rigorous imprisonment and to pay a fine of Rs. 15,000/-, in which Rs.10,000/- was ordered to be given to P.W.1 as compensation, in default to undergo six months rigorous imprisonment.

5. Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.23 of 2018 on the file of the learned III Additional District and Sessions Judge, Thanjavur District @ Pattukottai and the Appellate Court also dismissed the same, by a judgment dated 19.03.2019 and confirmed the conviction and sentence imposed by the trial Court.

6. Aggrieved by the said judgment, the petitioner has filed the present revision case on the following grounds:-

The judgment and conviction of the trial Court as well as the appellate Court is contrary to law, weight of evidence and probabilities of the case. The Courts below failed to appreciate the fact that the alleged occurrence took place on 12.02.2011 at about 04.30 p.m., but the complaint was given only on 13.02.2011 at about 01.30 a.m, and this enormous delay has not been properly explained by the



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prosecution. The Courts below failed to appreciate the fact that due family civil dispute with regard P.W.1 and the petitioner, both are closely related, the present complaint has been falsely preferred. The Courts below failed to appreciate the fact that the other witnesses are spoken by prosecution one Raja, Sundararaj (P.W.3 and 4) have not supported the case of prosecution. The Courts below failed to appreciate the fact that P.W.1 during his cross examination specifically deposed that he has taken the M.O.1 to 3 to the police station on 13.02.2011 at the time of preferring complaint. However, as per prosecution said M.Os were recovered by P.W.6 in the occurrence spot by preparing mahazer and the same was signed by P.W.4 and 5. The Courts below failed to appreciate the fact that Mos.1 to 3 are not mentioned in the observation mahazer in Ex.P6 and rough sketch Ex.P5. The Courts below failed to appreciate the fact that the petitioner and P.W.1's wife are sisters and both are residing in the adjacent portions of the same house. Due to civil dispute with regard to eviction of the petitioner, the present complaint has been falsely preferred. The Courts below failed to appreciate the fact that during the cross examination of P.W.2 he was studying 8th standard and the alleged occurrence day was working day. In fact prosecution failed to establish the fact that the presence of P.W.2 at the time of alleged occurrence by producing any school records or attendance register or any other evidence.



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7.The learned counsel appearing for the petitioner would contend that in this case, there is one day delay in lodging FIR and the same was not properly explained by the prosecution and the Courts below failed to consider the independent witnesses, neighbors of the victim of P.W.1 have not supported the prosecution case. As per prosecution case, M.Os.1 to 3 were not mentioned in the observation mahazer, Ex.P6 and rough sketch Ex.P5. As per evidence of P.W.1, M.Os were taken by him to the police station but the Investigating Officer stated that he recovered the properties from the place of occurrence and further, there is no recovery of kerosene can and there are so many contradictions with regard to occurrence. The P.W.2 who is said to be eye witness cannot be an eye witness and there is no whisper about from where the P.W.2 saw the occurrence and as per evidence of P.W.2, the accused poured kerosene and set fire on the hut at that time, he asked why you set fire on the hut. For that the accused scolded him and he shouted and thereafter, the fire was extinguished by the neighbors. Further on the date of occurrence, P.W.2 was school going boy, he stated in his evidence that his sister went to school but he did not go to school. But no reason was stated by him as to why he did not go to school on the particular date of occurrence. The Investigating Officer also failed to investigate in this aspect. Thereby, the evidence of P.W.2 is not reliable. Based on the evidence of P.W.2 only the trial Court convicted the accused. P.W.1 also admitted the accused is also residing in the same house in another portion. While so, it is unbelievable to set



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fire by the accused. Further the main motive for commission of this offence is that there is a dispute between the sister of the accused who is none other than the wife of the defacto complainant. While so in order to prove the motive, the said wife of the defacto complainant and sister of the accused Anjammal was not examined as witness. Therefore, the trial Court as well as appellate Court failed to appreciate the evidence in a proper manner and the prosecution case is highly doubtful and the accused is entitled for acquittal by allowing this revision petition.

8.The learned Government Advocate appearing for the respondent contended that the date of occurrence is 12.02.2011. On that date at about 04.30 p.m., the defacto complainant went to his coolie work and he reached his home at about 07.30 p.m., and on the next day, he gave complaint before the police station and the same is clearly explained by the prosecution and thereby, there is no any delay as alleged by the accused. Further P.W.1 has deposed about the lodging of complaint and the damages caused through the fire. P.W.2 is the main eye witness and he categorically deposed about the occurrence and he also questioned the accused at the time of occurrence and she shouted towards the P.W.2. Though the other witness turned hostile, the evidence of P.W.2 is sufficient to prove the case of prosecution. P.W.2 categorically deposed about the occurrence and he did not go to school on the date of occurrence and number of witness are immaterial and even the



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sole witness is sufficient to convict the accused and thereby, the evidence of P.W.2 is sufficient and his evidence cannot be discarded in any way. The Investigating Officer also categorically deposed about the investigation and recovery of M.Os. Thereby, the prosecution has proved the case beyond reasonable doubt and the trial Court has correctly convicted the accused based on the evidence of P.W.2 and the appellate Court after elaborate discussion and analysing all the evidence correctly dismissed the appeal. Thereby, the revision petition is liable to be dismissed.

9.Upon perusing the documents and evidences adduced on both sides and upon perusing the judgments of lower Courts, the points for determination in this petition is whether the judgment of the learned Additional District and Sessions Judge, Thanjavur @ Pattukottai in Crl.A.No.23 of 2018 on 19.03.2019, in confirming the conviction and sentence imposed by the learned Assistant Sessions Judge, Pattukottai, Thanjavur District, in S.C.No.185 of 2012 on 16.03.2018 is sustainable according to law and facts.

10.The prosecution case is that on 12.02.2011 at about 04.30 p.m., the accused set fire on the hut of the defacto complainant and the same was witnessed by the son of the defacto complainant and thereby, caused damages worth about Rs. 10,000/-. In this case P.W.1 is the defacto complainant, P.W.2 is eye witness to the

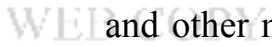


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11.P.W.1 in his evidence stated that on 12.02.2011 at about 06.00 a.m., he went to his coolie work and his wife also went for coolie work and two daughters went to the college and his son alone was in the home. There is frequent quarrel between the accused and the defacto complainant's wife. The accused is wife's sister of P.W.1 and she was residing in the same house in another portion. On 12.02.2011, at about 04.30 p.m., the accused set fire on the hut and the same was extinguished by the neighbours. There was damage of worth about Rs.10,000/-. After returning home at 07.00 p.m., he heard about the occurrence and seen that his hut was semi burnt. Therefore, according to the evidence of P.W.1, he is not an eye witness and he gave a complaint. The complaint was marked as Ex.P1. A perusal of Ex.P1, it reveals that due to enmity between the wife of the defacto complainant and accused, on 12.02.2011 at about 04.30 p.m., the accused set fire on the hut. After seeing the same, the son of the defacto complainant namely P.W.2 shouted. But she scolded him and the hut was burnt.

12.According to the complaint, the value of damage is worth about Rs. 10,000/- but according to the evidence of P.W.1, the value is worth about Rs. 20,000/- and the value was exaggerated by the complainant. In the complaint, there is



While so, there is no whisper about the semi burnt house either in the complaint or in the evidence of P.W.1. Further according to the P.W.1, TV, bamboo and coconut leaves, 4 bags of paddy and other clothes were burnt. No any information was given to the fire service and also no semi burnt paddy and other clothes were recovered by the police. Further according to the evidence of P.W.1, he took TV, one bamboo, coconut leaves to the police station and hand over the same to the police.

14. In this case, P.W.2 is the main witness and according to the prosecution case, he is the eye witness and he also in his evidence stated that on 12.02.2011 at about 04.30 p.m., the accused set fire on the hut by pouring kerosene. At that time, he questioned about the same and for that, the accused scolded him and then the villagers extinguished the fire. At that time, the house was semi burnt. Further the accused thrown kerosene can into the house. While so, there is no reference by the



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prosecution as about the aforesaid kerosene can. There is no whisper about the particulars of the aforesaid kerosene can. If the occurrence took place as alleged by the P.W.2, the prosecution could have recovered the can from the house of the defacto complainant. But the prosecution has not seized any kerosene can in this case.

15.Further according to P.W.2 on the date of occurrence, his two sisters went to college and his parents went for work and he was also studying 8th standard. Why he had not gone to school on the date of occurrence has to be explained by the prosecution. But the Investigating Officer failed to investigate the matter in the said aspect. In that aspect, no any records from the school authorities were perused by the Investigating Officer as to whether the P.W.2 was present on the date of occurrence. Further there is no whisper about the presence of the petitioner from where P.W.2 saw the occurrence. If he was inside the house, there is no chance to see the occurrence. If he was outside the house, from where he saw the occurrence. It is the duty of the prosecution to prove that from where the P.W.2 saw the occurrence. P.W. 1 and P.W.2 are interested witnesses. Even according to the evidences of P.W.1 and P.W.2, there are major discrepancies with regard to the manner of the occurrence. Further the independent witness have turned hostile.



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16.The main motive for setting fire by the accused is that there were frequent quarrels between the accused and the wife of the defacto complainant namely Anjammal. In order to prove the said motive, the prosecution failed to examine the aforesaid Anjammal as witness in this case. Thereby, the prosecution failed to prove the motive between the accused and the wife of the defacto complainant. The prosecution failed to establish recovery of alleged M.O.s and failed to recover the kerosene can, which was thrown inside the house. These are all creates serious doubt over the prosecution case and the trial Court mainly relied upon the evidence of P.W.2 and the aforesaid discrepancies of the prosecution case were not taken in to consideration by the Courts below. It is unsafe to convict the accused for the offence under Section 436 of IPC with the available evidences. Further there is no reference about which part of the house was burnt and no photos were taken either by the defacto complainant or by the Investigation Officer.

17.P.W.6 who is the Investigating Officer in his evidence admitted that the wife of the P.W.1 defacto complainant was not examined as witness and P.W.2 eye witness during investigation did not state about the date of occurrence. Further the investigation was conducted by one SSI Nadimuthu, he died and thereby, P.W.6 deposed before the Court based on the records and he has no personal knowledge about the case.



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18. According to the prosecution, the M.Os. were recovered in the place of occurrence. But evidence of P.W.1 is contra to the prosecution version and the other witness also turned hostile. Therefore, the prosecution has failed to prove the alleged recovery of M.Os. and even according to Ex.P5, Observation Mahazer, there is no whisper about the semi burnt articles and M.Os. recovered by the prosecution. The recovery Mahazer was marked as Ex.P6. Three M.Os. were recovered but those M.Os. were not mentioned in the Observation Mahazer. In Observation Mahazer, not even mentioned about the burnt house and only mentioned about the directions and location of the place of occurrence. Therefore, the evidence of the prosecution is not sufficient to prove the charge as against the petitioner under Section 436 of IPC. Therefore, the judgment and conviction passed by the trial Court and confirmed by the appellate Court are unsustainable and the same are liable to be set aside. Thereby, the accused is entitled for acquittal.

19. In the result, the Criminal Revision Petition is allowed and the judgment and the conviction passed as against the petitioner in S.C.No.185 of 2012 dated 16.03.2018 by the learned Assistant Sessions Judge, Pattukottai, Thanjavur District confirmed in Crl.A.No.23 of 2018 dated 19.03.2019 on the file of the learned Additional District and Sessions Judge, Pattukottai, Thanjavur District are set aside.



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P.DHANABAL, J.

Mrn

The petitioner is acquitted from the charge under Section 436 of IPC and she be set at liberty subject to other cases if any The bail bond if any executed by the petitioner shall stand cancelled. The fine amount if any paid by the petitioner shall be refunded to her as per law.

05.09.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

Mrn

To

- 1.The III Additional District and Sessions Judge, Pattukottai, Thanjavur District.
- 2.The Assistant Sessions Judge, Sivakasi, Thanjavur District.
- 3.The Inspector of Police,
Thiruchitrampalam Police Station,
Thanjavur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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