

**IN THE COURT OF THE PRINCIPAL ASSISTANT SESSIONS JUDGE
KOLLAM**

Present :Sri. Doney Thomas Varghese, Principal Assistant Sessions Judge

Tuesday, the 8th day of March, 2022

17th day of Falguna, 1943 S.E.

Sessions Case No. 105/2018

(C.P.No. 83/17 of J.F.M.C -I, Kollam, Crime No. 140/03 of Kundara Police Station.)

Complainant: State of Kerala represented by the
Sub Inspector of Police, Kundara
Police Station
(Represented by Addl. Public Prosecutor Adv. Sri. V. Vinod)

Accused : Anilkumar S/o. Dasan,
Chonkil Colony, Perayam Cherry,
Mulavana Village, Kollam Taluk.
(By Adv. Sri. Paul Antony)

Charge : Offences u/s. 436 r/w 34 IPC

Plea of the accused : Not Guilty

Finding of the Court : Guilty of offence u/s. 436 IPC.

Sentence or Order : Accused is found guilty of the
offence u/s. 436 IPC. He is
convicted and sentenced to undergo
simple imprisonment for a period of
three years and to pay a fine of
Rs. 30,000/- (Rupees Thirty Thousand
Only) and in default of payment of
fine to undergo simple imprisonment
for a further period of three months
for offence u/s. 436 IPC. Fine if
realised shall go in full of PW2.

Dates of trial and hearing: : 1.11.19, 29.2.20, 20.03.20, 18.05.20,
2.7.20, 30.7.20, 16.09.20, 29.9.20,
13.10.20, 27.01.21, 20.2.21, 15.3.21,
29.03.21, 21.6.21, 22.7.21, 10.09.21,
23.09.21, 13.10.21, 25.10.21, 16.11.21,
27.11.21, 6.12.21, 8.12.21, 14.12.21,

16.12.21, 23.12.21, 17.01.22, 21.01.22,
15.2.21, 21.2.22, 25.02.22, 26.02.22,
28.02.22, 7.03.22, 8.03.22.

This case has been finally heard on 8.03.22 and the court on same day delivered the following:

JUDGMENT

This is a case charge sheeted by the Sub Inspector of Police, Kundara against the accused four in numbers alleging the commission of offence u/ss. 436 r/w 34 IPC.

2. The prosecution case in brief is as follows

On 24.04.2003 at 7.30 A.M accused in furtherance of their common intention to set ablaze the thatched house of the defacto complainant set fire to it at Chonkil Colony, Mulavana Village and caused a total loss of Rs. 15000/- to the defacto complainant. Thereby accused have committed the offences alleged against them.

3. After completing investigation charge was laid by the investigating officer before the Court of JFMC-I, Kollam where the case was taken on file as CP 11/06. Case against original accused 3 and 4 was committed by the learned Magistrate u/s. 209(a) Cr.PC. Cognizance was taken by the Hon'ble Sessions Court, Kollam as SC 657/09 and the case was made over to this court for trial. On 27.7.2012 judgment was pronounced by which accused 3 and 4 were acquitted. On 21.12.17 case against original 1st accused/present accused was committed by the learned Magistrate u/s. 209(a) Cr.PC to the Hon'ble Sessions Court, Kollam. Cognizance was taken as SC105/18 and the

case was made over to this court for disposal.

4. On appearance of accused learned Additional Public Prosecutor opened his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. Upon consideration of the records of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution charge was framed against the accused for offence u/ss. 436 r/w 34 IPC which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. CW7 is no more. CW8 and CW9 are bedridden. Evidence for the prosecution consists of the oral testimony of PW1 to PW4 and Exts. P1 to P5 were marked. Remaining witnesses were given up by the learned Additional Public Prosecutor.

6. After the conclusion of the prosecution evidence accused was examined u/s. 313(1)(b) Cr.PC. He denied all the incriminating circumstances appearing against him in the prosecution evidence.

7. After taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence on the point it is satisfied that it is not a case of "no evidence" for an acquittal u/s. 232 Cr.PC and accordingly accused was called upon to enter on his defence and to adduce any evidence he may have in support thereof.

8. Neither any oral nor any documentary evidence was adduced from the defence side.

9. Heard both sides. The points that arise for consideration are:

1. Whether accused has committed mischief by fire with intent to destroy the house of PW2?
2. Whether accused has acted in furtherance of his common intention with other accused?
3. Whether an offence u/s. 436 r/w 34 IPC is made out against the accused?
4. In the event of conviction what ought to be the punishment?

10. Point nos: 1 and 2: For the sake of convenience, point nos. 1 and 2 are discussed together. Admitted prosecution case is that the incident occurred on 24.04.03 at 7.30 AM. Accused and original accused 2 to 4 were walking along the road which runs through the side of the house of PW2. Upon seeing them the pet dog of PW2 started barking and aggrieved by the same accused has uttered abusive words to PW2. Accused has set fire to the thatched roof of the house of PW2 by lighting a matchbox which was in his hands. Water was kept in a vessel near the house for household purposes. When PW2 tried to extinguish the fire by pouring that water accused persons desisted her. The attempt of others who gathered there to extinguish fire was also obstructed by them. The husband of PW2 was not there in connection with his job. PW2 and her aged and sick mother in law were there

in the house. All the items kept there in that house including wearing apparels, dusk, bed, utensils, the study materials of the children, title deed etc were damaged. PW2 has sustained a total loss of Rs. 10,000/- to Rs. 15,000/-. Accused are her neighbours,. Ext. P1 is the FIS . PW2 has deposed on lines with the prosecution case. PW1 turned hostile to the prosecution and there is nothing incriminating the accused in her testimony. PW3, attestor the scene mahazar has identified his signature on Ext.P2 scene mahazar. PW4, CI of Police has deposed that original 4th accused was apprehended. Ext.P3 is the arrest memo. Ext.P4 is the report showing the identity of the accused. PW4 has identified the signature on Ext.P5 FIR as that of CW8, SI of Police who is bed ridden. After completing investigation final report was laid by CW8.

11. From the oral evidence of PW2 it was come out in evidence that accused has set fire to the thatched house of PW2 and it resulted in a total loss of the house and all the valuables kept therein resulting in a loss of Rs. 15000/-. The evidence of PW2 is corroborated on material particulars by the recitals in Ext.P2 scene mahazar. It was also come out in evidence that accused and other accused persons were walking along a road which runs through the side of the house of PW2. Upon seeing them the pet dog of PW2 barked and it caused some annoyance to them and the accused has uttered abusive words to PW2. It resulted in a tug of war and as a retaliation accused

has set fire to the thatched house of PW2.

12. One of the main contentions advanced by the defence is that PW1 alleged independant occurrence witness turned hostile to the prosecution and it is quite unsafe to act upon the interested and partisan testimony of PW2 which lacks independent corroboration. It is settled position of law that conviction can be recorded on the sole testimony of a witness if her evidence inspires confidence and there is absence of circumstances which militate against her veracity . There is no legal impediment is convicting a person on the sole testimony of a single witness. That is the logic of S. 134 of the Evidence Act, 1872. But if there are doubts about the testimony the courts will insist on corroboration . It is not the number the quantity but quality that is material. It is apposite to refer the decision in Joseph V State of Kerala 2003(1) SCC 465 wherein it was held as : “S. 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and therefore it is permissible for a court to record and sustain a conviction on the evidence of a solitary eye witness. But at the same time such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence . By this standard when the prosecution case rests mainly on the sole testimony of an eye witness it should be wholly reliable”. The evidence of PW2 is cogent, reliable and must essentially fit into the chain of events that

have been stated by the persecution and as such I do not find any merit in the aforesaid contention. When confronted in the box a suggestion was put to PW2 that accused were falsely implicated in this case to which PW2 answered as “why should I set fire to my own house”. She has further deposed that after the incident she left that place and now she started residing in a rented house.

13. Yet another important contention advanced by the defence is that two co-accused were acquitted on merits and as the admitted prosecution case is that accused has acted in furtherance of his common intention with others there is no chance for a successful prosecution. Here the prosecution case and the evidence on record clearly shows that the accused is the prime accused and no overt act is alleged against other accused. Even otherwise said contention has no legs to stand in the light of the decision in Chellappan Pillai V State of Kerala 1992(1) KLT 609 wherein it was held that in a case where the coaccused was acquitted in the prior trial it does not mean that the absconding accused who is subsequently tried is also entitled to be acquitted. When the absconding accused is apprehended and tried later the court has necessarily to consider the legally available evidence and cannot adopt the easy course of acquittal on the premise that the coaccused was acquitted. So long as no inconsistencies or contradictions or infirmities were brought out to discredit the witness merely because the coaccused was acquitted in the prior

trial case against the absconding accused cannot be thrown out . The case of the absconding accused should be tried and decided on its own evidence unless the evidence was specially recorded u/s. 294 Cr.PC. Merely because the coaccused was acquitted the court cannot ignore the evidence against the absconding accused and jump to the same conclusion as in the case of coaccused. The acquittal of some of the coaccused based on appreciation of evidence in their case is no ground to bar a criminal trial as the appreciation of evidence by my learned predecessor in a prior trial is not binding. When the prosecution is able to establish the complicity of the accused for the alleged offence independently of S. 34 IPC he can be convicted even if coaccused were acquitted on merits. There is acceptable evidence to show that the individual acts of the accused are such as to attract S. 436 IPC and he should be convicted for the substantive offence S. 436 IPC. The fact that four accused were charged for offence u/s. 436 r/w 34 IPC and two were acquitted, it would be legal to convict the accused as his participation in the criminal act is established to the satisfaction of this court. In view of the above the aforesaid contention is not tenable in the eye of law.

14. A defence is canvassed that PW2 and her husband had attacked the accused with a mattock and in order to escape from the clutches of law accused were falsely implicated in this case as a counter. When confronted in the box PW2 has deposed that when she tried to extinguish the fire accused

persons obstructed him and then she had used a mattock to desist the accused and in that attempt it hit one among them. She denied the other suggestion put by the defence . Besides canvassing such a defence nothing was brought on record to prove such an incident suggestive of false implication. When confronted in the box questions were merely put to PW2 as to the details of her husband, former earlier husband etc and the contention that she had such a history has nothing to do with the merits of the case and the complicity of the accused. Nothing was brought on record to doubt the prosecution case nor to probabilise the defence version. Admitted prosecution case is that accused has set fire to a house with thached roof used as dwelling house of PW2. The word “building” connotes something which is exclusively used for human habitation of a person or a group of persons including family. Even a thached hut made of reeds and mud is a building if the same is used for human dwelling or for custody of property . The case law on the point is State V Vedva Vaghari Moti 1973 Cr.L.J 148(Guj). The dominant intention of the Legislature is to give protection to those buildings which are used as human dwelling or as places where properties are stored. From the oral evidence of PW2 it is clearly established that 1) that the property injured consisted of a building and 2) that the building was ordinarily used as human dwelling and also as a place for the custody of property. The available evidence on record are sufficient to prove committing mischief by fire by the accused and total

damage to the said thatched house of PW2 and all the household items kept therein resulting in a loss of Rs. 15000/- . Prosecution succeeded in bringing home the guilt of the accused beyond all reasonable doubts for offence u/s. 436 IPC irrespective of S. 34 IPC . Points are answered accordingly.

15. Point No. 3 and 4:-

Prosecution succeeded in proving the guilt of the accused beyond all reasonable doubts for offence u/s. 436 IPC. Point no. 3 is answered accordingly.

In the result, accused is found guilty of the offence u/s. 436 IPC. He is convicted u/s. 235(2) for the said offence.

Pronounced in open court on this the 8th day of March, 2022.

Sd/-
Doney Thomas Varghese
Principal Assistant Sessions Judge.

Accused is heard on the question of sentence. He pleaded for mercy.

The theory and practice in the area of sentencing have undergone gradual but drastic change through the years. Today each offender is valued as a unique individual and sentencing judge seeks to know why he has committed the crime and what are his chances of repetition of the future offence. As held in Joy V State of Kerala 1998(1) KLT 815 the object of the sentencing judge is to place the offender in a position where he can do no further harm. Arson in a village area is a serious crime which cannot be too

lightly considered as it causes incalculable damage to innocent persons like PW2 who can ill-afford to lose the little property that she possesses. At the same time deterrence is one of the basic purposes of a sensible sentencing programme. Considering the age of the accused, his chance of reformation and to avoid the chance of incarceration I am inclined to impose the following sentence .

Accused is convicted and sentenced to undergo simple imprisonment for a period of three years and to pay a fine of Rs. 30,000/- (Rupees Thirty Thousand Only) and in default of payment of fine to undergo simple imprisonment for a further period of three months for offence u/s. 436 IPC. Fine if realised shall go in full of PW2.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 8th day of March, 2022.

Sd/-
Doney Thomas Varghese
Principal Assistant Sessions Judge.

APPENDIX:

WITNESSES EXAMINED FOR THE PROSECUTION

PW1 : Leela on 16.9.20

PW2: Sabeena on 29.9.20

PW3: Ratheesh on 16.11.21

PW4: E.K Sabu (Circle Inspector) on 6.12.21.

EXHIBITS MARKED FOR PROSECUTION:

- P1: FIS proved by PW2 on 29.09.20
 P2: Scene mahazar proved by PW3 16.11.21
 P3: Arrest memo proved by PW4 on 6.12.21
 P4: Report proved by PW4 on 6.12.21
 P5: FIR proved by PW4 on 6.12.21.

WITNESSES FOR THE DEFENCE:**EXHIBITS FOR THE DEFENCE:NIL****MATERIAL OBJECTS MARKED : NIL**

Sd/-

Doney Thomas Varghese
 Principal Assistant Sessions Judge.

**Tabular form to be annexed to judgment as per Rule 132 of
 Criminal Rules of Practice.**

- | | |
|---|---|
| 1. Serial No. | : Sessions Case No. 105/18 |
| 2. Name of Police Station &
Crime No. of offence | Kundara Police Station
:Crime No. 140/03 |

DESCRIPTION OF THE ACCUSED

- | | |
|--------------------|--|
| 3. Name of accused | : A1- Anilkumar |
| 4. Father's Name | : A1- Dasan |
| 5. Occupation | : - |
| 6. Residence | : Chonkil Colony, Perayam Cherry,
Mulavana Village. |
| 7. Age | : |
| 8. Caste | : - |

DATES OF

- | | |
|------------------------------|------------|
| 9. Occurrence | : 24.04.03 |
| 10. Complaint | : 24.04.03 |
| 11. Apprehension | : |
| 12. Release on bail | : |
| 13. Committal | : 21.12.17 |
| 14. Commencement
of trial | : 16.09.20 |

15. Close of trial	:	8.03.22
16. Sentence or Order	:	8.03.22
judgment or finding	:	8.03.22
18. Reason for delay	:	No delay.

Sd/-

Doney Thomas Varghese
Principal Assistant Sessions Judge

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Typed by:

Comp.by:

Doney Thomas Varghese
Principal Assistant Sessions Judge