

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 2555 of 1999**

1. Sant Kumar, aged 29 years, son of Bajuram Satnami.
2. Ashok Satnami (Dead)
3. Ajuram (Dead)
4. Ashish, aged 34 years.

Nos. 2 to 4 all sons of Kapoor Satnami.

5. Khoj Kumar, aged 18 years, son of Jugul Satnami.
6. Bajuram, aged 52 years son of Kapoor Satnami.
7. Prakash Das, aged 43 years, son of Kapoor Satnami.

All resident of Bhandarpuri, P.S. Kalari, District Raipur (C.G.)

---- Appellants**Versus**

1. The State of Madhya Pradesh

---- Respondent

For Appellants.	-	Mrs. Renu Kochar, counsel.
For Respondent	-	Mr. Arun Sao, Deputy Advocate General.

Hon'bel Shri Justice Pritinker Diwaker**Order On Board****01/07/2015**

This appeal arises out of the judgment of conviction and order of sentence dated 10.09.1999 passed by the IInd Additional Sessions Judge, Baloda Bazar, District Raipur in S.T.No.460/1996 convicting the accused/appellant No.1-Sant Kumar under Sections 448 and 436 of IPC and remaining appellants under Section 436/34 of IPC and sentencing them to undergo R.I. for 6 months and R.I. for 5 years and to pay a fine of Rs.1000/- each respectively.

02. Brief facts of the case are that on 01.04.1996 at about 8:30 am, the accused/appellants entered into the house of Ramadhar Banjare (PW/2) and set his house/hut on fire. It is alleged that there was some old land dispute between the accused/appellants and the complainant. On the same day, F.I.R. (Ex.P/4) was lodged by the Kotwar Santosh Kumar, on which basis, offence under Sections 448 and 436/34 of the IPC was registered against accused/appellants. After investigation, charge sheet was filed against the accused/appellants and two convicted deceased appellants namely Ashok Satnami and Ajuram. The Court below framed the charge against the accused/appellant No.1-Sant Kumar under Sections 448 and 436 of the IPC, whereas against remaining accused persons charges under Sections 448, 436/34, 506 Part-II and 294 of the IPC were framed.

03. So as to hold the accused/appellants guilty, the prosecution examined as many as 17 witnesses. Statement of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. In defence, the appellants examined four witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the accused/appellants as mentioned in para-1 of this judgment.

05. During the pendency of the appeal preferred by seven appellants, appellants Ashok Satnami and Ajuram have expired and

therefore their names have been deleted on 23.04.2015 from the array of memo of appeal. Now, this appeal survives only in respect of 05 appellants mainly Sant Kumar, Ashish, Khoj Kumar, Bajuram and Prakash Das.

06. Learned counsel for the appellants submits as under:

- (i) that the accused/appellants have been falsely implicated in the crime in question and there is no evidence on record to show that it is the accused/appellants who set the house of complainant on fire;
- (ii) even if the entire prosecution case is taken as it is, the offence under Sections 448 and 436/34 of the IPC is not made out against the accused/appellants;
- (iv) that the appellants have already remained in jail for about two months; incident had taken place on 01.04.1996 i.e. 19 years back; their relation with the complainant is no more inimical and therefore no useful purpose would be served by sending the appellants back to jail and at best the victim can be compensated by awarding reasonable compensation.

07. On the other hand, supporting the impugned judgment it has been argued by learned counsel for the State that conviction of the accused/appellants is strictly in accordance with law and there is no illegality or infirmity in the judgment impugned warranting interference by this Court.

08. I have heard learned counsel for the parties and perused the material available on record.

09. PW-1 Chanda Bai has been declared hostile. PW-2 Ramadhar

Banjare is the complainant whose house/hut was burnt by the accused/appellants. He has stated that there was some land dispute between him and the accused/appellants, over which he was abused by the accused/persons and then his hut was set on fire by the accused/appellants. However, in the cross-examination, he has stated that he himself has not seen the accused/appellants setting his house on fire but he again stated that the accused/appellants have set his house on fire. PW-3 Asharam-father of Ramadhar, has stated that there was quarrel between accused/appellants and the complainant & it is the accused persons who set the house of complainant on fire. PW-4 Ram Kunwar-mother of complainant Ramadhar, has seen the house in burning condition after the incident had taken place. PW-5 Saraswati Bai-sister of the complainant, has seen the accused/appellants Sant Kumar and Aajuram lighting the match box in the house. PW-6 Jhabburam saw the house burning. PW-7 Usha Bai-wife of complainant, has stated that her husband was beaten by the accused/appellants. PW-8 Jethia, PW-9 Chetan Bai and PW-10 Sadhram saw the house in question burning. PW-11 Manohar Singh Kanwar-Head Constable recorded the numbered F.I.R. PW-12 S.L. Patle- Sub Inspector did initial part of investigation. PW-13 Kunwar Bai stated that she was not aware whether the house was burning or not. PW-14 Smt. Dashmat has also stated that she was not aware about burning of the the house. PW-15 S.L. Tiwari has recorded the F.I.R. PW-16 Deval Das helped in the investigation. PW-17 Sant Kumar-Head Constable did part of investigation.

10. Close scrutiny of the evidence makes it clear that on 01.04.1996,

on account of some land dispute, the accused/appellants entered into the house of the complainant and set his house on fire. PW-2 Ramadhar Banjare, PW-3 Asharam, father of Ramadhar, PW-4 Ram Kunwar, mother of complainant Ramadhar, PW-5 Saraswati Bai, sister of the complainant, PW-6 Jhabburam, PW-7 Usha Bai, wife of complainant, PW-8 Jethia, PW-9 Chetan Bai and PW-10 Sadhram have supported the case of prosecution and stated that first there was quarrel between the accused/appellants and complainant and thereafter the accused/appellants set the house of complainant on fire.

11. Considering the statements of the witnesses, there is no reason for this Court to doubt their statements. After due appreciation of the evidence of these witnesses, the Court below has convicted and sentenced the accused/appellants and I find no reason to defer with the finding recorded by the Court below. Thus, the conviction of the accused/appellants is hereby maintained.

12. Now the question is as to what would be the appropriate sentence to be imposed upon the appellants? The incident had taken place on 01.04.1996; the accused/appellants remained in jail for about two months, and further considering that relation between the appellants and the complainant is no more inimical, they are on bail, it will not be appropriate to send the accused/appellants back to jail. I am of the opinion that ends of justice would be served if instead of sending the appellants back to jail they are sentenced to the period already undergone by them. Ordered accordingly.

13. However, the appellants are directed to pay Rs.2,000/- each

(total Rs.10,000/-) as compensation to the victim PW-2 Ramadhar Banjare before the Court below concerned within a period of three (03) months from today. The amount so deposited by the appellants be paid to the complainant Ramadhar Banjare after due verification. The compensation amount would be in addition to the fine amount already imposed upon the accused/appellants by the trial Court.

14. In the result, the appeal is allowed to the above extent.

Sd/-
(Pritinker Diwaker)
JUDGE