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HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Justice Rajendra Chandra Singh Samant

Criminal Appeal No. 2 of 2000

Sirpatiram

---- Appellant

Versus

State of Madhya Pradesh.

---- Respondent

CAV JUDGMENT

Post. for 05/10/2016

Sd/-
Rajendra Chandra Singh Samant
Judge

05/10/2016



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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 2 of 2000

Judgment Reserved on 03.10.2016

Judgment Delivered on 05.10.2016

Sirpatiram, aged about 20 years, S/o Ghasiyaram Occupation
Business, R/o. Chechrupati, P.S. Kasdol, District Raipur, Chhattisgarh.

---- Appellant (on bail)

Versus

State of Madhya Pradesh.

---- Respondent

For the Appellant	:	Shri Goutam Khetrapal, Advocate.
For the Respondent/ State	:	Shri Neeraj Jain, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Judgment

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 16.10.2000 passed by the First Additional Sessions Judge, Mahasamund, District Mahasamund, Chhattisgarh in Sessions Trial No. 87 of 2000 whereby and whereunder the learned Additional Sessions Judge convicted the appellant under Section 436 of the Indian Penal Code (for short 'IPC') and sentenced him to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo additional RI for six months.
2. Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

3. As per the case of the prosecution, on 1.5.1999, at about 10:00 am, appellant – Sirpatiram came to the house of complainant - Ganesh Ram, in his absence and by pouring kerosene over the roof of the house set it on fire. Eyewitness – Phoolbasan (PW-3), with the help of other eyewitnesses, extinguished the fire. Complainant – Ganesh Ram on coming back to his house saw that some articles of the house had burnt and on inquiring from his wife Phoolbasan (PW-3), he came to know that the appellant, by pouring kerosene, had set the house on fire and also misbehaved. Thereafter, the complainant lodged a written report (Ex. P/1) in the Police Station Pithora, District Mahasamund. On the basis of which, the First Information Report (FIR, Ex. P/2) was lodged.

4. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Code'). After completion of investigation, charge sheet was filed before the First Additional Sessions Judge, Mahasamund and the appellant was charged with offence punishable under Section 436 of the IPC. Statement of the appellant was also recorded under Section 313 Code in which he denied the charge levelled against him and pleaded innocence and false implication. The trial Court after hearing counsel for the respective parties and considering the material available on record by the impugned judgment dated 16.10.2000 convicted and sentenced the appellant as mentioned above.

5. The grounds taken in the appeal by the appellant are that the defence put-forth by the appellant was not considered by the trial Court. There are many contradictions, omissions and improvements in the statements of the

prosecution witnesses, which affect the reliability of the prosecution evidence. Hence, the appellant urged that the conviction is bad in law. In the alternative, it has also been prayed that the appellant may be given benefit of provisions of the Probation of Offenders Act.

6. Shri Goutam Khetrapal, Advocate, who has been appointed from the panel of the High Court Legal Services Committee, has argued on behalf of the appellant and prayed that considering the grounds of defence taken in the appeal, the conviction and sentence imposed upon the appellant may be set aside.

7. On the other hand, Shri Neeraj Jain, Government Advocate for the State argued that the conviction of the appellant is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.

8. The only question to be adjudicated by this Court is whether the evidence produced by the prosecution before the trial Court was beyond reasonable doubt and sufficient to inspire confidence for the purpose of holding the appellant guilty.

9. To decide the aforesaid question, I have heard learned counsel for the respective parties and perused the entire material available on record.

10. The only eyewitness in this case is Phoolbasan (PW-3). She has stated that on the date of the incident, she smelled kerosene and, therefore, came out of her house. At that time, she saw that the appellant threw a

jerry-can of kerosene and a match-stick over the roof of her house and, therefore, the roof caught fire. This witness gave information of this incident to Binda and Dhanurjay. Later on, her husband's brother Gajendra and his wife came to the place of the incident and extinguished the fire. Her husband returned home at about 12:00 noon and this witness narrated the incident to him also. Her statement has not been contradicted and reverted in her cross-examination.

11. Ganesh Nayak (PW-1) is the husband of eyewitness Phoolbasan (PW-3). He has stated that when he reached home at about 12:00 noon, he saw that there was smell of kerosene. His wife, Phoolbasan (PW-3) narrated him the whole incident. He called a meeting of elders of the village in the evening and on their advice he presented the application Ex.P/1 in Police Station Pithora. He has also admitted his signatures on the FIR, Ex.P/2. In his cross-examination, the statement made by him in examination-in-chief remains unchallenged and corroborative with the statement of eyewitness Phoolbasan (PW-3).

12. Gajendra (PW-5), brother of the complainant has supported the version of eyewitness Phoolbasan (PW-3) by stating that he was informed by her about the incident and he helped in extinguishing the fire. This statement has not been challenged in his cross-examination.

13. Jagbandhu (PW-4) is the eyewitness of the meeting held in the evening on the date of incident. In this meeting, the complainant narrated that the accused did the act setting his house on fire. Shoklal Panda (PW-6) is another witness, who was present in the meeting. He has stated that after

being asked by the elders from the accused/appellant that for what reasons he set the house of the complainant on fire, he replied that he committed the said act because his sister was raped. No question was asked to the witness in his cross-examination to challenge this statement.

14. Considering the evidence of the prosecution witnesses, it is found that the statement of eyewitness Phoolbasan (PW-3) stands corroborated with the statement of Ganesh Nayak (PW-1) as also with the statements of the other witnesses. The fact that the house of the complainant caught fire and loss was caused to him was never challenged by the appellant. The only point for consideration is that the presence of accused at the spot and the act of commission of offence by him. In support of the prosecution case, the evidence adduced by the prosecution is totally reliable and the prosecution has done its duty by producing beyond reasonable doubt and trustworthy evidence. The defence of the appellant had simply been denial only. No parallel story of the defence has been set up by the appellant before the trial Court.

15. In view of the above discussion and the findings arrived at in this appeal, the conviction of the appellant under Section 436 of the IPC is found to be proper which calls for no interference.

16. Another ground which has been raised in this appeal in the alternative is that the appellant should be given the benefit of the provisions of the Probation of Offenders Act. It has also been argued that the sentence imposed upon the appellant is too harsh, which may be reduced to the period already undergone by him looking to the fact that almost 16 years

have already elapsed and that the appellant had a grievance against the complainant because of which he committed this kind of act.

17. Attention has been invited to paragraph 39 of the statement of Ganesh Nayak (PW-1) made in cross-examination, in which he has admitted that a case of outraging modesty of sister of the appellant against Babulal, who is son of this witness is pending in the concerned Special Court at Raipur. There is also an admission in examination-in-chief of Shoklal Panda (PW-6) that the appellant replied to the query that he did the act because his sister was raped. Hence, the argument on behalf of the appellant that the appellant had a grievance against the complainant has some substance and being an illiterate and rustic villager he resorted to this kind of act which comes within the purview of powers of this Court under Section 386(b) of Code. The appellant has suffered jail sentence for a period of 5 days and he has deposited the fine as ordered by the trial Court.

18. For the foregoing reasons, this Court is of the considered opinion that this appeal deserves to be allowed in part. Accordingly, the appeal is allowed in part. The judgment of conviction passed by the trial Court is hereby affirmed, however, the order of sentence of imprisonment is modified and reduced to the period already undergone by the appellant. The appellant is on bail and he need not surrender.

Sd/-

(Rajendra Chandra Singh Samant)
Judge