

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 952 of 2008

1. Uday Pratap Singh S/o Dhyanpal Singh, aged about 29 years.
2. Lalit Yadav S/o Neelam Yadav, aged about 19 years.
3. Ranjit Yadav S/o Opin Yadav, aged about 18 years.

All R/o Indagaon, Police Station Deobhog, District Raipur, CG

---- Appellants

Versus

1. State of Chhattisgarh through the District Magistrate, Raipur
(C.G.)

---- Respondent

For Appellant.	-	Smt. Indira Tripathi, Advocate.
For Respondent.	-	Shri Adil Minhaj PL

Hon'ble Shri Justice Pritinker Diwaker

Judgment on Board

17.03.2016

This appeal is directed against the judgment and order dated 22.8.2008 passed by Additional Sessions Judge Gariyaband, District Raipur in Sessions Trial No. 12/2008 convicting the accused/appellants under Section 436/34 IPC and sentencing each of them to undergo rigorous imprisonment for ten years with fine of Rs. 10,000/-, plus default stipulations.

2. Facts of the case in brief are that on 14.3.2008 the accused/appellants set on fire the house and shop of complainant Lakhan Sahu (PW-1) as a result of which two rooms and the grocery items worth Rs. 1,50,000/- got burnt. Written report Ex. P-1 was lodged by the complainant and after inquiry FIR Ex. P-6 was registered against

unknown persons. Further case of the prosecution is that about 25 days after the incident Devi Singh (PW-2) made the statement on 9.4.2008 before the police to the effect that he had seen the accused/appellants setting on fire the house/shop of the complainant and based on that further investigation was done and charge-sheet for the offence punishable under Section 436 was filed against them followed by framing of charge under Section 436/34 IPC.

3. So as to hold the accused/appellants guilty, prosecution has examined 09 witnesses in support of its case. Statements of the accused/appellants were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the charge levelled against them and pleaded their innocence and false implication in the case.

4. After hearing the parties, the trial Court has convicted and sentenced the accused/appellants as mentioned above in paragraph No.1 of this judgment.

5. Counsel for the accused/appellants submits that the accused/appellants have been falsely implicated in this case just on the basis of statement of Devi Singh (PW-2) who does not appear to be a trustworthy witness as he kept quiet for a period of 15 days from the date of incident, and being so the findings recorded by the Court below suffer from a legal flaw and are liable to be set aside.

6. On the other hand, counsel for the respondent/State supports the judgment impugned and submits that the findings recorded by the Court below convicting the accused/appellants under Section 436/34 IPC are strictly in accordance with law and there is no infirmity in the same.

7. Heard counsel for the parties and perused the evidence on record.

8. Complainant - Lakhan Lal Sahu (PW-1) has stated in his evidence that on the date of incident at about 2 AM when he was sleeping, his nephew came to him and after waking him up informed about the fire in his house. Thereafter, he rushed to spot and saw that his shop had caught fire and all the grocery items kept therein were burnt. This witness has further stated that on hearing his cries, people of the vicinity reached there and when they were trying to extinguish the fire, smell of petrol was emanating, and then he went to the police station and made the written report. According to this witness, 16-17 days thereafter Devi Ram (PW-2) came to his house and told him that he had seen the accused/appellants setting his house/shop on fire. In cross-examination also, this witness remained firm to what he has stated in the examination-in-chief. Devi Singh (PW-2) has stated in his evidence that on the date of incident at about 2 AM when he was returning after attending a religious concert, he had seen accused Lalit on the rooftop of the complainant whereas accused Lalla alias Uday Pratap and Ranjit were standing near his house. According to this witness, accused Lalit was pouring some substance kept in a container and thereafter accused Lalla lit the match stick and then all the three accused ran away. This witness has further stated that 15-16 days thereafter he informed about the incident to the complainant and one Durga Charan and then to the police. In cross-examination, he however, has admitted that the relations between him and accused Lalit were not cordial. According to him, his relations with the

complainant were of master and servant; that except rainy season he was working with him and was being paid Rs. 40/- per day. He has further admitted that as the complainant had taken an affidavit from him before the notary, he made a statement to the police in respect of the incident of arson. He has reiterated that as the affidavit was given by him to the complainant, he made statement in the Court against the accused/appellants. According to this witness, as the religious concert was attended by 500 persons, he could not tell as to who and who were there and that he had not seen the accused/appellants in the said programme. He has stated that he had informed the police about accused Lalit pouring some substance but if it is not recorded in the police statement Ex. D-2, he could not tell the reason for that. He has stated that he did not extinguish the fire nor did he help in the same. He has admitted that till 15 days from the date of incident he did not disclose the same to anyone though during the said period he used to meet the complainant almost daily. Phulmati Bai/Phulo Bai (PW-3) - the mother of Devi Singh (PW-2) has stated in her evidence that she was informed by her son Devi Singh (PW-2) that the house of the complainant was set on fire by the accused/appellants. She has stated that though she used to visit the house of the complainant almost daily but she did not inform him about his house being set on fire by the accused/appellants as was disclosed to her by Devi Singh (PW-2). According to her, on the date when her Court statement was recorded, brother of the complainant namely Nand Kishore (PW-5) had told her that he was informed by Devi Singh that the accused/appellants had set the house of the complainant on fire and thus asked her to depose the same in the Court. Jano Bai (PW-4) has stated in her evidence that

when she had gone to the house of her neighbour Phulo Bai (PW-3) she had informed her that the accused/appellants had set on fire the house/shop of the complainant and about 15 days thereafter, she had disclosed it to brother of the complainant namely Nand Kishore (PW-5). She has stated that as Phulo Bai and her son had asked her not disclose the incident to anyone, she did not make its disclosure immediately. Nand Kishore (PW-5) - elder brother of the complainant has stated that on coming to know about the incident of fire in the house of the complainant, he immediately rushed to the spot and saw the villagers extinguishing the same. According to this witness, Phulobai (PW-3) had informed his daughter Rekha Bai that it is the accused/appellants who had set on fire the house/shop of the complainant. According to him, even his neighbour namely Jano Bai (PW-4) had informed him about the house of the complainant being set on fire by the accused/appellants. This witness is further stated to have been informed by Devi Singh (PW-2) about the accused/appellants setting the house of complainant on fire. He is further stated to have informed the police about the fact that his daughter Rekha came to know about the incident through Phulobai but if it is not written in his police statement Ex. D-3, he could not tell the reason for that. He has stated that till date the named report was not lodged against the accused/appellants and that he and one Durga Charan Awasthy got prepared the affidavit of Devi Singh (PW-2). Adhar Singh Netam (PW-6) has stated in his evidence that he had gone to attend the religious concert where accused/appellant Uday Ram was present but he did not see the other accused persons, and in the next morning he came to know about the house of the complainant being burnt. Bhajanlal (PW-7)

has stated that in the religious concert accused Uday Ram was seen by him. According to him, in the next morning on coming to know about the incident he had been to the spot. Thereafter, he has stated that he did not go to the spot and had come to know about the incident through the villagers. At this stage, he has been declared hostile. In cross-examination he has stated that accused Uday Ram was the Up Sarpanch and was also the vice president of the organizing committee and that till two AM Uday Ram was sitting on the stage near the announcer. According to him, accused Ranjit was dancing in the programme and accused Lalit was also present there. S.L. Shukla (PW-9) is the investigating officer who has duly supported the case of the prosecution.

9. Close scrutiny of the evidence available on record goes to show that though the incident of fire being set in the house of the complainant (PW-1) was seen by Devi Singh (PW-2) on 14.3.2008 but he kept quiet till 9.4.2008 i.e. for 25 days. Likewise, Devi Singh (PW-2) is stated to have informed the said incident to his mother Phulo Bai (PW-3) on the next morning itself but she too kept quiet till 7.4.2008. This inordinate delay on the part of Devi Singh (PW-2) and Phulo Bai (PW-3) in making disclosure of the incident, who are very close to the complainant creates a doubt in the case of the prosecution. Devi Singh (PW-2) has admitted that his affidavit before the notary was got prepared at the instance of the complainant and his brother and that had he not given the affidavit, he would not have stated against the accused/appellants in the Court. Statements of Phulo Bai (PW-3), Jano Bai (PW-4) and Nand Kishore (PW-5) also creates a doubt in the case of the prosecution that it is the accused/appellants who have set the

shop/house of the complainant on fire. Devi Singh (PW-2) has also admitted that after the incident he used to meet the complainant almost daily but why he remained silent for a period of 25 days has not been explained by him. Moreover, Devi Singh (PW-2) has stated that the relations between him and the accused Lalit were not cordial and he always used to do the things as was asked by the complainant and this also creates a doubt in the case of the prosecution and being so the possibility of a false story being cooked up by this witness after a long period of 25 days cannot be ruled out.

10. In view of the aforesaid factual position seen in the light of the evidence of the witnesses on record, this Court does not find the conclusion drawn by the Court below to be based on proper appreciation of the evidence of the witnesses. Prosecution has utterly failed to establish its case beyond all reasonable doubt and therefore the benefit has to go to the accused/appellants. Judgment impugned is thus hereby set aside and the accused/appellants are acquitted of the charge levelled against them. Accused/appellants who are in jail be set free forthwith if not required in any other case.

11. Appeal is thus allowed.

Sd/-

(Pritinker Diwaker)

Judge