

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.1009 of 2008**

Mahendra Singh Ghurwa, aged about 35 years, S/o Ram Singh R/o Village Chanakhata, PS Devbhog, District Raipur (CG).

---- Appellant

Versus

State of Chhattisgarh, through Police Station, Devbhog, District Raipur (CG).

---- Respondent

For Appellant	:	Shri Akhand Pratap Singh, Advocate.
For respondent/State	:	Smt. Shobha Kashyap, Deputy G.A.

Hon'ble Shri Justice P. Sam Koshy

Judgment on Board

11.11.2017

1. The appellant stands convicted for the offence punishable under Section 436 IPC and have been sentenced to undergo RI for 10 years with fine of Rs.1000/- with default stipulation, vide judgment dated 09.09.2008 passed by the Additional Sessions Judge, Gariyaband, Distt. Raipur in Sessions Trial No.20 of 2008.
2. Since the counsel appearing for the appellant, inspite of repeated calls, were not present before the court, this court considering the seniority of the case, requested Shri Akhand Pratap, Advocate, to assist the court for disposal of the appeal.
3. The case of the prosecution is that, an FIR was lodged on 16.06.2008 by PW-1, Tejraj Nagesh, PW-1, as regards his cattle house (Kotha) was set on fire by the present appellant. When the villagers had seen the cattle house on fire and informed him, he came out of the house and

saw the appellant running from the place of occurrence and he identified the appellant from his shirt which he was wearing. After the FIR was lodged and investigation was done, the appellant was arrested on the same day and a case was registered against the appellant for the offence under Section 436 IPC.

4. There was 7 witnesses examined on behalf of the prosecution side whereas, no witness was examined on behalf of defence. The learned Additional Sessions Judge, after completion of trial vide the impugned judgment, finding the appellant to be guilty of having committed the offence, convicted and sentenced him as mentioned in paragraph 1 of this judgment.
5. Learned counsel for the appellant assailing the impugned judgment of conviction submits that the trial court has not been able to fully establish the case. The identity of the accused itself is doubtful and that any extra judicial confession, if any, made is under duress and pressure and the same should not be taken note of by the trial court. Likewise, for establishing the offence under Section 436 IPC, the prosecution has to show the mala-fide intention on the part of the accused for doing the same. Thus, prayed for quashing of judgment of conviction.
6. The State counsel opposing the appeal submits that the prosecution in the instant case has produced sufficient evidence before the trial court to establish the offence. She refers to the statement of independent witness before whom extra judicial confession was made. She further submits that the total factual matrix of the case available on record also goes against the appellant so far as his presence, his intention and his

confession subsequently made, and thus prayed for rejection of the appeal.

7. Having heard the rival contentions put forth on either side and on perusal of records, what is relevant to be seen for establishment of the offence is the evidence which have come on record. PW-1, Tejraj Nagesh, the complainant, who is said to have upon hearing the hue and cry of the villagers came out of the house and found his cattle house on fire and he saw the accused running from the scene. He could recognize him from his shirt which he was wearing at that time. The accused in the instant case is the brother-in-law of the complainant i.e. his sister's husband. Since the accused was his brother in law, there is no reason to doubt the statement of complainant so far as identifying the accused is concerned.
8. In addition to the statement of PW-1, Tejraj, there is also statement of the independent witness, the Kotwar of the village, Lekhan, PW-5, who is said to have in a very specific term stated that he had reached on the spot and found the appellant being caught hold by the villagers and have been kept in the courtyard of the complainant. He has further stated that when he asked the appellant as to why he did such an act, the appellant-accused is said to have made a confession of he himself having done the act and that it was an accidental fire which erupted and that he never intended to put fire on the cattle house of the complainant. This evidence of PW-5, Lekhan, stands also proved from the statement of PW-4, Charan Singh, the brother of the complainant, who has also stated so far as the factual matrix as has been narrated by PW-1 and

PW-5. Witness PW-4, Charan Singh has also supported the case of the prosecution in so far as the statement made by the Kotwar inasmuch as the appellant making extra judicial confession in the presence of the Kotwar.

9. In the light of the said evidence of PW-4, Charan Singh, which corroborates the statement of PW-5, Lekhan, this court has no hesitation in reaching to the conclusion that the findings of the trial court in holding the appellant guilty for the offence under Section 436 IPC seems to be just, proper and legal and does not warrant any interference.
10. Thus, this court does not find any strong case made out by the appellant for setting aside the impugned judgment of conviction nor does this court finds any illegality or infirmity or the findings of the court below to be contrary to evidence.
11. Accordingly, the appeal fails and is rejected. At this juncture, it is necessary to mention that a report has been received from the Central Jail, Raipur, that the appellant having been completed his jail sentence have already released from jail on 15.06.2013 after having got certain remission in his sentence, thus, no further steps is required to be taken.
12. Before parting with the matter, this court renders a word of appreciation to Shri Akhand Pratap, Advocate, for his valuable assistance rendered to this court in the disposal of appeal.

Sd/-
(P.Sam Koshy)
Judge