

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.79 of 2010**

- Murari Lal @ Murlidhar S/o Panda Ram Patel, Aged 39 years, R/o Singharpur, P.S. Baramkela, Distt.-Raigarh, (C.G.)

---- Appellant

Versus

- State Of Chhattisgarh Through The Police Station, S.C./S.T., Raigarh (CG)

---- Respondent

For the appellant : Shri Hemant Kumar Agrawal, Advocate
on behalf of Shri SC Verma, Advocate

For the respondent/State : Ms. K. Tripti Rao, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****20.9.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 21.10.2009 passed by Special Judge under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Special Case No.22/2008 wherein the said Court convicted the appellant for the commission of offence under Section 435 of the Indian Penal Code and sentenced him to undergo imprisonment for six days and to pay fine of Rs.5000/- with default stipulation.

2. As per the prosecution case, on 23.02.2008 at about 7.00 am, the appellant set on fire the straw kept in the land of complainant Ganeshi Bai (PW-1) at village Singharpur.

3. To substantiate the charge, the prosecution has examined as many as ten witnesses. Ganeshi Bai (PW-1) and Ishwar (PW-4) are the witnesses of the incident. Other witnesses are either supportive witnesses or hearsay witnesses.

4. In **Kalyan Kumar Gogoi vs. Ashutosh Agnihotri reported in (2011) 2 SCC 532**, Hon'ble the Supreme Court has held as under:

“(a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me",

(b) truth is diluted and diminished with each repetition and

(c) if permitted, gives ample scope for playing fraud by saying "someone told me that.....". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information received from others is inadmissible.”

5. In view of the above, hearsay evidence is second hand evidence and is inadmissible in evidence, therefore, second hand evidence cannot be acted upon to record any findings.

6. Though Ganeshi Bai (PW-1) deposed in her statement that the appellant caused mischief by fire on her straw kept in her land, but her version is exaggerated against her statement recorded under Section 161 CrPC. In her earlier statement she only deposed that at the time of the incident the appellant was standing near her land. While deposing before the Court she improved her version and deposed that the appellant committed mischief by fire. Exaggerated version can only be accepted when sufficient explanation is given by the witness. No such explanation was

given by the witness, therefore, her exaggerated version is not liable to be accepted.

7. Ishwar (PW-4) though deposed in examination in chief that he has seen the appellant causing mischief by fire on the straw but in his cross-examination he deposed that complainant Ganeshi Bai had advised him to tell the name of the appellant as culprit. Looking to the entire evidence of these witnesses it is not safe to record that the appellant has committed mischief by fire.

8. As the evidence of Ganeshi Bai (PW-1) and Ishwar (PW-4) are not liable to be accepted, there is nothing on record to establish the guilt of the appellant. Finding arrived at by the trial Court is not sustainable.

9. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charge under Section 435 IPC.

Sd/-
(Ram Prasanna Sharma)
JUDGE