

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 317 of 2010****Reserved on : 06.10.2018****Delivered on : 30.10.2018**

Lallu Uraon, S/o Kamla Uraon, aged about 20 years, R/o Village-Baser, Bharhidih, P.S. Charcha, District- Korea (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through P.S.- Charcha, District- Korea (C.G.)

---- Respondent

 For Appellant : Mr. Shakti Raj Sinha, Advocate.

For State/respondent : Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV JUDGMENT**

1. This appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against judgment dated 15.04.2010 passed by Sessions Judge, Korea, Baikunthpur (C.G.) in Session Trial No. 76/2009, wherein the said court convicted the appellant for commission of offence under Section 436 of IPC, 1860 and sentenced to R.I. for 3 years and fine of Rs. 500/- with further default stipulations.
2. As per version of the prosecution, in the intervening night of 29.04.2009 & 30.04.2009 when the complainant- Lalsai was preparing for marriage of his elder daughter- Hiramani, the appellant set fire in his house resulting in destruction of some valuable articles total worth Rs. 15,000/-. It is alleged that due to some enmity between father of the appellant and the complainant- Lal Sai, he committed the offence. Matter was

reported & investigated and after completion of trial, the trial court convicted the appellant as mentioned above.

3. Learned counsel for the appellant submits that there is no reliable evidence on record to warrant conviction of the appellant under Section 436 of IPC. There is no eye witness in this case and the whole case rest upon the circumstances where the prosecution has completely failed to prove the chain of circumstances to connect the appellant with the offence. There is major omission regarding this fact that actually who has set fire in the house of complainant- Lal Sai, therefore, finding recorded by the trial court is liable to be reversed.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
5. As per version of the complainant- Lal Sai (PW-1), his house got fired while he was preparing for marriage of his daughter. He deposed that the appellant was flee from the spot after committing mischief by fire. Version of this witness is supported by version of Ugresh (PW-2), Ramdhari (PW-3). Version of these witnesses were subjected to searching cross-examination, but nothing could be elicited in favour of the defence. Version of these witnesses is supported by FIR (Ex.- P/4) which is lodged on 06.05.2009 in which name of the

appellant is mentioned as culprit and his act of mischief is also mentioned in the FIR.

6. From the evidence, it is not established that all the witnesses have grudge against the appellant to rope him in false charge of the said offence. There is no material contradiction regarding mischief of fire on the part of the appellant and any minor contradiction which do not go to the route of the case, are insignificant in deciding the issue, therefore, argument advanced on behalf of the appellant is not sustainable.
7. Now, the point for consideration is as to what offence has been committed by the appellant. From the evidence of prosecution witnesses, it is established that some paddy, cloth and other articles (movable property) were burnt. No one deposed that fire caused destruction of any part of the building (immovable property). Section 436 of IPC will apply in cases where destruction of any building is caused by mischief of fire, but that is not the case here, therefore, case of the appellant falls within ambit of Section 435 of IPC for causing any damage to the property. The conviction under Section 436 of IPC is set aside and the appellant convicted for commission of offence under Section 435 of IPC.

Heard on the point of sentence.

8. The appellant has suffered jail sentence from 07.05.2009 to 15.04.2010 for 344 days (about 11 months & 14 days). His sentence part is reduced to the period already undergone by

him for commission of offence under Section 435 of IPC. The fine amount shall remain intact.

9. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge