

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No.344 of 2010**

- State Of Chhattisgarh, Through the District Magistrate, Ambikapur, Distt. Surguja (CG)

---- Appellant**Versus**

1. Smt. Vimla Devi, W/o. Late Haricharan Dubey, Aged about 62 years, Occupation House wife, R/o. Mayapur, (Chandni Chowk) Ambikapur, Distt. Surguja (CG)
2. Billu @ Rakesh Dubey, S/o. Suraj Prasad Dubey, Aged about 24 years, Occupation – Student, R/o. Mayapur, Ambikapur, Distt. Surguja (CG)
3. Dheeraj Shukla, S/o Late Shiv Kishore Shukla, Aged about 24 years, Occupation – Student, Mayapur, Ambikapur, Distt. Surguja (CG)
4. Rajeev @ Pappu, S/o. Late Haricharan Dubey, Aged about 26 years, Occupation – Medical Representative, Mayapur (Chandani Chowk) Ambikapur, Distt. Surguja (CG)

---- Respondents

For Appellant/State : Shri Arvind Dubey, Panel Lawyer
 For respondents : Shri Nishikant Dubey, Advocate

DB: Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****Per Ram Prasanna Sharma, J.****09.4.2018.**

1. This acquittal appeal arises out of judgment dated 11.01.2008 passed by Sessions Judge, Session Division Suguja (CG) in Session Case No. 420/2005 wherein the said Court acquitted the respondents from the charges of commission of offence under Section 307 read with Section 34 of the Indian Penal Code, 1860 for attempting murder of one Saroj Dubey.

2. As per the case of the prosecution, on 12.10.2004 at about 9.30 am, Saroj Dubey (PW-1) was sitting in the room of her house;

at that time respondent Rajeev @ Pappu Dubey threw kerosene on her body which was supplied to him by respondent Vimla. It was also alleged that Rajeev Dubey lit the match box and threw the same on her body which caused burn injuries to her. The matter was reported to Police Station Kotwali, Surguja. After investigation, charge sheet was filed and after completion of investigation, the trial Court acquitted the respondents as aforementioned.

3. Learned counsel for the State submits as under:

- (i) that the judgment passed by the trial Court is illegal, improper and incorrect and thus liable to be set aside.
- (ii) that the trial Court failed to appreciate the evidence of prosecution witnesses in its right perspective.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and the same is not liable to be disturbed while invoking the jurisdiction of the appeal.

5. Heard learned counsel for the parties and perused the record.

6. Case of the prosecution is based on direct evidence of Saroj Dubey (PW-1). To substantiate the charges, the prosecution has examined as many as eight witnesses and to nullify the charges the defense has examined three witnesses. Apart from Saroj Bai, other witnesses are either supportive witnesses who received information of burning of Saroj Dubey after the incident, and some other witnesses who have assisted the prosecution during investigation after registration of the FIR.

7. Saroj Dubey (PW-1) deposed in para 2 that at the time of incident she was having food and some liquid like substance fell into her back and when she turned back, she saw all the four respondents standing near the window. She further deposed that when she came out and ran towards the road, one of the respondents threw burning match stick on her body which caused her burn injuries. Version of this witness is entirely different from what is stated by her during investigation under Section 161 CrPC. In her previous statement she stated that respondent Rajeev @ Pappu threw kerosene on her body and the kerosene was supplied to him by his mother Vimla. Again she stated in her previous statement that burning match stick was thrown on her body by respondent Rajeev, but she changed her version entirely while deposing before the Court. In the Court statement she has not stated that kerosene was supplied by Vimla and match stick was thrown by respondent Rajeev. In her Court statement she deposed that one of the respondents had lit the match stick and threw it on her body but she was not sure who had lit the match stick and thrown it on her body. She has improved her version in the Court that match stick was thrown when she came out of the house and was running towards the road side, but that was not her statement during the investigation. In her previous statement she stated that burning match stick was thrown on her when she was sitting in the room. She has admitted in para 17 that in the said room there was a grill in the window and a person having thin hands can only put his hands through the grill. But the matter was not investigated on this angle as to whose hands were thin amongst the respondents so that

he can put his hands through the grill. From the statement of Saroj it is not clear as to who poured kerosene on her body and who threw the burning match stick. She deposed differently in different stages right from investigation and the trial Court was not in a position to find a firm opinion as to what had really happened at the time of the incident. Four persons have been implicated in the present case, but act of any of the appellant is not established beyond the shadow of doubt. It is a settled principle of law that benefit of doubt goes to the accused person when story put-forth by the prosecution is not firmly established, therefore, the trial Court was right in recording the finding of acquittal.

8. Looking to the entire evidence, it would not be proper for us to disturb the finding recorded by the trial Court.

9. In the result, the appeal is liable to be and is hereby dismissed.

Sd/-
Judge

(Prashant Kumar Mishra)

Sd/-
Judge

(Ram Prasanna Sharma)