

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 945 of 2013**

Deepak Sharma S/o Shri Vimal Sharma Aged About 28 Years R/o Kokpur, PS
Kanker, Civil And Rev. Distt. Kanker C.G., Chhattisgarh

---- Appellant**Versus**

State Of Chhattisgarh Through SHO, PS - Korar, Distt. Uttar Bastar Kanker
C.G., Chhattisgarh

---- Respondent

Shri Lokesh Kumar Singh, counsel for the appellant/s.
Shri Suryakant Mishra, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****03/02/2018**

This appeal is directed against impugned judgment of conviction and order of sentence dated 21/06/2013 passed by the Sessions Judge, Uttar Bastar, Kanker (CG) in Sessions Trial No.09/2013 whereby the appellant has been held guilty of commission of offence under Section 457, 436 read with Section 511 of IPC and sentenced to undergo R.I. for 4 years with fine of Rs.1000/- for commission of offence under Section 457 of IPC and R.I. for 4 years with fine of Rs.1,000/- for commission of offence under Section 436/511 of IPC (in default of payment of fine, further R.I. of two months for each of the offences).

2. According to the prosecution, on 01/11/2012, the appellant set ablaze the dwelling house of the complainant – Smt. Nandini Jain (PW1) in the night at about 9 PM and when he was attempting to run away, he was caught red handed at the spot

by Shriram Nishad (PW2), Sukhlal (PW3) and Binakram (PW4). The appellant was taken to the police station and FIR in Ex.P/1 was lodged by Smt. Nandini Jain (PW1) on which, offence under Section 457, 436 read with Section 511 of IPC was registered. In the FIR, it was stated by the informant that when she had gone to attend her field duty on 01/11/2012 and while coming back at about 9 PM, village kotwar informed her on mobile that appellant -Deepak Sharma has set her house on fire and also committed theft. Thereafter, she came to the place where villagers caught hold of the appellant and he was tied up. The front door of the house was burnt and when she went inside, the households were scattered. She suffered a loss of Rs.2 lakhs. After lodging of report, the police seized burnt parts of the door in Ex.P/4 in the presence of the witnesses. Spot map was prepared, statement of the prosecution witnesses were recorded under Section 161 CrPC and charge sheet was filed. The appellant was tried for commission of alleged offence after framing of charge.

3. In order to prove its case, the prosecution examined as many as six witnesses. The appellant was examined in respect of the incriminating circumstances appearing against him in the evidence of the prosecution. The appellant claimed to innocent and stated that he has been falsely implicated and subjected to assault.

4. Learned Trial Court, however, relying upon the evidence of the prosecution held the appellant guilty of commission of offence and sentenced as described above.

5. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the prosecution case is based only on the material evidence that at the time when the house was set

on fire, the appellant was seen on the spot, this by itself is not sufficient to bring home the guilt of the appellant because the appellant was not actually seen setting the house on fire. Next submission is that even if the appellant was found in attempting to commit theft, he was liable only for commission of said offence and not for offence under Section 436 IPC.

6. Learned State counsel would submit that the appellant was caught hold at the spot by Shriram Nishad (PW2), Sukhlal (PW3) and Binakram (PW4) and they have stood firm in their statement that when they reached the house of the complainant, the appellant was found at the spot and trying to run away and then he was caught red handed.

7. The complainant -Smt. Nandini Jain (PW1) has proved FIR lodged by her. She proved her signature in Ex.P/1. K.R.Diwan (PW6)- ASI and Investigating Officer of the case has also proved lodging of FIR in the police station and has proved his signature in Ex.P/1.

Binak (PW4) has proved seizure of burnt wooden door seized by the police vide seizure memo Ex.P/4. In the cross examination, there is no suggestion that the wooden plank was not seized from the spot or that it was not burnt.

8. Shriram Nishad (PW2), Sukhlal (PW3) and Binakram (PW4), all of them have stated in their evidence before the Court that when they reached the house of the complainant – Nandini Jain, they saw the door of the house burnt. Therefore, it is proved that the house of the complainant – Nandini Jain (PW1) was set ablaze and the door was found burnt.

9. Presence of the appellant at the spot has been proved by overwhelming evidence of Shriram Nishad (PW2), Sukhlal (PW3) and Binakram (PW4). Each of

them has very emphatically stated that when they reached the house of the complainant – Nandini Jain, they found that the house was burning and the appellant was running away and caught red handed. In the cross examination, the witness stood firm and nothing could be elicited to doubt the veracity of the evidence regarding actual presence of the appellant in the house and attempt made to run away from the spot. The complainant (PW1) also stated that when she went inside the house, the house holds were scattered. From the trustworthy statement of the witnesses, it is clear that it is the appellant who set the house on fire. There is no defence taken by the appellant that he had entered the house only with an intention to commit theft and due to some accident, the house caught fire.

10. Therefore, there is clinching evidence on record to show that it is the appellant who was inside the house of the complainant and the house was set ablaze by him and by none else.

11. It is also submitted that the appellant was in jail throughout and therefore, he has already undergone the entire period of sentence.

12. In view of above, no case is made out. The appeal is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge