

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 637 of 2012**

1. Ghasiram S/o Bhuwalram Satnami Aged About 32 Years R/o Village Chirhula, Ps Mungeli, Distt. Bilaspur C.G. , Chhattisgarh
2. Doulatram S/o Bhuwalram Satnami Aged About 40 Years R/o Village Chirhula, Ps Mungeli, Distt. Bilaspur C.G., District : Bilaspur, Chhattisgarh.

---- Appellants**Versus**

State Of C.G. S/o Through PS Mungeli, Distt. Bilaspur C.G.,
Chhattisgarh.

---- Respondent

For Appellants	:	Shri Goutam Khetrapal, Advocate.
For the Respondent/ State	:	Shri Anupam Dubey, Dy. G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Judgment on Board****19/07/2018**

Heard.

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 26.7.2012 passed by Learned Additional Sessions Judge, Mungeli, District Bilaspur, Chhattisgarh in Sessions Trial No. 12 of 2011 whereby and whereunder the learned Additional Sessions Judge has convicted both the appellants for the offence under Sections 436 and 323 read with Section 34 of the Indian Penal Code, sentenced them to undergo rigorous imprisonment for 4 years and RI for one month and to pay fine of Rs.500/- and Rs.200/-, respectively, in default of payment of fine, to further undergo additional rigorous imprisonment for one month and 15 days with a direction that both the substantive jail sentences shall run concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed illegality.

(3) As per case of the prosecution, in brief, on the date of incident i.e. 31.12.2010 at about 1:45 am before sunrise, the tube-well house of complainant – Dhanlal (PW-1) was on fire. When the complainant arrived on the spot, he saw appellant No.2 – Doulatram standing nearby and it was at that time appellant No.1 – Ghasiram assaulted the complainant with club and caused injuries to him. Thereafter, the appellants fled from the spot. First Information Report (Ex. P/1) was lodged and on that basis, the case has been investigated and the charge-sheet has been filed before the concerned trial Court against both the appellants. The appellants were charged for the offence under Sections 436 and 323 read with Section 34 of the IPC. They denied the charges and prayed for trial.

(4) In order to prove the guilt of the appellants, the prosecution examined six witnesses. Statements of the appellants were recorded under Section 313 of the Cr.P.C. in which they denied all the incriminating evidence against them, pleaded innocence and false implication in the crime in question. No witness was examined in defense.

(5) After providing opportunity of hearing to the parties, learned trial Court convicted and sentenced the appellants as aforementioned.

(6) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the appellants submits that the appellants have been falsely implicated in this case and the judgment of conviction passed against the appellants is totally erroneous and without there being any reliable evidence of the prosecution. It is also submitted that no witness has stated as to which appellant had set ablaze to the tube-well house of the complainant. The explanation about the presence of the appellants nearby is that because the appellants are the owners of the adjacent agricultural land and had been on the spot because of the curiosity to watch the incident of fire in the tube-well. It is also submitted that there is only one allegation against appellant No.1 – Ghasiram that he assaulted the complainant with a club and the presence of appellant No.2 – Doulatram on the spot does not make him a party to the said incident of assault. Hence, no case is made out against both the appellants under Sections 436 and 323 of the IPC. Hence, it is prayed that the appeal of the appellants may be allowed.

(8) On the other hand, learned counsel for the respondent/ State opposes the submissions made on behalf of the appellants and submitted that the prosecution has proved its case beyond reasonable doubt. Dhanlal (PW-1) has duly supported the case of the prosecution. Hence, no case is made out for acquittal of the appellants.

(9) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(10) Dhanlal (PW-1) has stated that he got up in the night and went to see the tube-well where he saw smoke coming out. He stated that he saw appellant No.2 standing there setting ablaze the tube-well and it was at that time, the complainant was assaulted by appellant No.1 – Ghasiram with a club. When this witness raised alarm, both the appellants fled from the spot. The loss caused to the complainant is not an issue and that he has proved by lodging FIR (Ex.P/1). In cross-examination, he denied that the tube-well caught fire because of short circuit of electricity, but he has stated that when brother of the complainant – Dilip arrived on the spot, he saw the appellants fleeing but he could not see the faces of the appellants. No question has been specifically put that appellant No.2 was on the spot and the assault was made by appellant No.1. On perusal of his statement, it appears that neither he saw any of the appellant setting fire to the tube-well nor there is statement of about any articles which could have been used for setting ablaze the tube-well.

(11) Bholeshankar (PW-2), Rohit Kumar (PW-3), Hirdey Sai (PW-4) all the witnesses arrived on the spot after the tube-well was on fire. All these witnesses have stated that complainant – Dhanlal (PW-1) has informed them that he was assaulted by the appellants whereas Rohit Kumar (PW-3) and Hirdey Sai (PW-4) have stated that the complainant informed them that the appellants had set fire to his tube-well. All the three witnesses are hearsay witnesses and their narration before the Court is based only on the basis of the statement of Dhanlal (PW-1).

(12) Inspector – S.R. Dhritlahre (PW-5) has given statement before the Court about the investigation made by him and in cross-examination he admitted that because of fire the electrical board and wires were also burnt on the spot of incident. He also admitted that he did not inspect and examine whether the fire could have started because of short circuit of electricity and no investigation was done in this respect.

(13) Considering all the material present on record, it appears that Dhanlal (PW-1) is the star witness and his only statement which is available for the prosecution is that he saw the appellants standing nearby the place where the incident of fire had taken place. There is no specific statement made by him that he saw the appellants setting fire to the tube-well. No investigation has been made in this respect to find out the presence of articles which have been used for setting fire the tube-well. Spot map (Ex. P/3) also does not disclose the presence of such articles near the spot. The explanation given on behalf of the appellants that they are the adjacent land owners is a plausible explanation as Dhanlal (PW-1) has admitted in his cross-examination that the appellants are the owners of the adjacent land. Apart from that, rest of the witnesses examined by the prosecution are hearsay witnesses. Hence, for these reasons, I am of the considered opinion that the evidence to hold the appellants guilty for the offence under Section 436 of the IPC was not sufficient and only on the basis of the presence of the appellants on the spot they cannot be held guilty for such offence. Hence, the conviction of the appellants under Section 436 of the IPC appears to be bad in law. Regarding conviction of appellants under Section 323/ 34 of the IPC also needs interference as the only statement available is that

when complainant – Dhanlal (PW-1) went to the spot he was assaulted by appellant No.1 only and there is no such statement that appellant No.2 was encouraging him or supporting him in the incident. Hence, no such statement is available which could have been helpful in such a case to form an opinion that appellant No.2 had furthered the common intention in assisting appellant No.1, because of which, the conviction of appellant No.2 under Section 323 of the IPC also appears to be bad in law.

(14) After due consideration of all the material present on record before the trial Court and on the basis of the finding herein-above, this appeal is allowed in part. The judgment of conviction and sentence passed by the trial Court against appellant No.1 – Ghasiram and appellant No.2 Doulatram under Section 436 of the IPC is hereby set aside and the conviction and sentence of appellant No.2 – Doulatram under Section 323 of the IPC is also set aside. However, the conviction and sentence of appellant No.1 – Ghasiram under Section 323 of the IPC is maintained and upheld. Appellant No.1 – Ghasiram is reported to be on bail. His bail bonds stands canceled. He shall immediately surrender before the Court below concerned to serve out the remaining jail sentence upon him.

(15) The appeal is partly allowed.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

