

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 507 of 2003**

- Uttra Kumar, aged 21 years, S/o Bisahu @ Chamarrai Satnami, R/o Junwani, P.S. Sahaspur Lohara, District Kawardha, C.G.

---Appellant**Versus**

- State of Chhattisgarh, Through P.S. Sahaspur Lohara, District Kawardha, C.G.

---- Respondent

For Appellant	Mr. Ravindra Sharma and Ms. Pragya Pandey, Advocates.
For Respondent/State	Mr. Ashish Gupta, P.L.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****21/11/2019**

1. The appellant would call in question the legality and validity of the judgment dated 02.04.2003 passed by the Additional Sessions Judge, (FTC), Kawardha, C.G. in ST No. 174/2002 whereby appellant stands convicted under Section 436 of IPC and sentenced to undergo simple imprisonment for one year and fine of Rs.500/-, in default thereof to suffer simple imprisonment for one month.
2. Case of the prosecution in brief is that on 18.10.2002, accused appellant Uttar Kumar went to his father-in-law's house at village Junwani to bring back his wife to matrimonial house. When he asked his wife to return to her matrimonial house with him she replied that due to some illness she would not go with him.

Hearing this accused/appellant became angry and threatened her by saying that if she did not go, he would set on fire her parental house. On the date of incident in night, appellant's mother-in-law PW-1 ShakunBai and father-in-law PW-2 Budhari went to watch dance and thereafter next day at 4 am when Uttra Kumari PW-6, Gadhini Bai PW-5 and Nehru PW-7, brother of Uttara Kumari were sleeping in the house, PW-4 Mehatra (Neighbour) saw the appellant/Uttra Kumar set on fire the house of PW-2 Budhari. As a result of which, suitcase, clothes, bed and other articles worth Rs.5,000/- were burnt. Seeing this PW-4 Mehatra started shouting and after hearing this Gadhini Bai and Nehru came out of their house and thereafter PW-4 Mehatra narrated the story to them. Then, Prompt FIR Ex.P-1 was lodged by father-in-law (PW-2 Budhari) of the appellant. As per Ex.P-3, spot map was prepared by the Patwari PW-9 Ramsharan Kausik and site plan Ex.P-4 was also prepared by PW-13 Ashok Sharma. PW-4 Mehtara and PW-3 Baliram stated to have seen the accused setting on fire the house of Budhari and fleeing away from the place of incident. After completion of investigation, charge sheet was filed against the appellant under Section 436 of IPC. The trial Court framed the charge under Section 436 of IPC against the appellant which was denied by him and he prayed for trial.

3. So as to hold the accused/appellant guilty, the prosecution examined as many as 13 witnesses i.e. PW-1 Sakun Bai, PW-2 Budhari, PW-3 Baliram, PW-4 Mehatra, PW-5 Gadhini Bai, PW-6 Uttra Kumari, PW-7 Nohru, PW-8 Sanjay, PW-9 Ram Sharan

Kaushik, PW-10 Shyam Ratan, PW-11 Ismil Khan, PW-12 Satya Prakash and PW-13 Ashok Sharma. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.

4. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para-1 of this judgment.
5. Learned counsel for the appellant submits that due to some matrimonial dispute between the appellant/husband and his wife PW-6 Uttra Kumari, he has been falsely implicated by his wife and her parents. He further submits that accused had not committed any offence and he only wanted his wife to return to his matrimonial home. He also submits that because of this dispute false report was lodged against appellant and no witness has identified the appellant to be perpetrator of the crime. Therefore, the appellant deserves to be acquitted of the charge levelled against him.

Alternatively, he submits that if this Court ultimately comes to the conclusion that the appellant is guilty of the offence under Section 436 of IPC, considering the fact that the incident took place around 16 years ago, the age of the appellant at the relevant time i.e. 21 years and the fact that he has no criminal

antecedent, he has already remained in jail for six days, by granting the benefit of Probation of Offenders Act, the accused may be sentenced to the period already undergone by him.

6. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction of the accused/Ultra Kumar is strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
7. Heard learned counsel for the parties and perused the material available on record.
8. It is not disputed by both the parties that PW-6 Ultra Kumari is wife of the appellant and appellant reached the home of his father-in-law at 5 pm to take back his wife Ultra Kumari to her matrimonial home but Ultra Kumari denied to return to her matrimonial home because of illness and thereafter dispute arose between them.
9. As per evidence of PW-6 Ultra Kumari (wife of appellant), she refused to go to her matrimonial home due to illness and for that reason appellant became angry and threatened her. She also states that on the date of incident in night, appellant's mother-in-law PW-1 Shakun Bai and father-in-law went to watch dance and thereafter at 4 am, when Ultra Kumari PW-6, Gadhini Bai PW-5 and Nehru PW-7, brother of Ultra Kumari were sleeping in the house, PW-4 Mehatra (Neighbour) saw the appellant/Ultra Kumar set on fire the house of PW-2 Budhari and fled away from the place of incident and because of fire suitcase, clothes, bed and

other articles worth Rs.10,000/- to Rs.12,000/- were burnt. Seeing this PW-4 Mehatra started shouting and after hearing this Gadhini Bai and Nehru came out of their house and thereafter PW-4 Mehatra narrated the story to them.

10. PW-3 Baliram, neighbor of the complainant Budhari, has stated that though he has not seen the appellant setting on fire the house of the complainant but saw the appellant running away from the place of incident.
11. PW-4 Mehatra, another neighbour of the complainant, has categorically stated that when he woke up to attend the call of nature in the night, he saw the accused/appellant setting on fire the house of the complainant and thereafter running away from the spot. In cross-examination, both these witnesses have remained firm and there is no major contradiction or omission in their statements. Prompt FIR was lodged by PW-2 Budhari, who is the owner of the house vide Ex.P-1 where name of the accused was mentioned on the information given by the eyewitnesses of the case. As per Ex.P-3 and Ex.P-4 spot map and site plan were prepared and have been duly proved by PW-9 Ram Narayan Kausik, PW-10 Shyamratan and PW-13 Ashok Sharma and that is not disputed by the appellant. As per Ex.P-5, property worth Rs.12,000/- approx. was destroyed by the accused. The said document has been duly proved by independent witness PW-10 Shyamratan and I.O. PW-13 Ashok Sharma. Looking to the facts and circumstances of the case and the evidence available on

record, this Court is of the opinion that the learned trial Court has rightly convicted the appellant for the offence punishable under Section 436 of IPC and there is no reason to disbelieve the statements of eye-witnesses and the Investigating Officer.

12. As regards the sentence, considering the facts and circumstances of the case, the manner in which the incident occurred, the fact that the appellant is son-in-law of the complainant/Budhari and husband of PW-6 Uttra Kumar, that the incident took place around 16 years ago, that at the time of incident accused Uttra Kumar was 21 years of age and at present he must be 37 years of age, the fact that he has already remained in jail for 6 days, this Court is of the opinion that no use purpose would be served in sending the accused Uttra Kumar back to jail at this stage and the ends of justice would be served, if he is sentenced to the period already undergone by him and the fine of Rs.500/- imposed by the trial Court is enhanced to Rs.15,000/-. On deposit of the said fine amount, it shall be disbursed as compensation under Section 357 Cr.P.C. to the complainant/Budhari. If the fine amount is not deposited by the accused Uttra Kumar, he shall have to suffer additional R.I. for three months.

13. In the result, the appeal is allowed in part. Conviction imposed on the appellant under Section 436 is hereby maintained. However, he is sentenced to the period already undergone by him. The fine amount of Rs.500/- imposed by the trial Court is enhanced to

Rs.15,000/-. If the appellant has already deposited the fine of Rs.500/-, the same shall be adjusted accordingly. In default of payment of the fine amount as imposed by this Court, the appellant shall have to suffer additional R.I. for three months. On fine amount being deposited by the appellant, the same shall be disbursed as compensation under Section 357 Cr.P.C to the complainant/Budhari by the trial Court after due verification.

14. The appellant is reported to be on bail, therefore, his bail bonds shall continue for a period of six months from today in view of provisions of Section 437-A of Cr.PC.

Sd/-
Gautam Chourdiya
Judge

Akhilesh