

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 14-8-2019****Pronounced on 19-8-2019****CRIMINAL APPEAL No.2035/2000**

(Arising out judgment of conviction and order of sentence dated 31.7.2000 passed by First Additional Sessions Judge, Balodabazar, District Raipur Madhya Pradesh (Now State of Chhattisgarh) in Sessions Trial No.345/1999)

1. Netram son of Puneetram Yadav, aged 22 years, R/o. Village Jaroda, PS Bhatapara (Gramin), Distt. Raipur (CG)
2. Munna Khan son of Mohd. Khan, aged 32 years, R/o. Parsuram Ward, PS Bhatapara (Gramin), Distt. Raipur (CG)

---Appellants**-VERSUS-**

State of Madhya Pradesh (now Chhattisgarh) through PS Bhatapara (Gramin), Raipur (CG)

---Respondent

For appellants	: Mr. B.P. Rao and Ms. Sareena Khan, Advocates
For respondent/State	: Mr. D.K. Tiwari, Dy. Govt. Advocate

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 31.7.2000 passed by First Additional Sessions Judge, Balodabazar, District Raipur Madhya Pradesh (Now State of Chhattisgarh) in Sessions Trial No.345/1999 whereby and whereunder he convicted and sentenced each appellant as under:-

Offence u/S.	RI for	Fine Rs.	RI in default of payment of fine
436, IPC	5 Years	5,000/-	1 year

2. In brief the prosecution story is that the complainant Bihari Lal is the resident of village Jarod. At the time of alleged incident, he was running a grocery shop in a room of his house. On 17.12.1998 at about

12.00 hours, the appellants reached near the shop of complainant. They entered in his shop, poured some explosive substance in his shop and set it at fire. They also abused and threatened to kill him. The incident was seen by Baisakhu, Anuj, Dhanush Ram, Motim Bai and his son. He ran away from the shop and returned back after three hours. The damage was caused of Rs.1,50,000/-. He gave information in police station Bhatapara (Rural) on very day at about 15.00 hrs. A Dehati nalishi was lodged. After completion of investigation, a charge sheet was filed against them under Sections 436, 294, 506-B of Indian Penal Code (hereinafter referred to as 'IPC'). Trial Court framed charges against them under Sections 436 & 506-B of IPC. They abjured the charges and faced trial. To bring home the charges the prosecution examined as many as 14 witnesses. They examined four witnesses on their defense. After completion of trial, trial Court convicted and sentenced them as aforesaid. However, trial Court acquitted them of the offence punishable under Section 506-B of the IPC.

3. Being aggrieved the appellants have preferred this criminal appeal.

4. Counsel for the appellants argued that Trial Court has not appreciated the evidence in proper perspective. Earlier, between the complainant party and appellant Netram, there was rivalry because complainant party was accused for the murder of one Paras, who is relative of appellant Netram. Thus, the conviction and sentence of the appellants are bad in eyes of law. Hence, appellants may be acquitted of the aforesaid charge.

5. Counsel for the State argued that the conviction and sentence of the appellants are based on clinching evidence led by prosecution. The conviction and sentence of the appellants do not call for any interference by this Court.

6. P.W. 4 Bhuneshwari says in para Nos.1 and 2 of her statement given on oath that appellant Netram and one another person had come, seeing them she entered into her house. After hearing of shout, she came out from her house, she saw that the shop of the complainant was burning.

7. As per the statement of para Nos. 1 and 3 of P.W. 6 Motim Bai given on oath, appellants reached near the shop of complainant. She

went inside her house. She came out after hearing of shout, she saw that shop of complainant was burning.

8. P.W.-9 Anuj Ram says in para 1 of his statement given on oath that he had seen the appellants came near the shop of complainant.

9. P.W. 10 Bihari Lal, P.W. 11 Virendra @ Tedku, who is son of P.W.-10 Bihari Lal, say in para Nos.1 and 2 of their statements given on oath the appellants had entered in shop of P.W.10 Bihari Lal, some explosive substance was poured and shop was set at fire.

10. D.W.-1 Narottam says in para No.1 of his statement given on oath that in his presence, Motim Bai had told the appellants that she would kill him like Paras Ram.

11. D.W.-2 Raju says in para No.1 of his statement given on oath that the complainant Bihari had told him that he will persuade the appellant Munna, who is known to him, he shall not give evidence against him in Paras Ram's murder case otherwise he will be falsely implicated in future.

12. D.W.-3 Salik Ram says in para No.1 of his statement given on oath that Motim Bai had told him that he may persuade the appellant Netram otherwise he will be murdered as Paras Ram or falsely implicated in another case.

13. As per alleged application Ex. D-4, allegedly Motim Bai had come in the house of appellant Netram and told that if her family members are not acquitted then he will also be killed like his brother.

14. P.W.-4 Bhuvneshwari says in para No. 6 during her cross-examination that in Paras Ram's murder case her father was convicted, appellant Netram is relative of deceased Paras Ram. P.W.-6 Motimbai says in para No.2 during her cross-examination that appellant Netram is son of aunt of Paras Ram. P.W.10 Bihari Lal says in para No.6 during his cross-examination that in Paras Ram's murder case his six family members were convicted. Thus, this Court finds that there was rivalry between complainant party and appellant Netram on account of murder of Paras Ram who was his relative.

15. Rivalry or previous enmity is a double edged weapon. Animosity may be motive for committing the offence and another part is that possibility of false implication cannot be ruled out where animosity exists.

16. There is no such evidence on record on strength of which it can be said that P.W. 9 Anuj Ram had made aforesaid statement only because he was interested with complainant party on such reason, or he was prejudiced with appellants on such reason.

17. No such omissions and contradiction have been dealt during cross-examination of P.W.-4 Bhuvneshwari, P.W.-6 Motimbai, P.W.-9 Anuj Ram, P.W.-10 Bihari LaL, P.W.-11 Virendra @ Tetku on strength of which it can be said that aforesaid testimonies of para 1 and 2 of P.W.-4 Bhuvneshwari, para 1 and 3 of P.W.-6 Motimbai, in that reference, para 1 of P.W.-9 Anuj Ram, para 1 and 2 of P.W.-10 Bihari LaL and P.W.-11 Virendra @ Tetku are untrustworthy.

18. Alleged Dehati Nalishi Ex.P-10 lodged quickly without delay. In Ex. P-10 it has been mentioned that the appellants entered in the shop of complainant, explosive substance was poured and shop was set at fire.

19. There is no such material available on record on strength of which it can be said that Ex. P-10 is not simple, not natural and not normal.

20. Looking to the above mentioned facts and circumstances of the case, this possibility cannot be ruled out that the appellants had allegedly committed said offence on account of previous enmity.

21. There is no such material available on record on strength of which it can be said that aforesaid statements of para Nos. 1 & 2 of P.W.-4 Bhuvneshwari, para Nos. 1 & 3 of P.W.-6 Motimbai in that reference, para No.1 of P.W.-9 Anuj Ram, para Nos. 1 & 2 of P.W.10 Bihari Lal and P.W.-11 Virendra @ Titku are not simple, not natural and not normal. Thus, this Court believes on them and disbelieves aforesaid statements of D.W-1 Narottam, D.W.-2 Raju, D.W.-3 Salik Ram, Ex. D-4, in the reference that the appellants allegedly had not committed any offence.

22. After the appreciation of the evidence discussed here before, this Court finds that prosecution has succeeded to prove beyond reasonable doubt the charge punishable under Section 436 of IPC against the appellants. Thus, the aforesaid conviction of appellants of trial Court is affirmed.

23. So far as sentence is concerned, the appellants have served

some jail sentence. About 20 years have passed from the date of incident. At the time of incident, the appellant No.1- Netram was aged about 22 years, now he is about 42 years old, appellant No.2- Munna Khan was aged about 32 years, now he is about 52 years old. Now they are in mainstream of society. Sending them to jail would disturb their as well as their family members' life. At the time of the incident, no minimum jail sentence was provided for the offence punishable under Section 436 of IPC. Hence, no useful purpose would be served if they are sent to jail after 20 years of the incident. Looking to these circumstances and observation made by Hon'ble Supreme Court in the matter of **Manjappa -v- State of Karnataka** [(2007) 6 SCC 231] this Court is of the opinion that cause of justice would be sub-served, if RI for five years for the offence punishable under Section 436, IPC to both the appellants is reduced to the sentence for the period already undergone by them and fine amount may be suitably enhanced.

24. Consequently, the appeal is partly allowed. The sentence of the each appellant under Section 436, IPC for five years is reduced to the period already undergone by them and fine amount of Rs.5,000/- of each appellant is enhanced to Rs.25,000/- (Rupees twenty five thousands only), in default of payment of fine, each of them would further undergo additional RI for one year.

25. The appellants are granted two months' time from the date of this judgment for depositing the fine amount. The fine amount deposited earlier by the appellants shall be adjusted in the fine amount of Rs.25,000/- imposed on each appellant.

26. After the prescribed period of legal remedy available to the parties, Rs.40,000/- (Rupees Forty thousands only) out of the total fine amount of Rs.50,000/-, if deposited, be given to the complainant as compensation.

27. The appellants are reported to be on bail. Their bail bonds stand cancelled subject to the provisions of Section 437-A, Cr.P.C.

Sd/-
(Sharad Kumar Gupta)
Judge