

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 90 of 2009

1. Umesh Kumar S/o. Gangaram Vishwakarma, Aged 25 years,
2. Ramesh Kumar S/o. Gangaram Vishwakarma, Aged 25 years,
3. Dinesh Kumar S/o. Gangaram Vishwakarma, Aged 25 years,

All resident of village Khutiya, Police Station Udaipur, District Surguja (C.G.)

---- Appellants

Versus

State of Chhattisgarh, Through Incharge , Police Station Udaipur,
District Surguja (C.G.)

---- Respondent

For Appellants : Ms. Hamida Siddiqui, Advocate

For Respondent : Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

07.05.2019

Challenge in this appeal is to the judgment of conviction and order of sentence dated 23.12.2008 passed by the Special Sessions Judge (Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act 1989 Sarguja, Ambikapur, in Special Case No. 68/2007, whereby the learned Special judge, convicted the appellants for the offence punishable under Section 436 IPC and sentenced them to undergo rigorous imprisonment for 3 years and to pay fine of Rs. 500/- with default stipulation.

2. Complainant Mahesiya Bai and Hirasai are the Gond. The complainants are the members of Scheduled Tribe community and the applicants are not the member of of Scheduled Tribe.

3. Case of the prosecution, in brief is that on 22.01.2006 at about 2.00 PM in village Khutiya, the appellants having armed in their hands entered in the house of the complainant. The appellants and co-accused abused them in the name of their casts and threatened them to kill and thereafter, they shouted that set the house of the complainants on fire. Ultimately, the appellants and co-accused set the house of the complainants on fire and looted Rs. 3000/- from the box. The complainants lodged the FIR (Ex.P-25) in Police- Station Udaipur at 2.00 p.m and the crime was registered against the appellants. After due investigation, charge-sheet was filed in the Court of JMFC, Ambikapur, who, In turn, committed the case for trial to the Court of Special Judge, Ambikapur. Learned Special Judge who, in turn, conducted the trial and convicted and sentenced the appellants under Section 436 IPC.

4. Counsel for the appellants /accused does not assail the conviction part of the judgment impugned and his only request is that looking to the incident being quite old and also considering the fact that appellant No. 3 has remained in jail about 1 year 3 months and 29 days, appellant No. 1 has remained in jail about 6 months, 15 days and the appellant No. 2 has already remained in jail about 4months, 16 days and the jail sentences imposed on

them may be reduced to the period already undergone and thereby protect their well settled family life from being up-rooted at this stage.

5. State counsel however, supports the findings recorded by the both the Courts below.

6. Mahesiya Bai (PW-6) has stated that she had seen the appellants setting of her house on fire. She further deposed that when she come out of the house she saw that appellants and co-accused were standing outside the house of her house and thereafter he ran away from the spot. If the presence of the appellants on the spot was an innocent one, then they could have made an attempt to extinguish the fire of the house of the complainants and he would not have ran away from there. From the cross-examination of the witnesses which has been done in short, the counsel for the appellants could not point any circumstances which may indicate that the evidence of these witnesses is not worth-reliance. Maiya (PW-1) Mohan (PW-2) are the witnesses who have supported the case of the prosecution and deposed in the same line stated by complainant Hirasai (PW-3). Mohan (PW-2) had seized the burnt wood, kanni, burnt sari and burnt umbrella from the spot vide seizure memo Ex. P-1 and also prepared loss panchnama Ex.P-3.

7. Thus, it is clear that the appellants and co-accused had burnt the house of complainant Mahesiya Bai (PW-6). As per loss panchnama (Ex.P-3), total loss sustained by complainant

Mahesiya Bai (PW-6) was of Rs.13,475/-. Considering the evidence of the prosecution witnesses, this Court is of the considered opinion that the prosecution has succeeded in establishing the guilt of the appellants beyond reasonable doubt and accordingly, the appellants is held guilty for offence under Section 436 of IPC.

8. However, looking to the fact that the incident had taken place in the year 2006 and thereby more than 13 years have passed by, and further that the accused/appellant No. 3 has remained inside the jail about 1 year, 3 months and 29 days, accused/appellant No.1 has remained inside the jail about 6 months, 15 days and appellant No. 2 has remained inside the jail about 4 months and 11 days, this Court thinks it proper to reduce the sentence imposed on them to the period already undergone, so that they already settled family life is not landed to crises. Order accordingly. However, the fine imposed by the Court below is enhanced to Rs. 2,000/- from that of Rs. 500/- as imposed by the Court below. Let this amount be deposited in the Court below within a period of 4 months from today or else they may not derive the benefit of this order.

9. Appeal allowed in part.

Sd/-
(Vimla Singh Kapoor)
JUDGE