

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.71 of 2012**

Kewal Singh, S/o. Beer Singh, aged about 21 years, R/o.
Village Jagatpur, Police Station Charcha, Distt. Korea (CG)

---- Appellant**Versus**

State of Chhattisgarh Through Station House Officer, Police
of Police Station Charcha, Distt. Korea (CG)

---- Respondent

For the appellant : Shri Samir Singh, Advocate

For the respondent/State : Shri Afroj Khan, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****27.3.2019.**

1. The appeal is directed against judgment dated 15.11.2011 passed by Sessions Judge, Korla (Baikunthpur) (CG) in Session Case No.69/2009 wherein the said Court convicted the appellant for commission of offence under Section 436 of the Indian Penal Code, 1860 and sentenced him to undergo RI for 10 years and to pay fine of Rs.1000/- with default stipulation.

2. As per the version of the prosecution, one Nandlal gifted one Motor Cycle to Gopal Singh and brought one bicycle for the appellant and on this bias the appellant was having malice and on the date of incident i.e. on 11.3.2009 he entered into the house of Nandlal and set fire on the said motor cycle by lighting match stick. The matter was reported and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The trial Court has overlooked the major contradictions and omissions in the statement of the prosecution witness.

(ii) There is no malice intention on the part of the appellant with the complainant and the case is not proved beyond the shadow of doubt.

(iii) Benefit of probation of offenders act ought to have given to the appellant.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. Nandlal (PW-2) is the eyewitness account of the incident. As per the version of this witness, someone pushed the door of his house at about 10.00 pm on the date of incident, that is why he woke up and saw that the appellant was running after setting fire on the motor cycle by match stick. He further deposed that he informed the incident to Shyama Bai and Gopal Singh. Thereafter fire was doused by them by pouring water. Version of this witness is supported by the version of Gopal Singh (PW-1) and Mohd. Ismail (PW-4) who have seen the burnt motor cycle. Version of these witnesses is supported by FIR (Ex-P/1) which was lodged on the next day of incident i.e. on 12.3.2009 at Police Station Charcha in which name of the appellant was mentioned as culprit

and his act of setting the motor cycle on fire. All the witnesses have been subjected to searching cross-examination, but their version remained unshaken. There is nothing on record to show that the appellant has been roped with false charges and there is nothing to disbelieve the evidence of the prosecution witnesses. From the entire evidence, recorded, it is established that the appellant committed mischief by fire in the house of Nandlal and the act of the appellant falls within Section 436 IPC for which the trial Court convicted him and the same is hereby affirmed.

7. Heard on the point of sentence.

The appellant suffered jail term from 15.3.2009 to 24.3.2009 i.e. 10 days and after conviction he suffered jail term from 15.11.2011 to 29.01.2013 which comes out to one year two months and twenty five days. Looking to the facts and circumstances of the case, it would be proper to reduce the period of corporal sentence awarded to the appellant. Accordingly, sentence awarded by the trial Court is reduced to the period already undergone by the appellant while fine sentence shall remain intact.

8. The trial Court to ensure whether the appellant is in jail or not. If he is in jail, he be released forthwith, if not required in any other case.

9. With these modifications, the appeal is allowed in part.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**