

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 176 of 2011**

- Munna Chandrakar, S/o- Sukhram, Caste- Kurmi, Aged about- 35 years, R/o- village- Bisanpura, P.S.- Pipariya, District- Kabirdham (C.G.) **---- Appellant**

Versus

- State of Chhattisgarh, through- Police Station- Pipariya, District- Kabirdham (C.G.) **---- Respondent**

For Appellant : Shri R.K. Pali & Shri Amit Kumar Sahu, Advocates.

For State/Respondent : Smt. Shubha Shrivastava, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****20/11/2019**

1. This appeal is preferred against the judgment dated 18th February, 2011 passed by Sessions Judge, Kabirdham (Kavardha) (C.G.) in Sessions Trial No. 29/2010 wherein the said Court convicted the appellant for commission of offence under Section 436 of IPC, 1860 and sentenced him to undergo R.I. for three years and fine of Rs. 25,000/- with default stipulations.
2. In the present case, FIR was lodged by Arjun Das Manikpuri (PW-1). As per FIR, Arjun Das Manikpur (PW-1) was informed by his wife Sarswati Manikpuri (PW-2) that it is the appellant who committed mischief by fire in his house. Version of this witness depends on information given by Sarswati Manikpuri (PW-2).

3. Puran Chandrakar (PW-6) also deposed that she was informed by Sarswati Manikpuri regarding mischief by fire by the appellant. The other witnesses are witness of investigation after registration of FIR.
4. The only question for consideration of this Court is whether evidence of Sarswati Manikpuri is dependable to bring home the guilt of the appellant. Sarswati Manikpuri (PW-2) deposed that when she reached in her kitchen garden the appellant was standing there. In her cross-examination (Para-9) she deposed that she has seen the appellant standing in a distant place from her kitchen garden, she has categorically admitted that she has not seen the appellant causing mischief by fire, therefore, there is no eye witness account to the incident. From the statement of Sarswati Manikpuri, it is not clear as to how the mischief is caused and no connecting material for causing mischief by fire is seized from the appellant. In absence of direct evidence, evidence of seizure may have supported case of the prosecution, but in the present case nothing is seized from the appellant which is burning in nature and mischief of fire could be caused by such material. No matchstick and other explosive substance is seized from the appellant which connect him with crime in question. The trial Court recorded finding on the basis of conduct of appellant, but the fact remains that conduct itself is not conclusive proof for commission of offence. Mere standing near the place of incident is not sufficient to bring home the guilt, therefore, finding arrived at by the trial Court is not sustainable.
5. Accordingly, appeal is allowed. Conviction and sentence imposed on the appellant is hereby set aside. The appellant is

acquitted from charge under Section 436 of IPC, 1860. The appellant is reported to be on bail. His bail bonds shall continue for further period of six months in view of Section 437-A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
Judge

Vasant