

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1369 of 2017

1. Rohit Kumar Mathur, S/o- Kartik Ram, Aged about- 35 years,
 2. Yadunandan Bharati, S/o- Late Tiharu Bharati Goswami, Aged about- 48 years,
 3. Jaleshwar Giri Goswami, S/o- Sukhchain Goswami, Aged about- 28 years,
 4. Raghvendra Bharati, S/o- Puran Bharati, Aged about- 39 years,
- All Respondents are R/o- Village- Kurma, P.S.- Baloda, District- Janjgir- Champa, (C.G.)

---- Appellants

Versus

- State of Chhattisgarh, through- Police Station Baloda, District- Janjgir- Champa (C.G.)

---- Respondent

For Appellant No.1 : Shri Raj Bahadur Singh, Advocate.
 For Appellants No. 2 to 4 : Smt. Ranjana Singh, Advocate.
 For Complainant : Shri N.K. Chatterjee, Advocate.
 For State/Respondent : Shri Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

14/11/2019

1. This appeal is preferred against the judgment dated 24th August, 2017 passed by Sessions Judge, Janjgir- Champa (C.G.) in Sessions Case No. 122/2016 wherein the said Court convicted all the four appellants for commission of offence under Sections 436, 435 and 450 read with Section 34 of IPC, 1860 and sentenced to undergo R.I. for seven years, three years and seven years and fine of Rs. 5000/- on each count respectively with default stipulations.
2. In the present case, name of the victim is Komal Goswami. As per version of the prosecution on 13th April, 2016 at about 08:30 pm all the appellants came and entered into the house of the

victim and poured kerosene on the house and set the house on fire thereby caused damage to the property worth more than one hundred rupees including motorcycle, almirah and also caused some destruction to house. Matter was reported and investigated, appellants were charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellants submits that the complainant Komal Goswami has filed application for compounding the offence under Section 320 of Cr.P.C., 1973, but the offences are not compoundable. His application for compounding the offences should be considered, if case is resulted into conviction. Version of the prosecution witnesses is contradictory to each other, therefore, same is not reliable piece of evidence. Participation of all the three appellants in crime in question is not established, but the trial Court has not evaluated the entire evidence in its right perspective, therefore, conviction and sentence awarded by the trial Court may be set aside.
4. On the other hand, learned counsel for the State submits that finding of the trial Court is based on proper marshaling of evidence which is not required to be quashed while invoking jurisdiction of appeal.
5. I have heard learned counsel for the parties and perused the record of the Court below wherein judgment has been passed.
6. To substantiate the charges, the prosecution examined as many as fifteen witnesses. Komal Goswami (PW-1) deposed before the trial Court that all the appellants entered into his house by breaking the door and appellant No. 3 Jaleshwar Giri Goswami

was in possession of one jurrycane with kerosene and appellant No. 1 Rohit Kumar Mathur poured kerosene and set his house on fire. Rani Goswami (PW-2) deposed on same line against all the appellants. Dilip Kumar Khunte (PW-4), Uttar Kumar Khunte (PW-5), Chetan Giri Goswami (PW-9) and Girver Puri (PW-15) also deposed against the appellants. These witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of defence, therefore, their version is not rebutted and as per evidence of these witnesses, participation of each of the appellant in crime in question is established.

7. Mischief by fire with intent to cause damage to amount of one hundred or more is offence punishable under Section 435 of IPC, again mischief by fire with intent to destroy the house is the offence punishable under Section 436 of IPC, house trespass in order to commit offence punishable with imprisonment for life is under Section 450 of IPC. Section 436 of IPC is punishable with imprisonment for life. Therefore, all the offences against each the appellant under Section 435, 436 and 450 read with Section 34 is established. The trial Court elaborately discussed the entire evidence and recorded finding of conviction and this Court no reason to interfere with the finding recorded by the trial Court. Accordingly, conviction of the appellants on above said three offences is hereby affirmed.

8. Heard on point of sentence.

9. Appellants are in jail since the date of judgment, i.e. 24th August, 2017 thereby they suffered the jail term of two years and three months. At the time of investigation/trial the appellants suffered

jail term for seven days. In the facts and circumstances of the case, this Court is of the opinion that ends of justice would be served if the jail sentence imposed by the trial Court is reduced to period already undergone by the appellants. It is ordered accordingly. All the appellants be set at liberty forthwith, if not required in any other case.

10. Accordingly, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge