

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 134 of 2011

Rajendra Prasad@Ramdiklal Chouhan, S/o Late Madan Lal Chauhan, Aged about- 33 years, Occupation- Agriculture, R/o- Mirauni, Police Station- Chandrapur, District- Janjgir-Champa(C.G.)

---- Appellant

Versus

State of Chhattisgarh, through Station In-Charge Officer, Police Station Kotraroad, District- Raigarh (C.G.)

---- Respondent

For appellant : Mr. Mirza Kaisar Baeg, Advocate

For State : Mr. Afroj Khan, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment on Board

02/03/2020

1. This appeal is preferred against the judgment dated 31st of January, 2011 passed by 3rd Additional Sessions Judge(F.T.C.) Raigarh (C.G.) in Sessions Case No. 59/2010, wherein the said Court convicted the appellant for charge under Section 436 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 4 years.
2. In the present case, name of the complainant is Santosh Kumar (PW-1). According to the prosecution, date of incident is 10th of April, 2010 at about 5:30 p.m. at village Kantahaldi, on the fateful date of the incident the appellant caused mischief by fire by lighting match-stick in the house of the complainant. Prior to that, the appellant came into the house of the complainant four days ago and committed theft of mobile phone of his sister namely Nandai Chauhan. At the time of search she asked the appellant that you have come to my house since four days back and from that date my mobile

was missing, on which the appellant said that he knows *Tantra-Mantra* by which he can trace the mobile and called for one coconut, Agarbatti and after setting fire he replied that mobile was kept on the roof of the house, resulting which Nandai started searching her mobile on roof and at that point of time the appellant after taking out matchstick from his pocket set-fire the roof and ran away. Thereafter, complainant Santosh Kumar has reported the matter to the Police Station and matter was investigated, after completion of investigation appellant was charge-sheeted and Court convicted him as mentioned above.

3. Learned counsel for the appellant submits that there is no eye witness account to the incident and prosecution witnesses who claimed to be eye witness account to the incident have admitted in their cross examination that initiation of firing was not seen by them. The trial Court has overlooked material discrepancies in the statements of the prosecution witnesses and recorded finding of conviction which is not sustainable. The trial Court has not evaluated the evidence properly therefore, conviction of the appellant is liable to be and is hereby set-aside.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.

5. Santosh Kumar (PW-1) is complainant in the present case though he deposed that there was search for mobile of her sister and the appellant asked her that he will find her mobile phone on the roof of the house and thereafter said appellant by taking match-stick lit the same on the roof of the house, but this witness deposed in his cross examination (Para-10) that he came out there, after the incident of firing. This witness had no occasion to see as to how the fire broke therefore, this witness is not a real eye witness and on the basis of his statements it cannot be held that it is the appellant who lit the match-stick and he is the author of the crime. Smt. Sukmat Bai (PW-2) also deposed in her cross examination in chief that the appellant lit the match-stick in the house but in her cross examination (Para -9) she admitted that she had not seen the appellant lit the match stick in the house and setting fire in the house of the complainant. This witness is also not an eye witness account to the incident. Therefore, story put forth by the prosecution has not established from the statements of these witnesses. Sonkunwar Chouhan (PW-3) deposed that she had gone to the market and when she returned back, found the house of the complainant is burning. This witness was also not an eye witness account to the incident. Therefore, his version also has not supported piece of evidence. The other witnesses are also not an eye witnesses account to the incident. They reached to the spot after firing and they are witnesses of what happened after the incident.

6. Radheshyam (PW-6) deposed that loss by fire is estimated about 11,800/- but the fact remains that unless criminal act is proved by cogent and clinching evidence, he cannot made liable to pay compensation to the complainant. On an overall assessment of the evidence, charge leveled against the appellant is not established and finding arrived by the trial Court is not sustainable.
7. Accordingly, the appeal is allowed and he is acquitted of the said charge, his conviction and sentence is hereby set-aside.

Sd/-
(Ram Prasanna Sharma)
Judge