

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Appeal No. 912 of 2014**

1. Kamod Verma @ Dhadi S/o Manglu Verma, Aged about 35 years, Occupation- Hamali
2. Tata @ Malesh Verma S/o Manglu Verma, Aged about 32 years, Occupation – Hamali  
Both R/o Pikri Para Ward No.1, Vidhya Nagar, Bemetara, P.S. & District- Bemetara (C.G.)

**---- Appellants**

**Versus**

- State of Chhattisgarh Through – Police Station City Kotwali, Bemetara, District- Bemetara (C.G.)

**---- Respondent/State**

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For Appellants : Shri Sudhir Verma, Advocate  
For Respondent/State : Shri Anand Verma, Deputy Government Advocate

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**Hon'ble Shri Justice Gautam Chourdiya, J**

**Judgment**

**24.06.2020**

1. This appeal is heard through Video Conferencing.
2. This appeal arises out of the judgment of conviction and order of sentence dated 19.08.2014 passed by the Sessions Judge Bemetara, District Bemetara (C.G.) in Sessions Trial No. 51 of 2013, whereby the Appellants stand convicted and sentenced as under:-

| <b><u>Conviction</u></b>                                                      | <b><u>Sentence</u></b>                                                                                                           |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Under Section 427 read with Section 34 of Indian Penal Code (for short 'IPC') | R.I. for six days and pay a fine of Rs.1,000/- each, in default of payment to further undergo additional R.I. for ten days each. |

3. The allegation against the appellants is that on 27.03.2013 at about 09:00 pm at village Vidyanagar, Ward No. 1 Bemetara, P.S. City Kotwali Bemetara, District Bemetara, both above appellants in furtherance of common intention set on fire the hut of the complainant namely Rajkumari Chauhan (PW-1) and fled away. When PW-1 shouted for help, her husband Janardhan Chauhan (PW-2), Sushila Bai (PW-4), Mamta (PW-5), Umend Verma (PW-

8), Lalita Bai (PW-10) and others came there to extinguish the fire. Prompt named F.I.R. (Ex.-P/1) was lodged by PW-1 Rajkumari Chauhan against the appellants. Further allegation is that on the date of incident there was *Holi* Festival and prior to this incident, dispute arose between the appellants and PW-3 Devsingh Verma who is the neighbour of PW-1 and the appellants threatened Devsingh to set his house on fire. The incident was witnessed by Sushila Bai (PW-4) and Mamta (PW-5).

4. Both accused/appellants were arrested on 28.03.2013 and charge-sheet was filed against the accused/appellants for the offence under Sections 427 & 436 read with Section 34 of IPC. While framing charges, the Sessions Court framed charge against the accused/appellants under Section 436 read with Section 34 of IPC. The accused/appellants have denied the charges framed against them and prayed for trial. However, the Sessions Court acquitted the appellants of the charge under Section 436 of IPC and convicted & sentenced them as mentioned above in para-2 of this judgment.
5. So as to hold the accused/appellants guilty, the prosecution examined 12 witnesses namely Rajkumari Chauhan (PW-1), Janardhan Chauhan (PW-2), Devsingh Verma (PW-3), Sushila Bai Chauhan (PW-4), Mamta Chauhan (PW-5), Sumit Vishwakarma (PW-6), Savitri Bai (PW-7), Umend Verma (PW-8), Faaguram Sahu (PW-9), Lalita Bai (PW-10), Anup Kumar Vajpayee (PW-11) and Itwari Lal Dehre (PW-12) in support of its case. Statement of the accused/appellants were also recorded under Section 313 of Cr.P.C. in which they denied the circumstances appearing against them in the prosecution case, pleaded innocence and false implication. No defence witness has been examined by the appellants in their support.
6. Learned counsel for the appellants submits that the appellants were falsely implicated in this case due to previous enmity. He further submits that there is no threatening given by the appellants to Devsingh (PW-3) and no F.I.R. was lodged by Devsingh against the appellants. He also submits that looking

to the evidence of both eyewitness namely Sushila Bai (PW-4) and Mamta (PW-5), their evidence does not appear trustworthy and the Sessions Court has wrongly convicted and sentenced the appellants under Section 427 read with Section 34 of IPC by its judgment impugned for mischief causing damage to the amount of hundred rupees of PW-1 complainant. Therefore, the impugned judgment of conviction and sentence of the Sessions Court is liable to be quashed.

7. On the other hand, learned counsel for the State supporting the impugned judgment submits that looking to the evidence of Sushila Bai (PW-4) and Mamta (PW-5), they have seen the appellants setting on fire the fencing of the complainant (PW-1), therefore, the appellants were rightly convicted and sentenced by the Sessions Court which needs no interference by this Court.
8. Heard the learned counsel for the parties and perused the evidence available on record.
9. It is not disputed that on the date of incident i.e. on 27.03.2013 named F.I.R. (Ex.-P/1) was lodged by PW-1 Rajkumari (complainant) stating against the appellants that on the same day at about 06:30 pm dispute arose between the appellants and her neighbour Devsingh (PW-3) and both the appellants were threatening Devsingh that they will set his house on fire. On the same day at about 09:00 pm, the house of the complainant was set on fire. The incident was seen by Rajkumari Chauhan (PW-1), Janardhan Chauhan (PW-2), Devsingh Verma (PW-3), Sumit Vishwakarma (PW-6) and Savitri Bai (PW-7) and all have stated that the fencing of the complainant (PW-1) was set on fire by the appellants and they were extinguishing the fire.
10. *Nazrinaksha* was prepared by Patwari Faaguram Sahu (PW-9) in presence of PW-1 Rajkumari who proved the same. *Panchnama* of damage (Ex.-P/4) was prepared in presence of PW-1 Rajkumari Chauhan & other witnesses and they proved the same. It was found that in the back side of the house of

PW-1, the fencing (*badi*), which was made by *arhar*-straw, was set on fire and near about cost of damage is Rs.100/-. Ex.-P/4 remained uncontroverted and unchallenged. Ex.-A/1 and Ex.-A/2 are the photographs of the place of occurrence which go to show that the fencing of the house was burnt which was adjacent to the house of the complainant and that fencing was constructed by the complainant (PW-1).

**11.** PW-3 Devsingh Verma whose house is adjacent to the house of the complainant (PW-1) has stated in paras 1 & 2 of his deposition that on the date of incident at about 03:30 pm, the appellants were quarreling with him and both the appellants were threatening him to set his house on fire and on the same night, the house of the complainant (PW-1) was burnt. The estimated costs of loss was prepared by the police vide Ex.-P/4.

**12.** PW-4 Sushila Bai Chauhan and Mamta Chauhan are the eyewitness of the incident. Both (PW-4 & PW-5) have stated that on the date of incident at about 10:00 pm, both went to answer the call of nature, they have seen the appellants at the place of occurrence and they (appellants) after setting on fire the house of the complainant (PW-1), fled away from the place of occurrence, that fact is also proved by both eyewitness (PW-4 & PW-5).

**13.** Thus, in the totality of the facts and circumstances of the case, the evidence of the above witnesses PW-1, PW-3, PW-4, PW-5, it is clear that on the date of incident, the dispute arose between the appellants & Devsingh (PW-3) and the appellants threatened PW-3 to set his house on fire. Looking to the evidence of Sushila Bai (PW-4), Mamta Chauhan (PW-5) and Sumit Vishwakarma (PW-6), they have seen the appellants setting on fire the house of the complainant (PW-1), fleeing away from the place of occurrence and the fencing (*badi*), which was made by *arhar*-straw, was set on fire and near about cost of damage i.e. Rs100/- was estimated by police through Ex.-P/4. Ex.-A/1 & Ex.-A/2 (photographs of the place of occurrence) clearly show the damages caused to the complainant. Therefore, the prosecution has

proved its case beyond all reasonable doubt. Being so, conviction of the appellants under Section 427 read with Section 34 of IPC awarded by the Sessions Court appears to be just and proper warranting no interference by this Court.

**14.** Consequently, the appeal being devoid of substance deserves to be and is hereby dismissed.

**15.** In the present case, the Sessions Court by its judgment of conviction and order of sentence dated 19.08.2014 has sentenced the appellants to undergo R.I. for 6 days and fine amount of Rs.1,000/- each with default sentence. As per order-sheet dated 19.08.2014 of the Sessions Court, both the appellants have already deposited fine amount of Rs.1,000/- through Receipt No. 203153, Serial No. 16 & 17 and they remained in jail from 28.03.2013 to 02.04.2013, total six days, which is mentioned in para-43 of the impugned judgment, therefore, there is no requirement for passing any order regarding their arrest, surrender etc.

Sd/-  
**(Gautam Chourdiya)**  
Judge