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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 472 of 2001

Sukhnandan @ Kodhu, S/o Akilsay Rajwar, aged 27 years, Occupation- Agriculture, R/o. Village- Belkharikha Police Station- Darima, District Surguja, Chhattisgarh.

---- Appellant

Versus

The State of Chhattisgarh, Through: P. S. Darima, Distt.- Surguja (Chhattisgarh).

---- Respondent

For Appellant : Ms. Suchita Baishya, Advocate on behalf of Mr. A. K. Prasad, Advocate.
For Respondent/State : Mr. Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

30/01/2020

This appeal arises out of the judgment of conviction and order of sentence dated 16.05.2001 passed by the 3rd Additional Sessions Judge, Ambikapur Sarguja (C.G.) in Sessions Trial No. 251/1997, convicting the accused/appellant for the offence punishable under Section 436 of Indian Penal Code (henceforth “IPC”) and sentencing him to undergo rigorous imprisonment of four years.

02. It is relevant to mention here that learned Trial Court had

acquitted the co-accused namely Rakesh Kumar Yadav of the offfence under Section 436 of IPC.

03. Case of the prosecution, in brief, is that on 20.06.1997 at about 10.00 pm when complainant- Kanhaiyalal went to village Koillar Tikra, his house was set on fire. The said information was received by him at village Koillar Tikra, on which immediately he came back to his village where the villagers were trying to extinguish the fire and at about 2.00 O' clock at night the fire was extinguished. Due to the said incident, the complainant's properties amounting to Rs. 1.50 lacs (approximately) were damaged. On the next day of incident, complainant- Kanhaiyalal made a written complaint (Ex.P/4) before the Police Station Darima alleging that on the date of incident i.e. 20.06.1997, after instructing Surendra Singh & Pannu Singh to look after his house, he went to another village (Koillar Tikra), where at about 11.00 pm he received information that his house was set on fire, immediately thereafter he came back to his village and with the assistance of villagers, extinguished the fire. On the basis of written complaint, first information letter (Ex. P/5) was made and on the basis of which, FIR (Ex. P/9) was lodged against the accused namely Shukhnandan @ Kodhu and another co-accused Rakesh Kumar Yadav. During investigation, seizure memo (Ex. P/7) & spot Map (Ex. P/14) were prepared and the statements of the eye witnesses to the incident namely Surendra Singh & Pannu Singh were recorded under Section 161 of Cr. P. C.

04. After usual investigation, charge-sheet under Section 436 read with Section 34 of IPC was filed against the accused persons. After

filing of chargesheet, the trial Judge framed charge against the accused persons under Section 436 of IPC. Accused denied the charge levelled against them and prayed for trial.

05. So as to hold the accused persons guilty, the prosecution examined as many as 11 witnesses namely- Kuwarsai (PW-1), Munnu Singh (PW-2), Ramdev Yadav (PW-3), Kanhaiya (PW-4), Surendra Kumar Singh (PW-5), Dev Kumar (PW-6), Mangalsai (PW-7), Lallu (PW-8), Shri C. S. Sharma (PW-9), Pannu (PW-10) & Suffiuddin (PW-11). Statements of the accused 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. However, no defence witness was examined on behalf of the accused.

06. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in opening paragraph of the judgment.

07. Learned counsel for the appellant submits that in the instant case, complainant made written complaint against the accused persons on the basis of information received from the witness namely Surendra Kumar Singh but the said witness gathered the said information from another witness- Pannu (PW10), who has not supported the case of the prosecution and has turned hostile in his court examination during trial. He further submits that the complainant made a written complaint (Ex.P/4) against the accused persons stating that he received information regarding the aforesaid incident from Surendra Kumar Singh. On the date of incident, near the window of his (Kanhaiya)

house, two persons, one of whom was Sukhnandan @ Kondu, were smoking and when he asked that “who they are”, they did not reply and ran away from the place of occurrence. In the written complaint (Ex.P/4), he did not mention the name of a particular accused person, who set his house on fire. He lastly submits that in the instant case similarly situated co-accused namely Rakesh Kumar Yadav was acquitted of the same offence i.e. under Section 436 of the IPC by the trial Court, therefore, it is prayed that the appellant may also be acquitted of the charge leveled against him on the ground of parity.

08. On the other hand, while supporting the impugned judgment, it has been argued by the State counsel that in the instant case, learned trial Court has rightly appreciated the court statement of Surendra Kumar Singh (PW05), in which he stated that at the time of occurrence two accused persons were present and they set on fire the house of the complainant. He lastly submits that the conviction of the appellant is based on proper appreciation of the evidence and material available on record and as such, there is no scope for interference in the judgment impugned.

09. Heard counsel for the respective parties and perused the material on record.

10. Kunwarsai (PW-1) has stated in his evidence that since he reached the place of occurrence just after the incident, therefore, he has no idea as to in what manner, the house of the complainant is said to have been set on fire. He has also stated in paragraph 4 of his statement that when he was coming to the place of occurrence, he saw Pannu & another villager-Badsa, who were standing near the Jack-fruit

(*Kathal*) tree, asked to extinguish the fire but they could not come with him. In cross-examination, paragraph 6, he stated that at the place of occurrence no one mentioned the name of any person or persons, who set on fire the house of the complainant. He has also stated this fact, in paragraph 9 & 10 of his cross-examination that there was dispute between the complainant and accused party with regard to cutting of trees and due to that dispute, a panchayat meeting was also convened and in that meeting, the complainant threatened the accused namely Sukhnandan that he will falsely implicate him in any of the crime. Munnu Singh (PW-2) has also stated in his evidence that he also reached the place of occurrence just after the incident and, therefore, he also has no idea as to who set on fire the house of the complainant.

11. Complainant Kanhaiya (PW-4) has stated in his evidence that he made written complaint (Ex. P/4) stating that on the date of incident he went to village Koillar Tikra for some urgent work and immediately after receiving the information about the incident, he came back to his village and found that his house was burning, thereafter, with the help of villagers, he extinguished the fire and then one villager namely Surendra Kumar Singh (PW05) told him that two persons i.e. present accused- Sukhandan @ Kodhu & another co-accused were smoking near the window of his house and when he (Surendra Kumar Singh) asked that “who they are”, they did not reply and ran away from the place of occurrence. On the basis of said information, he made written complaint about the incident before the police Station Darima.

12. Surendra Kumkar Singh (PW05), who projected himself to be an

eyewitness to the incident, has stated in paragraphs two and three of his statement that on the date of incident when he saw two persons sitting near the house of the complainant, he asked them for their introduction, but they did not reply to the same and ran away from the place of occurrence.

It is apparent from his statement that he did not mention the name of the person/persons, who set on fire the house of the complainant. In paragraph 15 of his statement, he stated that Pannu (PW10) has also seen that the accused persons were fleeing from the place of occurrence.

13. Pannu (PW10), in paragraph two of his statement, has totally denied the factum of incident as narrated by Surendra Kumar Singh (PW-5), whose statement was not reliable as his statement suffers from several discrepancies. Thus, it is concluded that Pannu (PW10), who is said to be eyewitness to the incident, has turned hostile and has not supported the case of the prosecution at any stage of the examination.

14. Minute examination of the evidence makes it clear that the trial Court has failed to consider the material evidence available on record as the conviction of the appellant is based on two witnesses, who are said to be the eyewitness to the incidence, but statement of Surendra Kumar Singh, who is one of the eye witnesses, was not reliable as his statement suffers from several discrepancies and he is said to be the hearsay witness as per paragraph No. 15 of his deposition. Apart from that, another witness namely Pannu has not supported the case of the prosecution and has turned hostile. It is also evident from the judgment

of the trial Court that one co-accused namely Rakesh Kumar Yadav has been acquitted by the trial Court on the ground that there is no evidence on record to connect co-accused – Rakesh Kumar Yadav with the crime in question. Thus, I am of the opinion, the appellant -Sukhnandandan @ Kodhu also deserves to be acquitted of the charge under Section 436 of the Indian Penal Code.

15. Resultantly, the appeal is allowed. The conviction of the appellant under Section 436 of IPC is set aside. He is acquitted of the charge under Section 436 of IPC. The appellant- Shukhnandan @ Kodhu is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)

Judge

Amita