

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 01 of 2003

Reserved on : 16.12.2019

Delivered on : 06.02.2020

1. Tribhuvan Das @ Kallu, S/o Tillu Yadav, aged about 21 years, R/o Village- Parsapara, P.S. Patna, District- Korla (C.G.)
2. Manoj Das, S/o Khristodas Tigga, aged about 20 years, R/o Village- Parsapara, P.S. Patna, District- Korla (C.G.)

---- Appellants

Versus

The State of Chhattisgarh, through P.S.- Patna, District- Korla (C.G.)

---- Respondent

For Appellants : Mr. Rakesh Pandey, Advocate.

For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 07.12.2002 passed by Additional Sessions Judge, Baikunthpur, District- Korla (C.G.) in Session Trial No. 232/2002, wherein the said court convicted both the appellants for commission of offence under Section 436 of IPC, 1860 and sentenced to undergo R.I. for 3 years and fine of Rs. 3000/- each with further default stipulations.
2. As per version of the prosecution, on the date of incident i.e. on 05.02.2002 at about 12:00 p.m. in night, the appellants committed mischief by fire to betel shop of the complainant- Deosharan. The matter was reported, the appellants were

charge-sheeted and after completion of trial, the trial court convicted as mentioned above.

3. Learned counsel for the appellants submits as under:-

(i) Aatish (PW-2) & Sanjay (PW-6) are not reliable witnesses because their version is contrary in nature.

(ii) The trial court overlooked the material discrepancies, therefore, the finding arrived at by the trial court is not sustainable.

(iii) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.

4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record.

6. In the present case, date of incident is 05.02.2002 and report was lodged on 06.02.2002 as per Ex. P/1. Sanjay (PW-6) is eye-witness account to the incident and as per version of this witness, the appellants are author of crime who committed mischief by fire in betel shop of the complainant- Deosharan. Version of this witness is subjected to searching cross-examination, but nothing could be elicited in favour of the

defence. Version of this witness is supported by version of Aatish (PW-2) (Para 3) to whom the incident was informed.

7. On overall assessment of the evidence, the trial court recorded finding that the appellants are the persons who committed mischief by fire in the betel shop. After reassessing the entire evidence, this Court has no reason to record finding. The act of the appellants falls within mischief of Section 436 of IPC, 1860 and their conviction is hereby affirmed.
8. The appellants have suffered jail sentence from 07.02.2002 to 22.02.2002 i.e. for 16 days. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellants are sentenced to the jail sentence of the period already undergone by them. Accordingly, their sentence is reduced to the period already undergone by them. As per order of the trial court, the complainant shall be compensated from the fine amount, therefore, the fine amount imposed by the trial court shall remain intact.
9. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge