

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 435 of 2013

1. Sukdev (Died), S/o Ganesh Ram Bhagat Aged about 18 years
R/o Village Khairi, Thana Palari, Distt.- Raipur, Now Distt.-
Balodabazar, Chhattisgarh
2. Basant Kumar, S/o Rupchand Banjare Aged About 22 Years
R/o Village Khairi, Thana Palari, Distt.- Raipur, Now Distt.-
Balodabazar, District : Balodabazar-Bhathapara, Chhattisgarh

---- Appellants

Versus

State of Chhattisgarh S/o Through P.S. Palari, Distt.-Baloda-
Bazar, C.G., Civil And Revenu Distt.-Baloda-Bazar,
Chhattisgarh

---- Respondent

For appellants	:	Mr. N.K. Malaviya, Advocate
For State	:	Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

14/01/2020

1. Appellant No.1 has died. Perused the letter submitted by the
First Additional Sessions Judge, Balodabazar (C.G.), dated
01.01.2020. As per letter appellant No.1 Sukhdev Baghel has
died on 17th of April, 2018. The report was submitted with an
affidavit and other relevant documents. It appears that no one
filed application to continue the appeal on behalf of appellant
No.1, therefore, the appeal filed by appellant No.1 is disposed
of, as same is finally abated. This appeal shall be heard
against appellant No.2 Basant Kumar.
2. This appeal is preferred against the judgment dated 17th of
April, 2013 passed by first Additional Sessions Judge,
Balodabazar, District- Raipur Now District- Balodabazar (C.G.)
in Sessions Trial No. 134/2011, wherein the said Court

convicted the appellant for charge under Sections 436 read with Section 34 of Indian Penal Code, 1860 and sentenced him to undergo R.I. for 5 years and fine of Rs. 500/-with default stipulations.

3. In the present case, name of the victim is Bhojabai who is resident of village Khairi. As per version of the prosecution, the appellant caused mischief by fire on her house and there by the complainant sustained a loss of Rs. 50,000/-. Thereafter, Matter was reported, investigated, charge-sheeted and Court convicted the appellants as mentioned above.

4. Learned counsel on behalf of appellants submits as under -

(I) Appellant Sukhdev is no more and evidence against the appellant Basant Kumar is contradictory in nature, therefore, charge leveled against the appellant Basant Kumar is not established.

(II) The trial Court has not evaluated the evidence properly, therefore, finding of the trial Court is liable to be set aside.

5. 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.

6. To substantiate the charge, the prosecution examined as many as 7 witnesses. Bhoja Bai (PW-3), Rajkumar (PW-7) are eye witness account to the incident. As per version of Bhoja

Bai appellants Sukhdev and Basant both have poured the kerosene in her house and lighted matchstick but Rajkumar(PW-7) deposed that only Sukhdev committed mischief by fire who was in possession of kerosene and same was poured in the house of complainant. This witness has rebutted the version of the Bhoja Bai that both the appellants are involved in the crime in question. Suraj (PW-4) deposed that Bhoja Bai informed him regarding causing fire by Sukhdev. Looking to the entire evidence, it is not established beyond doubt that the appellant Basant is also involved in causing fire in the house of the complainant. Therefore, charge under Section 436 of IPC is not established against the appellant Basant. He is acquitted of the charge under Section 436 of IPC, 1860 and his conviction and sentence is hereby set- aside.

7. Accordingly, the appeal is allowed.

Sd/-
(Ram Prasanna Sharma)
Judge