

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 443 of 2013**

- Santosh Kumar Banjaree, S/o Kunj Lal Banjaree, aged about 26 Years, R/o Village Khairee, P.S. Palari, District Raipur C.G., Revenue District Balodabazar - Bhatapara C.G.

----Appellant**Versus**

- State of Chhattisgarh, Through- D.M. Balodabazar, Bhatapara C.G.

---- Respondent

For Appellant	Shri Vineet Kumar Pandey, Advocate.
For Respondent/State	Shri Rahul Jha, Government Advocate.

Hon'ble Shri Justice Gautam Chourdiya**Judgment on Board****05/11/2020**

1. The appeal is heard through Video Conferencing.
2. The appellant would call in question the legality and validity of the judgment dated 17.04.2013 passed by the 1st Additional Sessions Judge, Balodabazar, District Raipur, C.G. in ST No. 21/2012 whereby the appellant stands convicted under Section 436 of IPC and sentenced to undergo rigorous imprisonment for five years and fine of Rs.500/-, in default thereof to suffer rigorous imprisonment for one month.
3. Case of the prosecution, in brief, is that on 23.02.2012 when complainant-PW-5 Basant was sleeping in his house, at about 10:00 pm his Maternal Grandmother (PW-3 Leela Bai) heard some noise, she woke up and came out of her room and saw the

appellant set on fire the house of complainant. As a result of which, complainant's property amounting to Rs.31,500/- was damaged and other household articles were burnt. Seeing this, she (PW-3 Leela Bai) started shouting and after hearing her voice villagers and complainant-Basant came there and tried to extinguish the fire. On seeing them, accused/appellant tried to escape from there and when complainant-Basant tried to catch him, he (appellant) somehow came out of his clutches and ran away from there. Then, on the next day i.e. 24.02.2012 FIR Ex.P-6 was lodged by complainant against the appellant. During investigation, spot map Ex.P-1 and *panchnama* of damaged property (household articles) amounting to Rs.31,500/- vide Ex.P-2 was prepared by PW-1 Sukhram Sahu, Patwari. Burnt articles were seized vide Ex.P-3. Another *Panchnama* of damaged property Ex.P-4 and spot map Ex.P-7 were prepared by PW-6 J.K. Singha, Investigating Officer. Accused/appellant was arrested on 24.02.2012 vide Ex.P-8. After recording statements of the witnesses, charge sheet was filed against the appellant under Sections 436 and 429 of IPC. The trial Court framed the charge under Section 436 of IPC against the appellant which was denied by him and he prayed for trial.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 6 witnesses i.e. PW-1 Sukhram Sahu, PW-2 Sammat, PW-3 Leela Bai, PW-4 Sukhdev, PW-5 Basant and PW-6 G.K. Singha. Statement of the accused/appellant was also recorded under Section 313 of Cr.P.C. in which he denied

the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. However, no witness was examined by him in his defence.

5. 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 above.
6. Learned counsel for the appellant submits that due to previous enmity with the complainant and his family members, the appellant has been falsely implicated in this case. He further submits that no independent witness has supported the prosecution case. There are material contradictions and omissions in the statements of the complainant and other witnesses. No cogent evidence is available on record against the appellant. Therefore, the impugned judgment of conviction and order of sentence deserves to be set aside and the appellant be acquitted of the said charge.
7. On the other hand, supporting the impugned judgment learned counsel for the State submits that conviction and sentence of the accused/appellant are strictly in accordance with law and there is no illegality or infirmity in the same warranting interference by this Court.
8. I have heard learned counsel for the parties and perused the material available on record.

9. PW-3 Leela Bai stated in her deposition that when she was sleeping in her house, at about 10:00 pm she heard some noise, came out of her room and saw the appellant set on fire her house. As a result of which, her property amounting to Rs.30,000-Rs.40,000 was damaged and other household articles were burnt. Seeing this, she started shouting and after hearing her voice villagers, complainant Basant and her grandson Sukhdev came there and tried to extinguish the fire. On seeing them, accused/appellant tried to escape from there and when complainant-Basant tried to catch him, he somehow came out of his clutches and ran away from there. Then, on the next day, complainant- Basant went to the police station and lodged the FIR against the accused/appellant.
10. PW-4 Sukhdev stated in his deposition that on the date of incident he was at home and watching T.V. At about 9-10 pm, he heard the hue and cry of his maternal grandmother (PW-3 Leela Bai) then he went there and saw the appellant set on fire her house and flee from the place of incident. Seeing this, he tried to stop the appellant but appellant shook his hand and ran away from there.
11. PW-5 Complainant-Basant has supported the evidence of PW-3 Leela Bai and PW-4 Sukhdev and stated the same facts as stated by them. He stated that after the incident he went to the police station and lodged the FIR Ex.P-6 against the appellant. He also stated that in his presence police prepared the spot map Ex.P-7

and Patwari prepared the spot map Ex.P-1 and *panchnama* of damaged property worth Rs.31,500/- vide Ex.P-2.

12. PW-2 Sammat stated in his deposition that on the date of incident at about 9-10 pm he was watching TV at his home and after hearing the hue and cry of complainant-Basant, he came out of his home and saw complainant- Basant's house burning. He also stated that PW-3 Leela Bai and PW-4 Sukhdev informed him about the incident and he has not seen the appellant setting on fire the house of the complainant.

13. PW-1 Sukhiram Sahu, Patwari, prepared the spot map Ex.P-1 and also made a *panchnama* of damaged property (household articles) amounting to Rs.31,500/- vide Ex.P-2 and duly proved the same.

14. PW-6 J.K. Singha, Assistant Sub-Inspector, who investigated the case, has supported the prosecution case.

15. PW-3 Leela Bai has consistently stated as to the manner in which the house of the complainant was set on fire by the appellant on the date of incident as a result of which certain household articles were burnt. Her version has been duly corroborated by the evidence of PW-4 Sukhdev and PW-5 Basant- Complainant. There is no major contradictions or omissions in the statements of the aforesaid witnesses. Further, prompt FIR was lodged by PW-5 Basant vide Ex.P-6 naming the accused/appellant as a perpetrator of the crime. As per Ex.P-1 and Ex.P-7, spot maps were prepared

and duly proved by PW-1 Patwari and PW-7 Investigating Officer and that is not disputed by the appellant. Further, as per Ex.P-2, property worth Rs.31,500/- approx. was destroyed in the said incident and it has been duly proved by the PW-1 Sukhram Sahu, Patwari. Thus, considering the unrebutted ocular and documentary evidence on record, it stands proved beyond all reasonable doubt that it is the accused/appellant who on the date of incident set the house of the complainant on fire resulting in damage worth Rs.31,500/- to the complainant.

16. So far as argument of learned counsel for the appellant regarding previous enmity is concerned, PW-3 Leela Bai has admitted in para 7 of her deposition that one criminal case is pending against the appellant and her grandsons i.e. PW-4 Sukhdev and PW-5 Basant over land dispute. However, merely on the ground of there being previous enmity between the parties, the whole prosecution case cannot be discarded because previous enmity between the parties works as a double edged weapon and the Court is required to minutely examine the evidence on record before arriving at a conclusion whether such enmity between the parties has led to false implication of the accused or not. In the present case, admittedly there was previous enmity between the parties due to land dispute but from the eye-witnesses account, as discussed above, it is clearly established that the appellant set the house of the complainant on fire. In the given facts and circumstances of the case, the nature and quality of evidence available on record, it cannot be said that due to previous enmity of the complainant with

the appellant, he has been falsely implicated in this crime.

17. On the basis of aforesaid discussion, this Court finds no reason to interfere with the findings of guilt of the appellant recorded by the trial Court. The appeal is *sans merits* and is liable to be dismissed. It is accordingly dismissed.

18. As per report dated 22.10.2020 submitted by Jail Superintendent, Central Jail Raipur, C.G., the appellant having completed the jail sentence has been released from jail on 13.02.2018. Therefore, there is no requirement of passing any order in respect of arrest, surrender etc. of the appellant.

Sd/-
Gautam Chourdiya
Judge

Akhilesh