

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 806 of 2014**

1. Kheekram Binjharwar S/o Firtu Ram Binjharwar, aged about 39 Years, R/o Village Ghatadwari, Police O.P Urga, Korba, District Korba (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh Through Police Out Post (Now Police Station) Urga, Erstwhile Police Station Kotwali, District Korba (C.G.)

---- Respondent

For Appellant	:	Shri Mirza Kaiser Baeg, Advocate.
For Respondent/State	:	Shri Anand Verma, Dy. Govt. Advocate.

Hon'ble Justice Shri Gautam Chourdiya**Judgment****30/06/2020**

- 1) The matter is heard through video conferencing.
- 2) This appeal is filed under Section 374(2) of Code of Criminal Procedure, 1973 against the judgment of conviction and order of sentence dated 13/08/2014 passed by Sessions Judge, Korba, District Korba (C.G.) in Session Trial No. 90/2011; whereby the appellant stands convicted and sentenced as under:-

Conviction	Sentence
U/s. 436 of Indian Penal Code, 1860 (in short "IPC")	R.I. for 3 years and fine Rs. 30,000, in default of payment of fine additional R.I. for 9 months.

- 3) Case of the prosecution in brief is that on 20/08/2011 at around 08:30 PM accused quarreled with prosecutrix Mehandi Chouhan due to previous enmity abused filthily and threatened her to beat her. On the same day, at about 12:00 AM appellant again starting quarreling with the complainant saying that she got him

arrested for gambling, he would beat her and set her house on fire. At about 04:00 AM when the complainant woke up as there was pain in ear of her daughter, she saw her door broken and the articles kept in her bed room were burning. Thereafter, she called her neighbours. In the said incident articles worth Rs. 20,000/- were burnt. Written complaint on 21/08/2011 was submitted by complainant Mehendi Chouhan on the basis of which written complaint FIR Ex. P-8 was lodged by out post Porga on zero number and thereafter numbered FIR was lodged in Police Station Kotwali Korba under crime No. 867/2011. Spot map were prepared vide Ex. P-9 and Ex. P-10. During investigation Panchanama Ex. P-4 regarding the burnt articles and the burnt house of the complainant was prepared in presence of witnesses. Vide Ex. P-5 from the place of occurrence the ash, half burnt clothes and articles were seized. Memorandum of the accused appellant was recorded vide Ex. P-1 and a match box was seized from his house vide Ex. P-2. Statement of the witnesses were recorded and after completing investigation charge sheet was filed against the appellant /accused for the offence under Section 436 of IPC.

- 4) The Trial Court framed charge against the accused/appellant under Section 436 of I.P.C. The accused/appellant denied the charge and prayed for trial.
- 5) The prosecution in support of its case examined as many as 6 witnesses namely PW-01 Mastram Yadav, PW-02 Ramayan Das Vaishnav, PW-03 Mehendi Chouhan, PW-04 Chandrashekhar Khatki, PW-05 Usha Vaishnav and PW-06 Lallan Singh (S.I.). The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. No witness was examined by the accused in his defence. In his defence accused stated that he is innocent. Complainant lives without her husband and outsiders keep on visiting her house, which was objected by him and therefore, he

has been falsely implicated in this crime.

- 6) Learned Trial Court considering the material available on record by the impugned judgment convicted and sentenced the accused/appellant as mentioned above in Para-2 of this judgment.
- 7) Learned counsel for the appellant submits that the Trial Court has not properly appreciated the evidence available on record. He further submits that PW-05 Usha Vaishnav was shown as an eye witness of the incident but she turned hostile and did not support the prosecution case in any stage of her examination. No any eye witness is there in this case nor any connecting evidence was produced by the prosecution. Only on the basis of memorandum statement accused was wrongly convicted by the learned Trial Court whereas memorandum statement was also not proved by independent witness PW-01 Mastram Yadav and PW-02 Ramayan Das Vaishnav who turned hostile and not supported the prosecution case. Therefore, no any evidence is available on record against the appellant and he deserves to be acquitted of the said charge.
- 8) On the other hand learned counsel for the respondent/State supporting the impugned judgment submits that the Trial Court considering the overall evidence available on record has rightly convicted and sentenced the appellant by the impugned judgment which calls for no interference by this Court.
- 9) Heard counsel for the parties and perused the material available on record.
- 10) Prosecution case is based on eye witness account of PW-05 Usha Vaishnav as mentioned in Ex. P-7 written complainant submitted by complainant Mehendi Chouhan. PW-05 Usha Vaishnav only proved this fact that clothes and grains were seen by this witness at morning in burnt condition in the house of the complainant but she has no knowledge as to how it happened.

PW-05 Usha Vaishnav has turned hostile and not supported the prosecution case.

- 11) PW-03 Mehendi Chouhan only stated that on 20/08/2011 at 06:00 to 06:30 PM some dispute and quarrel took place with the appellant and he was threatening her to burn her house. Again on the same day at around 11:30 PM accused also used filthy language and threatened her to burn her house. In her cross examination complainant PW-03 Mehendi Chouhan admitted that she has not seen accused in the night when the incident happened. None of the prosecution witnesses has stated regarding any dispute with the prosecutrix by the appellant on the same day in the evening or the accused threatening the complainant to burn her house. No any other witness supported the complainant statement nor any dispute proved by any independent witness, nor complainant saw the appellant on the night of incident.
- 12) PW-01 Mastram and PW-02 Ramayan Das Vaishnav both have turned hostile and they have not supported the memorandum and seizure Ex. P-1 and Ex. P-2.
- 13) PW-05 Usha Vaishnav did not see the accused in night when the incident happened and only apprehension was expressed by PW-01 Mastram against appellant. Therefore, no any eye witness in this case to prove the fact who was set on fire of the house of the complainant nor any circumstances proved by the prosecution witnesses regarding appellant.
- 14) Thus, from perusal of the record it is seen that in this case there is no eye witness to the incident. The complainant states that on the date of incident in the evening there was quarrel between the complainant and the appellant where the appellant had threatened of beating her and setting her house on fire. However, there is no witness to the said incident of quarrel with the complainant. PW-05 Usha Viashnav who has been projected as eye witness to the incident has also stated that she did not

see the appellant setting the house of the complainant on fire and she only saw the burnt clothes and other articles of the complainant and that later she came to know through the complainant that it is the accused appellant who set her house ablaze. Though from the memorandum of the accused appellant Ex. P-1, a match box is said to have been seized from the house of the appellant vide Ex. P-2 but the witnesses to said memorandum and seizure i.e. PW-01 and PW-02 have turned hostile and not supported the prosecution case. It appears that the complainant lodged FIR against the appellant merely on the basis of suspicion as he had quarreled and threatened her on the same day of beating her and setting her house on fire.

- 15) In the matter of ***Sujit Biswas v. State of Assam, AIR 2013 SC 3817***, the Supreme Court has held that suspicion, however, strong cannot take place of proof. Para 6 is quoted below :

“6. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that 'may be' proved, and something that 'will be proved'. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between 'may be' and 'must be' is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between 'may be' true and 'must be' true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between 'may be' true and 'must be' true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense. (Vide: Hanumant Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; State

through CBI v. Mahender Singh Dahiya, AIR 2011 SC 1017; and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979)".

- 16) As discussed above, in the present case there is no direct or indirect evidence available on record proving the complicity of the appellant in the crime in question. Being so, conviction of the appellant under Section 436 of IPC is not sustainable and deserves to be set aside.
- 17) In the result, the appeal is allowed. Impugned judgment is hereby set aside. Appellant is acquitted from the charge under Section 436 of IPC. Fine amount imposed by the Trial Court, if deposited by the appellant, shall be refunded to him. Since the appellant is reported to be on bail, his bail bond shall remain in force for a period of six months from today in view of provision of section 437-A of Cr.P.C.

-Sd/-
(Gautam Chourdiya)
Judge

Chandrakant