

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Judgment Reserved on : 13/08/2021****Judgment Pronounced on : 14/09/2021****CRA No. 1977 of 2000**

- Dhani Ram Sahu S/o Chinta Ram Sahu, aged about 42 years, R/o village Pavni, P.S. Bilaigarh, District Raipur (C.G.)

---- Appellant**Versus**

- State of Chhattisgarh Through : Police Station Bilaigarh, District Raipur (C.G.)

---- Respondent

For Appellant	:	Dr. N.K. Shukla, Sr. Advocate with Ms. Abhyunnati Singh, Advocate
For Respondent/State	:	Mr. Anurag Verma, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****14/09/2021**

This appeal arises out of the judgment of conviction and order of sentence dated 18.07.2000 passed by the II Additional Sessions Judge, Baloda Bazar, District Raipur, in S.T. No.39/93 while acquitting the accused/appellant under Section 506-B IPC, convicted under Section 436 IPC & sentenced him to undergo R.I. for three years with fine of Rs.5,000/-, in default of payment of fine amount to further undergo S.I. for one year.

02. Case of the prosecution is that on 20.11.1992 at 6.30 am, a dehati nalishi (Ex.P/3) was recorded at the instance of

complainant Dhansai (PW/3) wherein he alleged that accused/appellant along with Puniram Sahu and Chhedu Ram Sahu set his house as well as sawmill on fire on account of family property dispute and also threatened him to kill. On the basis of aforesaid allegation, offence under Section 436 and 506-B/34 of IPC was registered. Based on this dehati nalishi, FIR (Ex.P-13-A) was registered on the same day at about 12.45 pm under the aforesaid sections against the present appellant and other accused persons namely Puniram Sahu and Chhedu Ram Sahu. Semi-burnt teak wood, coal ash, two doors, semi-burnt window total amounting to Rs.23,000/-, and other articles of sawmill were seized vide Ex.P/1. Spot map was prepared vide Ex.P/6. Khasra Panchshala (P-II) was seized vide Ex.P/7. One bamboo stick and axe (*tangia*) were seized at the instance of appellant Dhani Ram. Axe (*tangia*) was seized at the instance of accused Puniram Ram vide Ex.P/12. Nazri Naksha was prepared vide Ex.P/13. Photo copy of register of sawmill of complainant Dhansai (PW/3) was seized vide Ex.P/14.

03. After investigation, charge sheet was filed against the appellant and other accused persons under Sections 436 and 506-B/34 IPC and charges under Sections 436 and 506-B were framed against him (appellant), whereas charge under Section 436 IPC was framed against other accused persons by the trial Court.

04. So as to hold the accused/appellant guilty, the prosecution examined as many as 12 witnesses. Three

defence witnesses were also examined to substantiate its case and produced documents Ex.D-1 to D-3. Statements of the appellant and other accused persons 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.

05. The trial Court after hearing counsel for the respective parties and considering the material available on record while acquitting the appellant from Section 506-B IPC and another accused Chhediram from Section 436, convicted and sentenced the appellant as mentioned in para-1 of this judgment. Hence, this appeal.

06. Learned Sr. Advocate for the appellant submits that the appellant and complainant Dhansai (PW/3) are the brothers. A civil dispute is pending between them regarding ancestral property and to evict the present appellant from the ancestral property he has been falsely roped in the case. He further submits that the prosecution was launched for making pressure on the appellant to surrender before the complainant Dhansai (PW/3) in partition suit which was filed by the complainant. He also submits that the learned trial Court utterly failed to prove the fact that the premises which alleged to have been set on fire was not only in possession of the complainant but also in the possession of the appellant as is evident from the evidence of Raj Kumar (PW/10), son of complainant Dhan Sai. It is also submitted that the learned trial Court convicted the appellant

because he was Minister and influential person who could have managed for withdrawal of the case, but the fact is that he left the politics way back in the year 1980 and never contested election since then. It is also contended that in this case, most of the prosecution witnesses including the complainant himself turned hostile and have not supported the case of the prosecution and this fact was completely ignored by the trial Court while convicting the appellant. It is next submitted that the Court below committed error by ignoring the fact that the First Information Report under Section 154 Cr.P.C. has not been filed before the Court. The evidence of prosecution witnesses suffers from contradictions and omissions. No legal and incriminating evidence has been led by the prosecution against the appellant to bring home his guilt, therefore, the impugned judgment of conviction and order of sentence may be set aside.

07. On the other hand, supporting the impugned judgment it has been argued by the State counsel that the conviction of the accused/appellants is strictly in accordance with law and no interference is called for.

08. I have heard learned counsel for the parties and perused the material available on record.

09. Chheduram (PW/1) is the Kotwar of village. He is the witness to whom complainant Dhan Sai (PW/3) informed the incident. This witness has not supported the prosecution case and turned hostile. In cross-examination, he denied suggestions of the prosecution.

10. Kheek Ram (PW/2), Radhe Shyam (PW/5), Dwarika Prasad (PW/6), Ram Lal (PW/7) and Bihari (PW/8) have not supported the case of the prosecution and turned hostile.

11. Complainant Dhan Sai (PW/3) has stated that appellant is his real brother. The partition of their ancestral property was taken place in the year 1980-81. On 20.11.1992, his house was set on fire in which 245 pieces of chiran wood burnt. He has also stated that in the house, appellant Dhani Ram and co-accused Puniram were also residing. He has further stated that he did not see the appellant and co-accused persons setting his house on fire. It is Laxman who informed him about the incident. This witness has also stated that Laxman came to him and informed that the appellant and co-accused are preparing to set the house on fire but at the relevant time he did not go there. After 2-3 hours he went to see the fire. This witness has also stated that he did not go to the spot immediately because he was under impression that Laxman might be joking. After the incident, FIR of incident was lodged by him vide Ex.P/3. This witness has also been declared hostile. This witness, in para 13 and 14 of cross-examination, has admitted that a civil dispute of alleged house is pending in the same Court which was filed by appellant Dhani Ram. Further admission of this witness is that appellant Dhani Ram and co-accused Puni Ram had called some goondas and report of which was lodged by him on 13.11.1992. Further, in para 25, this witness stated that the alleged house is made of cement and is well constructed and there is cemented wall having door

between partition of appellant's house. In para 26, it has been stated that after the incident appellant Dhani Ram left the house. This witness himself admitted that co-accused Puni Ram and Chhedu Ram have been kept as caretaker by the appellant Dhani Ram.

12. Hari Ram Patel (PW/4) is the Patwari who prepared spot map vide Ex.P/6.

13. Laxman (PW/9) is the witness who first informed complainant Dhan Sai (PW/3) about setting his house of fire. He is brother-in-law (साढ़ू) of Dhan Sai. This witness has stated that he was sleeping in the terrace where the incident took place.

He woke up when he heard the noise “आग लग गई, आग लग गई” and saw that co-accused Puniram had matchbox as also rubber belt. This witness has also stated that the house of Dhan Sai (PW/3) was set on fire with the help of rubber belt by co-accused Puniram. At the relevant time, appellant Dhani Ram was also present there who was holding rubber belt in his hand.

14. Raj Kumar (PW/10) is the son of complainant Dhan Sai (PW/3). This witness has stated that the partition had taken place prior to 15 years of the incident. Appellant Dhani Ram and Anand Ram reside in one share & complainant Dhan Sai and Mani Ram reside in another share. At this stage, this witness has been declared hostile. In para 4 of his cross-examination, this witness has stated that at 6.00 am appellant Dhani Ram and co-accused Puni Ram were standing before their house and he (PW/10) was standing before his house.

Both were raising allegation against each other that you have set the house on fire. Further, in para 7, he has stated that it is true that appellant Dhani Ram did not leave the house. He himself stated that the appellant left the house much later. He has also stated that they wanted appellant Dhani Ram to leave the house under any circumstances.

15. Sardar Singh (PW/11) - Investigating Officer, has duly supported the prosecution case.

16. A.R. Yadav (DW/1) has stated that report of alleged fire (Ex.D-1) was given to him by the appellant. A.K. Sakhriya (DW/2) has stated that on the report of appellant Dhani Ram, offence under Section 448/34 IPC was registered. Tulsi Ram (DW/3) is uncle of the appellant. He has categorically stated that appellant Dhani Ram was in possession of the partitioned part where the fire broke out.

17. It is relevant to note here that defence of the appellant is that the alleged house where the fire broke out was in possession of the appellant, therefore, question of setting ablaze his own house does not arise. Evidence of the prosecution witnesses as also defence witnesses makes it clear that the alleged house where the fire broke out is the family property of the complainant and appellant & a civil dispute is also pending in the same Court. It is general principle of criminal justice system that the prosecution has to prove its case beyond all reasonable doubts and defence has to show only probability of their defence. In this case, the prosecution

witnesses supported the defence of appellant.

18. Close scrutiny of the evidence makes it clear that complainant Dhan Sai (PW/3), appellant Dhani Ram & co-accused Puniram were habitants of the alleged house where fire broke out. Complainant Dhan Sai (PW/3) and his son Raj Kumar (PW/10) have admitted that after the incident appellant Dhani Ram left the house. The question as to who set the house on fire is concerned, this Court finds from the evidence of Laxman (PW/9), who is the chance witness, that co-accused Puniram set the house on fire, but then this Court turn to evidence of complainant Dhan Sai (PW/3), who in para 17 of his cross-examination, admitted that the incident of fire was first seen by Ramtalhin and neighbour Khajurhin and on their noise being made, we (PW/3 and his family members) came to know that the fire broke out, but most surprisingly the prosecution did not examine these witnesses (Ramtalhin and Khajurhin) to prove its case and their name do not find place in the list of witnesses. I am not in a position to understand as to why these witnesses were not examined, who have figured in this case. Statement of Laxman (PW/9) would show that he heard the noise that the 'fire broke out' when he was in sleep and about 50 persons were also shouting that 'fire broke out'. The evidence of Laxman (PW/9) also reveals that Ramtalhin and Khajurhin were also shouting that get-up get-up, a fire broke out (उठो-उठो आग लग गई). The family members of appellant Dhani Ram were also shouting. Laxman (PW/9) himself has admitted of disclosing the incident for the first time before the Court. There are material

contradictions in the statements of prosecution witnesses.

19. Hon'ble the Supreme Court in the matter of **Shanthamalleshappa V. State of Karnataka** reported in **AIR Online 2018 SC 888**, has held that 'the incident occurred at about 9.30 p.m. on the fateful day. Unless sufficient light was there it was not possible to identify the accused. It was not the case of the prosecution that witness had seen the accused persons in the light emanated from fire. Even according to the case of the prosecution there were civil disputes pending between the brothers in respect of family properties and also it is evident from the evidence on record that 2-3 days prior to the date of incident both the brothers have lodged complaints against each other, basing on which crimes were registered being Crime Nos.36 of 2009 and 37 of 2009 on 20.02.2009 for the offences punishable under [Sections 323, 324, 341, 504, 506](#) read with 34 [IPC](#). In view of such disputes and complaints registered against each other, there is a possibility of implicating accused by making a false complaint. Further, it has been held that statements of prosecution witnesses to that of who was residing in alleged place are contradictory and, thus, held that conviction was improper.

20. In the matter of **Palanisamy and others V. State of Tamil Nadu** reported in **AIR 1986 SC 593**, it has been held by Hon'ble the Supreme Court that - in case of Sections 300 and 436 of IPC, evidence of prosecution witnesses are not free from reasonable doubt. The retraced confession by accused found to be tainted and not supported by the independent corroboration,

and thus, acquitted the accused person extending benefit of doubt.

21. In **Uday Pratap Singh V. State of Chhattisgarh**, reported in **2016 CRI. L.J. 2840**, this High Court held that two witnesses (PW/2 and PW/3) who allegedly witnessed the said incident kept quiet for almost 25 days and not made any disclosure of incident. Further, one of witnesses (PW/2) admitted that his affidavit before notary was got prepared at instance of complainant and his brother and that had he not given the affidavit, he would not have stated against the accused/appellant in the Court. It has been further held that witness and accused were not having cordial relationship and witness used to act as was asked by complainant, therefore, possibility of false story being cooked up by witnesses after 25 days, cannot be ruled out, and thus, acquitted the accused extending him benefit of doubt.

22. In the case in hand, it is evident from the prosecution witnesses that both the complainant and appellants were the habitants of the alleged property and a civil dispute of the same was pending between them. Both the parties were in possession of the alleged property where the fire broke out. The prosecution has failed to established the fact that the property where the fire broke out was in exclusively in possession of the complainant (PW/3). None of the witnesses have categorically stated against the appellant that it is he who set the house on fire. That apart, appellant Dhani Ram, after the incident, left the house, which is evident from the

statements of PW/3 and PW/10, thus, possibility of false story being cooked up by the complainant cannot be ruled out.

23. In view of the aforesaid factual position seen in the light of the evidence of the witnesses on record and in view of decisions of Hon'ble Supreme Court in the matter of ***Shanthamalleshappa (supra)***, ***Palanisamy (supra)*** and decision of this Court in the matter of ***Uday (supra)***, this Court does not find the conclusion drawn by the Court below to be based on proper appreciation of the evidence of the witnesses. Prosecution has utterly failed to establish its case beyond all reasonable doubt and, therefore, the benefit has to go to the accused/appellant. Judgment impugned is thus hereby set aside and the accused/appellant is acquitted of the charges levelled against him. Accused/appellant is on bail, his bail bonds shall stand discharged.

Sd/-

(Rajani Dubey)
JUDGE