

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 80 of 2017

Haradhan Malik @ Hari.

Vs

The State of West Bengal.

For the Appellant : Mr. Apalak Basu.
From H.C. Legal Services Authority

For the State : Mr. Bitasok Banerjee.

Hearing concluded on : 19.04.2024

Judgment on : 13.05.2024

Shampa Dutt (Paul), J.:**The Appeal:-**

1. The present appeal has been preferred against a judgment and order dated 21.12.2016 passed by the Learned Additional Sessions Judge, 1st Fast Track Court, Hooghly in connection with Sessions Trial Case No. 12 of 2016, Dadpur Police Station Case No. 98/2015 dated 10.06.2015, convicting the appellant and sentencing him to suffer rigorous imprisonment for 5 years and also pay a fine of Rs. 2000/-, in default further rigorous imprisonment for 3 months for the offence under Section 436 of the Indian Penal Code.

The Prosecution:-

2. The prosecution case is that:-

On 04.06.2015 at about 3 p.m. one Hari Malik @ Haradhan Malik came to the tea stall of the de facto complainant with a straw roof situated at the beneath of the Mathurkunda Bridge and suddenly set fire in the tea stall by throwing burning haystack 'kharer ati' on the roof of the said tea stall and ultimately the said tea stall was destroyed by turning into ashes.

3. On the basis of aforesaid complaint, Dadpur Police Station Case No. 98/2015 dated 10.06.2015 under Sections 436/427 of the Indian Penal Code was started. After completion of the investigation, charge

sheet being no. 87 of 2015 dated 30.06.2015 under Sections 436/427 of the Indian Penal Code was submitted.

4. During trial, the prosecution examined 6 witnesses.
5. Documents which includes a seizure list has been marked as Exhibit 1 to 4.

The Evidence:-

6. The relevant portion of the written complaint is as follows:-

"It is my earnest appeal to you that on last 04.06.2015, Monday, around 3 p.m. Hari Malik, S/o. Barun Malik appeared at my shop suddenly and did arson on it. He lives at Mahistikari Chanditala, P.S. Haripal. He sparked off a clod of straw and threw it on the thatch roof of my shop. Fire soon swallowed the entire shop and it turned into ashes soon.

My shop is located on a land (property of Govt.) which is on the side of Muthurkar Bridge.

I am poor fellow and I have no son. I sell chai, chop and muri and this is the only way of my living".

7. Prosecution Witness no. 1 is the complainant who has reiterated the written complaint. On being cross examined he has stated that:-

"I did not purchase my tea stall from anybody else. I constructed my tea stall on vested land. The local panchayat assisted me to set up a tea stall on that vested plot, but they did not give any written permission."

8. P.W.2 has seen the fire and is a witness to the seizure of the burnt articles.
9. P.W.3 is an eye witness to the incident and the complainant's nephew.

10. P.W.4 is the complainant's neighbour and has stated that the complainant's shop was destroyed by fire. He is the scribe of the Written Complaint.
11. P.W. 5 has a shop near the complainant's stall. He saw the stall totally burnt down on the next day.
12. The seizure list marked Exhibit 1 series proves seizure of ash and burnt bamboos collected from the burnt shop of the complainant at the place of occurrence.
13. In his examination under Section 313 of Cr.P.C., the appellant has stated that he was at the place of occurrence and did not run away. He has further stated that he and others were protesting as allegedly the complainant used to sell illicit liquor.
14. The allegations of the complainant allegedly selling liquor in his stall has also been stressed upon at the time of argument.
15. This prima facie proves that the accused has some notice, which was to stop the complainant from allegedly selling liquor, but taking the law in ones own hand is neither permissible nor to be encouraged.
16. The Appellant's case is that there actually was no shop/stall which belonged to the complainant, so the question of setting fire to it, did not arise.

Analysis of Evidence:-

17. From the evidence on record, it has been proved beyond reasonable doubt that the complainant had a temporary stall with a thatched roof

at the place of occurrence and that the appellant set fire to it, as a protest for allegedly selling illicit liquor in the said stall.

Conclusion:-

18. The Appellant has been convicted of offence punishable under Section 436 of IPC.

19. Section 436 of IPC, lays down:-

“436. Mischief by fire or explosive substance with intent to destroy house, etc.—Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence. -The essential ingredients of the offence under Section 436 are as follows:-

- (1) Accused committed mischief;*
- (2) He did it by setting fire or using any explosive substance;*
- (3) Accused intended to cause or knew it to be likely to cause destruction of a building by such act;*
- (4) The building was used as a place of worship or as a human dwelling or as a place for the custody of property.”*

20. The ingredients required to prove the offence under Section 436 of IPC has not been proved, as the mischief by fire was not caused to a building which was used for the purpose as stated in the said Section.

21. The structure in this case is a temporary one made of bamboo with a thatched roof made of hay.

22. Section 435 of IPC, lays down:-

“435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees.—Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ingredients of offence.— The essential ingredients of the offence under sec. 435 are as follows:-

- (1) Accused committed mischief;
- (2) It was caused by fire or some other explosive substance;
- (3) It resulted in damage to property to the amount of ₹ 100 or more where the property was other than agricultural produce, or ₹ 10 or more where the property was agricultural produce;
- (4) Accused intended or knew that his act was likely to cause such damage.”

23. Thus the prosecution in this case has proved the ingredients required to constitute the offence under Section 435 of IPC beyond all reasonable doubt against the appellant.

24. Section 222 of Cr.P.C., lays down:-

“222. When offence proved included in offence charged.—

(1)When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2)When a person is charged with an offence and facts are proved which reduced it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3)When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4)Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.”

25. Section 435 of IPC is a lesser charge to Section 436 of IPC for which the appellant has been convicted and sentenced.

26. * * In ***Dr Nallapareddy Sridhar Reddy vs The State of Andhra Pradesh & Ors., Criminal Appeal No. 1934 of 2019, arising out of SLP (Crl.) No. 3884 of 2019, on January 21, 2020***, the Supreme Court held that:-

“14. In order to adjudicate upon the dispute, it is necessary to refer to Section 216 of CrPC:

“216. Court may alter charge.—(1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

15. *Section 216 appears in Chapter XVII of the CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase “add to any charge” in Sub-Section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done “at any time before judgment is pronounced”. SubSection (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the persecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-Section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. Section 217 of the CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.*

16. *The decision of a two-judge Bench of this Court in **P Kartikalakshmi v Sri Ganesh, (2017) 3 SCC 347**, dealt with a case where during the course of a trial for an offence under Section 376 of the IPC, an application under Section 216 was filed to frame an additional charge for an offence under Section 417 of the IPC. Justice F M Ibrahim Kalifulla, while dealing with the power of the court to alter or add any charge, held:*

“6. ... Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now

well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.”

(Emphasis supplied)

17. In *Anant Prakash Sinha v State of Haryana*, (2016) 6 SCC 105, a two judge Bench of this Court dealt with a situation where for commission of offences under Sections 498A and 323 of the IPC, an application was filed for framing an additional charge under Section 406 of the IPC against the husband and the mother-in law. After referring to various decisions of this Court that dealt with the power of the court to alter a charge, Justice Dipak Misra (as the learned Chief Justice then was), held:

“18. ... the court can change or alter the charge if there is defect or something is left out. *The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle*

that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial...”

(Emphasis supplied)

18. In CBI v Karimullah Osan Khan, (2014) 11 SCC 538, this Court dealt with a case where an application was filed under Section 216 of CrPC during the course of trial for addition of charges against the appellant under various provisions of the IPC, the Explosives Act 1884 and the Terrorist and Disruptive Activities (Prevention) Act 1987. Justice K S P Radhakrishnan, speaking for the Court, held thus:

“17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions “at any time” and before the “judgment is pronounced” would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. **Needless to say, the courts can exercise the power of addition or**

modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court.”

(Emphasis supplied)

19. In *Jasvinder Saini v State (Govt of NCT of Delhi)*, (2013) 7 SCC 256, this Court dealt with the question whether the Trial Court was justified in adding a charge under Section 302 of the IPC against the accused persons who were charged under Section 304B of the IPC. Justice T S Thakur (as he then was) speaking for the Court, held thus:

“11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.”

(Emphasis supplied)

20. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time

before judgment is pronounced” in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court’s power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.

21. *The appellant has relied upon a two-judge Bench decision of this Court in **Onkar Nath Mishra v The State, (2008) 2 SCC 561**, to substantiate the point that the ingredients of Sections 406 and 420 of the IPC have not been established. This Court while dealing with the nature of evaluation by a court at the stage of framing of charge, held thus:*

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground

for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

(Emphasis supplied)

22. In the present case, the High Court while directing the framing the additional charges has evaluated the material and evidence brought on record after investigation and held:

“LW1 is the father of the de facto complainant, who states that his son in law i.e., the first accused promised that he would look after his daughter at United Kingdom (UK) and promised to provide Doctor job at UK and claimed Rs.5 lakhs for the said purpose and received the same and he took his daughter to the UK. He states that his son-in-law made him believe and received Rs.5 lakhs in the presence of elders. He states that he could not mention about the cheating done by his son-in-law, when he was examined earlier. LW13, who is an independent witness, also supports the version of LW1 and states that Rs.5 lakhs were received by A1 with a promise that he would secure doctor job to the complainant’s daughter. He states that A1 cheated LW1, stating that he would provide job and received Rs.5 lakhs. LW14, also is an independent witness and he supported the version of LW13. He further states that A1 left his wife and child in India and went away after receiving Rs.5 lakhs.

Hence, from the above facts, stated by LWs. 13 and 14, prima facie, the version of LW1 that he gave Rs.5 lakhs to A1 on a promise that he would provide a job to his daughter and that A1 did not provide any job and cheated him, receives support from LWs. 13 and 14. **When the amount is entrusted to A1, with a promise to provide a job and when he fails to provide the job and does not return the amount, it can be made out that A1 did not have any intention to provide job to his wife and that he utilised the amount for a purpose other than the purpose for which he collected**

the amount from LW1, which would suffice to attract the offences under Sections 406 and 420 IPC. Whether there is truth in the improved version of LW.1 and what have been the reasons for his lapse in not stating the same in his earlier statement, can be adjudicated at the time of trial. It is also evidence from the record that the additional charge sheet filed by the investigating officer, missed the attention of the lower court due to which the additional charges could not be framed.”

(Emphasis supplied)”

27. * * In *Virendra Kumar vs State of U.P., Criminal Appeal No. 69 of 2007, on 16th January, 2007*, the Court held that:-

“The residual question relates to the applicability of Section 113A of the Evidence Act and the question as to whether in the absence of the specific charge under Section 306 IPC, the appellant could be convicted though he was only charged in terms of Section 302 IPC.

So far as the question as to the effect of no charge having been framed under Section 306 is concerned the effect of Section 222(2) and Section 464 of Cr. P.C. cannot be lost sight of. In Dalbir Singh's case (supra) it was inter alia noted as follows:

"Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub- section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to

convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely Chapter XXXV which deals with Irregular Proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Cr.P.C. deals with the effect of omission to frame, or absence of, or error in, charge. Sub-section (1) of this Section provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court unless the appellate or revisional Court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In *Lakhjit Singh (supra)* though Section 464 Cr.P.C. has not been specifically referred to but the Court altered the conviction from 302 to 306 IPC having regard to the principles underlying in the said Section. In *Sangaraboina Sreenu (supra)* the Court completely ignored to consider the provisions of Section 464 Cr.P.C. and keeping in view Section 222 Cr.P.C. alone, the conviction of the appellant therein under Section 306 IPC was set aside.

17. There are a catena of decisions of this Court on the same lines and it is not necessary to burden this judgment by making reference to each one of them. Therefore, in view of Section 464 Cr.P.C., it is possible for the appellate or revisional Court to convict an accused for an offence for which no charge was framed unless the Court is of the opinion that a failure of justice would in fact occasion. In order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. We are, therefore, of the opinion that *Sangaraboina Sreenu (supra)* was not correctly decided as it purports to lay down as a principle of law that where the accused is charged under Section 302 IPC, he cannot be convicted for the offence under Section 306 IPC."

It is to be noted that in view of apparent conflict in the views expressed by two Judge Bench decisions in Sangaraboina Sreenu v. State of A.P. (1997(5) SCC 348) and Lakhjit Singh and Another v. State of Punjab (1994 Supp(1) SCC 173) the matter was referred to a three Judge Bench in Dalbir Singh's case (supra) There is no dispute that the circumstances are relatable to Section 306 IPC which were clearly put to the appellant during his examination under Section 313 of Cr.P.C.”

- 28.** The Judgment of the Supreme Court in ***Ghulam Hassan Beigh vs Mohammad Maqbool Magrey and Others, 2022 SCC Online SC 913, Criminal Appeal No. of 2022 (arising out of SLP (Criminal) No. 4599 of 2021) on July 26, 2022,*** is very relevant here:-

“32. The prosecution should have been given opportunity to prove all the relevant facts including the post mortem report through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It was too early on the part of the trial court as well as the High Court to arrive at the conclusion that since no serious injuries were noted in the post mortem report, the death of the deceased on account of “cardio respiratory failure” cannot be said to be having any nexus with the incident in question.

33. Whether the case falls under Section 302 or 304 Part II, IPC could have been decided by the trial court only after the evaluation of the entire oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, the trial court may take one view or the other i.e. whether it is a case of murder or case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion merely relying upon the post mortem report on record. The High Court also overlooked such fundamental infirmity in the order passed by the trial court and proceeded to affirm the same.

34. We may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead evidence only in accordance with the charge framed by the trial court. Where a higher

charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he has not been charged. He is merely to answer the charge as framed. The Code does not require him to meet all evidence led by prosecution. He has only to rebut evidence bearing on the charge. The prosecution case is necessarily limited by the charge. It forms the foundation of the trial which starts with it and the accused can justifiably concentrate on meeting the subject-matter of the charge against him. He need not cross-examine witnesses with regard to offences he is not charged with nor need he give any evidence in defence in respect of such charges.

35. Once the trial court decides to discharge an accused person from the offence punishable under Section 302 of the IPC and proceeds to frame the lesser charge for the offence punishable under Section 304 Part II of the IPC, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still it would be open for the accused to persuade the Court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under Section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence whatever it is worth in accordance with its original case as put up in the chargesheet. Such approach of the trial court at times may prove to be more rationale and prudent.”

- 29.** In the present case, the charge framed under Section 436 of IPC includes the charge under Section 435 of IPC being a lesser charge. Thus this case falls within clause (2) of Section 222 of Cr.P.C.

- 30. Thus the order of conviction and sentence is modified to the following extent:-**

The accused is convicted for offence punishable under Section 435 of IPC and sentenced to imprisonment for the period undergone and also pay a fine of Rs. 10,000/- in default to suffer S.I. for one year more. Fine if realized be paid to the victim/complainant as compensation.

- 31. CRA 80 of 2017 is accordingly disposed of.**
- 32. The appellant's bail bonds stands cancelled.**
- 33. The Appellant is directed to deposit the fine within 30 days from the date of communication of this judgment in default trial Court to proceed in accordance with law.**
- 34.** All connected applications, if any, stand disposed of.
- 35.** Interim order, if any, stands vacated.
- 36.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 37.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)