
(2012) 01 UK CK 0010
In the Uttarakhand High Court
Case No : Criminal Appeal No. 87 of 2002

Fakir Singh

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 426, 427, 435

Citation : (2012) 01 UK CK 0010

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Judgement

Hon"ble Servesesh Kumar Gupta, J.—This appeal has been preferred against the judgment and order dated 18.04.2002 rendered by learned Sessions Judge, Pithoragarh in Sessions Trial No. 32 of 1998 titled as State Vs. Fakir Singh. Appellant Fakir Singh was tried for the offence u/s 436 IPC but the learned Sessions Judge concluding the trial, found him guilty for the offence u/s 435 IPC and convicted him for a sentence of two years rigorous imprisonment and fine of Rs. 5,000/- and in default of payment of fine, he was further directed to undergo three months simple imprisonment.

2. Today in the Court complainant Kumer Ram, a very old person who is hardly able to walk, is present along with ex-Gram Pradhan of village Bajewa Toke Kauliya Bagad, Tehsil Munsiyari. Learned counsel for the appellant produced the complainant before this Court to manifest that now parties have entered into compromise. They are neighbours and living very amicably and peacefully in the village. Since the offence u/s 435 IPC is not compoundable so filing of the compromise is not permissible in the Court but taking into account the facts and circumstances of the case, this Court may consider to reduce the quantum of sentence to that of only undergone.

3. I have heard learned counsel for the appellant and Brief Holder for the State. The facts emerging out in the case are that complainant has two houses and at the time of incident, he was living in his another house, which was situated at

the distance of 300 metres in another Toke. This questioned house was vacant one. It has been in the evidence that almost 15 years ago from the date of occurrence, Kumer Ram pledged this house to Harpal Singh after taking Rs. 12,000/- in cash. The period of pledging was five years. So after the death of Harpal Singh his son Fakir Singh accused tried to grab this house in toto by way of adverse possession, which became the bone of contention between the two. Kumer Ram complainant lodged the First Information Report on dated 08.02.1995 that he was oppressed, being a member of scheduled caste, by Fakir Singh who is superior caste person and Fakir Singh torched the thatch of his house, so pledged.

4. The investigation was conducted which resulted into submission of charge sheet of offence u/s 435, 426, 427 IPC but the learned Sessions Judge prima facie was of the view that charge of offence u/s 436 IPC should be levelled against the accused so he was tried after levelling the charge so viewed by learned Sessions Judge. PW1 Kumer Ram complainant is not the eyewitness. Even in his chief examination, he has stated that his children informed him regarding smoke emanating from his vacant house located in Kauliya Bagad. Consequently, he rushed to the spot and found the accused there with matchbox in his hand. He himself stated that the house was vacant one. PW2 Bhawani Ram is Patwari of the Circle, who inspected the spot after almost nine days and found no sign of setting the house on fire. PW3 Kesar Ram is also not an eyewitness who has seen the accused actually putting grass of the roof on fire. He also noticed that smoke was emanating from the house. Even on the said evidence, learned counsel for the appellant is not agitating and inclined to argue the appeal on merits. The only prayer put forth before this Court is to reduce the sentence to that of undergone with a little amount of fine.

5. Considering the facts and circumstances of the case as well as very weak evidence produced by the prosecution this Court is of the view that ends of justice will be met if the sentence awarded is reduced, as prayed by learned counsel for the appellant. The appeal is dismissed on merits while it is allowed on the quantum of sentence. The appellant is sentenced to the period, which he has already undergone in the jail along with fine of Rs. 2,500/- that has already been deposited by him. Bail Application No. 10 of 2012 is disposed of.

6. Let the copy of the judgment be remitted to the learned Sessions Judge, Pithoragarh for ensuring the release of accused Fakir Singh.