
(2012) 09 MP CK 0241

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 2699 of 1999

Lakhan Singh Lodhi

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 13-09-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 436

Citation : (2012) 09 MP CK 0241

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Advocate : Ajay Tamrakar, for the Appellant; G.S. Thakur, Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Shri Justice N.K. Gupta, J.—This criminal appeal is preferred by the appellant being aggrieved by the judgment and order of sentence dated 8/9/1999 passed by the Sessions Judge, Damoh in ST No. 54/1999, whereby the appellant was convicted for commission of offence punishable u/s 436 of IPC and sentenced for five years" rigorous imprisonment with fine of Rs. 1000/-. In default of payment of fine, six months additional RI was directed. The prosecution's case, in short, is that on 8.3.1999 the complainant R.P. Tripathi (PW-1), a teacher in Higher Secondary School Hatta was not present in his house situated at Village Sunwaha (Police Station Batiyagarh District Damoh), but his wife Munni Bai (PW-2) and mother were sleeping in the house. At about 3:00 AM in the night Munni Bai and her mother-in-law felt that an arson took place in the house, and therefore they went to the upper stories and they saw from the terrace that the appellant was placing some inflammable garbage and wood in front of the house of the complainant and he was the person who set the house on fire. On their shouting the appellant ran away from the spot and some villagers came to the spot and helped Munni Bai and her mother-in-law in extinguishing the fire. Mastram (PW-5) was sent to Hatta to intimate the

complainant about the incident and thereafter the complainant came to his village Sunwaha and submitted a written report Ex. P-1 before the SHO Batiyagarh District Damoh. The police recorded the FIR Ex. P-3 on the basis of that written report. After due investigation, a charge sheet was filed before the JMFC Hatta, who committed the case to the Sessions Court, Damoh.

2. The appellant-accused abjured his guilt. He did not take any specific plea but he has stated that he was falsely implicated in the matter due to enmity. No defence evidence was adduced.

3. The learned Sessions Judge after considering the evidence adduced by the prosecution convicted the appellant for commission of offence punishable u/s 436 of IPC and sentenced as mentioned above.

4. Since no advocate was appearing for the appellant, and therefore Shri Ajay Tamrakar, Advocate was appointed from the Panel of the Legal Service Committee to argue the matter on behalf of the appellant as amicus curie.

5. I have heard the Learned Counsel for the parties.

6. The amicus curie has submitted that except the witness Munni Bai, there was nobody who came to implicate the appellant into the matter. The FIR was lodged with a delay of 14 hours and no reason was mentioned for that delay. If the witness Munni Bai saw the appellant when fire was initiated, then there was no problem to the complainant to lodge the FIR within time. Under such circumstances, it appears that Munni Bai gave the name of the appellant on the basis of suspicion only. If any doubt is created, then benefit of doubt is to be given to the accused. Under such circumstances, the appellant cannot be convicted for the offence u/s 436 of IPC. In the alternate, it is submitted that the appellant has faced the trial and appeal for last 13 years. He was the youth of 25 years at the time of incident and he was the first offender, and therefore he may not be sent to the jail again.

7. On the other hand, Learned Counsel for the State has argued in support of the impugned judgment on the ground that conviction and sentence directed by the trial Court appears to be correct, hence no interference is warranted by this Court.

8. After considering the submissions made by the Learned Counsel for the parties, it is to be considered that whether the appellant can be convicted for the offence u/s 436 of IPC on merits? And whether the sentence directed against the appellant can be reduced?

9. R.P. Tripathi (PW-1) was not the eye-witness in the case. He was intimidated by Mastram (PW-5). Mastram (PW-5) was lessee to the land of R.P. Tripathi (PW-1). He has stated that after the arson took place, mother of the complainant called him and sent him to Hatta so that the complainant may be informed about the incident. He has further stated that he reached at Hatta at 7:00 AM in the morning and informed the complainant. Thereafter the complainant came to the

village immediately. However, Mastram did not say anything that who committed the crime. Munni Bai (PW-2) has stated that she and her mother-in-law went to the roof of the house and they saw that the appellant was standing on the ground floor and when they shouted the appellant ran away. However, the witnesses like Mastram (PW-5) who came to help in extinguishing the fire were informed by Munni Bai that she saw the appellant from roof of her house. Rameshwar (PW-3) has stated that on hearing shouts of Munni Bai he went to the spot and he saw that the house of the complainant was burning and thereafter they poured some water on the house, and therefore fire was extinguished. But 2-3 rooms of 1-2 floors were duly destroyed. He has stated that Munni Bai informed him that fire was ignited by the appellant. However, if case diary statement of the witness Rameshwar is perused, then in the case diary statement he had stated that he was sleeping outside of his house and he saw that the appellant collected some wood and inflammable garbage in front of the house of the complainant and set those substances on fire. But in the Court he did not corroborate about that fact. Similarly, Munni Bai did not say in the Court that she saw the appellant who was collecting garbage and wood in front of her house. She simply said that she saw the appellant, who was standing in front of the door of the house. Under such circumstances, the evidence given by Munni Bai and Rameshwar appears to be contradictory from their previous statements.

10. It is apparent from the evidence given by the complainant R.P. Tripathi, witnesses Rameshwar and Mastram that few rooms of the front side of the house were burnt in a very bad condition. If the witness Munni Bai had called the villagers to extinguish the fire at earlier stage, then it was not possible that so many rooms could be damaged, and therefore it appears that when fumes were condensed in the room, Munni Bai and her mother-in-law knew about the fire. Also it is accepted by the witness Munni Bai that due to fire, she could not open the front gate of the house. Under such circumstances, it is clear that rooms situated in the front of the house in first and second floor were burning at the time when Munni Bai knew about the fire, and therefore there was no possibility for anyone to go on the terrace to look over the rooms which were on the flames, and therefore it was impossible for Munni Bai to look the front door of the house from the terrace, and therefore it was impossible for her to see the activities done on the front gate of the house.

11. If it was known to the witness Munni Bai that the appellant was the actual culprit, then it should be mentioned by the complainant in the FIR soon after the incident, but it appears that Mastram went to Hatta at about 7:00 AM in the morning and the complainant immediately came to his house and thereafter he went to the Police Station. Under such circumstances, he could lodge an FIR upto 10:00 AM in the morning. But looking to the FIR Ex. P-3, it appears that the written report Ex. P-1 was given to the Police Station at about 5:15 PM. In the report Ex. P-1, it is nowhere mentioned that the appellant placed some wood and inflammable garbage in front of the house of the complainant and thereafter set those things on fire. Under such circumstances, a doubt is created that the name

of the appellant was mentioned in the FIR on the basis of suspicion, because the witness Munni Bai and her mother-in-law could not see the activity which was done on the front gate of their house.

12. There should be some cogent evidence for conviction of an accused. Suspicion cannot replace the evidence. No accused can be convicted on the basis of suspicion only. Under such circumstances, where there was no cogent evidence against the appellant that he was the person who set the house of the complainant on fire, and therefore the appellant cannot be convicted for the offence u/s 436 of IPC. The learned Sessions Judge has erred in convicting the appellant for commission of offence u/s 436 of IPC.

13. It is true that a great loss has been caused to the complainant due to arson took place in his house, but it is nowhere proved beyond doubt that it was the appellant who committed such a crime. Under such circumstances, the appellant is entitled to get the benefit of doubt and he can not be convicted for the offence u/s 436 of IPC or any inferior offence of the similar nature.

14. On the basis of the aforesaid discussion, the appeal of the appellant is allowed. The conviction and sentence directed by the trial Court vide its judgment dated 8.9.1999 in ST No. 54/1999 are hereby set aside. The appellant is acquitted from all the charges appended against him. He would be entitled to get the fine amount back, if he has deposited the same before the trial Court.

15. At present the appellant is on bail. His presence is no more required, therefore it is directed that his bail bonds shall stand discharged. A copy of this judgment be sent to the concerned trial Court with its record for information and compliance.