
(2013) 10 MP CK 0091

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 122 of 1998

Mohd. Safi and Siraj Ahmed

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0091

Hon'ble Judges : Subhash Kakade, J

Bench : Single Bench

Advocate : Pramendra Sen, for the Appellant; R.S. Shukla, Learned Panel Lawyer, for the Respondent

Final Decision : Allowed

Judgement

Subhash Kakade, J.—This is an appeal u/s 374(2) of Cr.P.C. against judgment dated 06.01.98 in Sessions Trial No. 358/97 passed by the learned VIIIth Additional Sessions Judge, Jabalpur by which the appellants Mohd. Safi and Siraj Ahmed have been convicted u/s 436/34 of IPC and sentenced to R.I. for five years and to a fine of Rs. 1,000/- each. The prosecution case, in brief, is that on dated 26/04/1997 in the night at about 9:30 PM, complainant Saida Sultana was sitting with her tenant Sahida Bano at the upper side of her house. At that time appellant Mohd. Safi and Siraj Ahmad came over there and started abusing her. Complainant came to down floor where appellant Siraj Ahmad caught hold her hands and appellant Mohd. Safi set her homely objects bad etc. on fire by pouring kerosene oil. They also tried to pour kerosene oil on the person of complainant Saida Sultana and attempt to set her ablaze. When she hue and cry, the appellants ran away.

2. Return report of above facts presented at Hanumantal Police Station, Jabalpur, on the basis of which, the First Information Report was registered. Investigating Officer prepared the spot map, memo of loss, seized some burnt and un-burnt articles. After conducting enquiry, the Investigation Agency placed the charge-sheet before the committal court, who in his turn committed the case in the

Session Court, Jabalpur, from there it is finally transferred to learned trial Court for trial.

3. Learned trial Judge on available record, framed charge punishable u/s 436 of IPC against the appellants. The appellants denied and disputed the inducement and pleaded innocence.

4. To prove his case, respondent prosecution examined four witnesses and produced documents Ex. P/1 to Ex. P/8. Complainant Saida Sultana is examined as PW/2, Eye witness Julekha Khatun PW/1 is her tenant, Saheed Ahmad @ Shahid PW/3 is the witness of seizure memo Ex. P/3 and Shri Vikram Bhojak PW/4 is the Investigation Officer.

5. During statement recorded u/s 313 of Cr.P.C., the evidence put forth against the appellants have completely denied and again pleaded innocence. The defense did not choose to adduce any evidence.

6. Learned trial Court on the basis of ocular as well as documentary evidence recorded the conviction and imposed punishment as has been indicated herein above.

7. It is submitted by Shri Pramendra Sen, learned counsel for the appellants that the learned trial Court did not appreciate the admissions of the complainant and also not gone through the defence taken by the appellants that the complainant wants to dispossess the appellants from the house, which is in the ownership of appellant Mohd. Safi. Other independent witness did not support the case of the prosecution.

8. Per contra, Shri R.S. Shukla, learned Panel Lawyer for the respondent/State submitted that the prosecution has proved the entire story, therefore, the appeal deserves to be dismissed.

9. To appreciate the rival submissions raised, I have carefully perused the impugned judgment and gone through the evidence available on record.

10. Now it has to be seen that whether appellants set to fire homely articles and causes loss to complainant Saida Sultana?

11. Prior to marshalling the evidence of Saida Sultana (PW/2) on main incident, it will be better to go through the admissions of this witness. The following facts were admitted by Saida Sultana (PW/2):-

- (i) Appellant Mohd. Shafi is her husband and appellant Siraj Ahmed is her son;
- (ii) Prior to one year of the incident, she got divorce from appellant Mohd. Safi;
- (iii) The house in which arsony took place belongs to appellant Mohd. Safi;
- (iv) There is a dispute between complainant and her husband appellant Mohd. Safi regarding possession of this house.

12. In light of above admissions, these facts are proved that appellants and the complainant were having strain relationship on account of a house.

13. Now, coming to the evidence of Saida Sultana (PW/2) regarding the main incident. She has stated that after pouring kerosene oil on her homely belongings, appellant Mohd. Safi set them on fire. At that time, appellant Siraj caught hold her hands. It is pertinent to mention here that when any person will set to fire some articles, he will be required to have one container for kerosene oil and a match box to set the fire on. In this case, it is nowhere mentioned that in which container or means appellant Mohd. Safi brought the kerosene oil with him. This container or can was not recovered by the investigating officer from the spot or from the possession of appellant Mohd. Safi which was main corroborating piece of evidence, which is very much lacking in the case at hand. Same is the case to seize the match box or any means to set fire. It is pertinent to mention here that during the cross-examination, Saida Sultana (PW/2) admitted that appellants had brought the can and she also narrated this fact during her police statement (Ex. D/1), but why it is not mentioned therein she cannot say anything.

14. It is pertinent to mention here that the independent eye witness Julekha Khatun (PW/1), though not declared hostile, but right from the beginning, during her examination-in-chief and cross-examination, she admitted that she did not know the names of the appellants nor she know them by face. She only stated that she saw on the date of incident that fumes were coming out from the lower side of house.

15. Another witness Saheed Ahmed @ Shahid (PW/3) has also stated that when he went on the spot after hearing some noise, he found some homely articles, i.e. bed, sofa were burning and he also helped to extinguish the fire. He also admitted that when he reached on the spot, he did not find appellants on the spot. This admission of the witness goes to show that he has stated nothing against the appellants.

16. As discussed above, other independent witnesses Julekha Khatun (PW/1) and Saheed Ahmed @ Shahid (PW/3) did not support the case of the prosecution, and the most important corroborative piece of evidence, the container or can in which the appellants brought the kerosene oil and the match box or other means, by which, they set homely articles on fire were not recovered or seized from the possession of the appellants. In these circumstances, the case of the prosecution is doubtful and the benefit of doubt will go to the appellants only.

17. Considering from all angles the facts of the present case as discussed herein above the prosecution failed to prove beyond all reasonable doubts that appellants Mohd. Safi and Siraj Ahmed committed mischief by fire an act punishable u/s 436/34 of Indian Penal Code. Evidence of Saida Sultana (PW/2) is not reliable due to creating new story, when existence of enmity between the parties and non-examination of independent witnesses. In the result, in my

opinion, the prosecution failed to bring home the charge punishable u/s 436/34 of the Indian Penal Code against appellants Mohd. Safi and Siraj Ahmed, therefore, the appeal preferred by appellants Mohd. Safi and Siraj Ahmed is allowed and they are acquitted from the charge of Section 436/34 of Indian Penal Code and the judgment of conviction and order of sentence dated 06.01.98 passed by learned VIIIth Additional Sessions Judge, Jabalpur in Sessions Trial No. 358/97 is set aside.

Appeal allowed.