

1 Criminal Appeal No.675/1999
(Jairam @ Jeram Vs. State of M.P.)

HIGH COURT OF MADHYA PRADESH
BENCH INDORE

SINGLE BENCH:

HON. SHRI JUSTICE G.S. AHLUWALIA

CRIMINAL APPEAL NO.675/1999

.....Appellant: Jairam @ Jeram

Versus

.....Respondent : State of M.P.

Smt. Sharmila Sharma, Advocate for appellant.

Shri K.K. Tiwari, Public Prosecutor for respondent/State.

Date of hearing : 16/08/2018

Date of judgment : 21/08/2018

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

J U D G M E N T
(21/08/2018)

This Criminal Appeal under Section 374 of Cr.P.C. has been filed calling in question the correctness and propriety of judgment dated 1-5-1999 passed by 2nd A.S.J., Alirajpur in S.T. No.355/1995, by which the appellant has been convicted under Section 436 of I.P.C. and has been sentenced to undergo the rigorous imprisonment of 5 years and fine amount has not been imposed.

The necessary facts for the disposal of the present appeal in

2 **Criminal Appeal No.675/1999**
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short are that on 1-3-1995 at about 9:30 A.M., the complainant Jaheriya was in his house. At that time the appellant came there and started challenging that as Ghungharia has been killed, therefore, he would set the house on fire. After hearing the challenges thrown by the appellant, the co-accused Chimliya and Kukku also came there and instigated the appellant to set the house of the complainant on fire and the appellant thereafter went towards the house of the complainant and the complainant ran away and started watching the incident from a distant place. The appellant took out a matchbox and set the house of the appellant on fire and also set the house of Kamaal on fire, as a result of which, damage was caused to the houses as well as the household articles were burnt.

The complainant lodged the F.I.R. in police station Nanpur. The spot map was prepared, Damage Panchnama was prepared, the ashes of the huts of the complainant and Kamal were seized and the appellant as well as the co-accused persons were arrested. One matchbox was seized from the possession of the appellant and after concluding the investigation, the police filed the charge sheet against the appellant and the co-accused Chimaliya and Kukku for offence under Section 436/34 of I.P.C.

The appellant and co-accused persons abjured their guilt and pleaded not guilty.

The prosecution in support of its case, examined Jaheriya (P.W.1), Nahla (P.W.2), Methla (P.W.3), Kamal (P.W.4), Hemariya (P.W.5), Bholu (P.W.6), Madhav Singh (P.W.7), and Vinod Soni (P.W.8).

The appellant and the co-accused persons did not examine any witness in their defence.

The Trial Court by judgment and sentence dated 1-5-1999 passed in S.T. No.355/1995, convicted the appellant for offence under Section 436 of I.P.C. and sentenced him to undergo the

3 **Criminal Appeal No.675/1999**
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rigorous imprisonment of 5 years and acquitted the co-accused Chimaliya and Kukku. The acquittal of Chimaliya and Kukku has not been challenged either by the prosecution or by the complainant, thus, any reference to their name would be in the context of the prosecution case against the appellant.

Challenging the conviction and sentence passed by the Court below, it is submitted by the counsel for the appellant, that admittedly, the brother of the complainant was arrested in connection with the murder of one Ghungharia, who is the brother-in-law of the appellant. Methla (P.W.3) has admitted in his examination-in-chief itself that his hut was put on fire by the appellant, only because of the fact that one day prior to the date of incident, Ghungharia was killed by Keriya, who is the brother of the complainant Jehariya (P.W.1). It is submitted by the counsel for the appellant, that although there is direct evidence against the appellant to the effect that the appellant had set the huts on fire, but even if the evidence led by the prosecution is accepted, then it is clear that just one day prior to the date of incident, Ghungharia, the brother-in-law of the appellant, was killed by Keriya, the brother of the complainant and, therefore, it appears that as the appellant was upset because of murder of his brother-in-law, therefore, without causing any physical damage to the complainant or anybody, he set the huts on fire. Therefore, under these circumstances, it is clear that there was a valid motive for the appellant and because of annoyance, he committed the offence, therefore, the jail sentence of 5 years, awarded by the Trial Court is very excessive. The appellant had remained in jail from 20-3-1995 to 30-9-1995 during trial and after his conviction on 1-5-1999, the appellant was granted bail by this Court on 28-10-1999. Thus, it is clear that the appellant has already undergone the actual jail sentence of near about a year and under the facts and circumstances of the case, the jail sentence already

undergone by the appellant would serve the ends of justice.

Considered the submissions made by the counsel for the appellant.

The undisputed fact is that Ghungharia, who was the brother-in-law of the appellant, was killed by one Keriya, the brother of the complainant Jaheriya (P.W.1), just one day prior to the present incident. It has been candidly admitted by Methla (P.W.3) and Kamaal (P.W.4) that the huts were set on fire by the appellant, only because of the fact that his brother-in-law was killed by the brother of the complainant. Thus, it is clear that the appellant had committed the offence in question only because of the fact that he was annoyed with the complainant and his family members because of the fact that his brother-in-law was killed by Keriya. However, in view of the direct evidence of Jaheriya (P.W.1), Methla (P.W.3) and Kamaal (P.W.4), it is clear that the appellant set the huts of these witnesses on fire. Accordingly, the appellant is held guilty for offence under Section 436 of I.P.C.

So far as the question of sentence is concerned, according to the loss assessment panchnama Ex.P.5, the complainant Jaheriya (P.W.1) suffered the loss to tune of Rs.9,700/-, Keriya suffered the loss of Rs.6,400/- and Hemariya suffered the loss to the tune of Rs.7,900/-. According to loss panchnama, Ex.P.6, Kamaal (P.W.4) suffered the loss of Rs.10,000/-. Hemariya (P.W.5) has not supported the prosecution case and was declared hostile.

Thus, considering the loss caused by the appellant and the manner in which the offence is alleged to have been committed by the appellant, this Court is of the considered opinion that the jail sentence already undergone by the appellant would serve the ends of justice. However, no fine amount has been imposed by the Trial Court. In view of the loss sustained by the complainant/witnesses, fine of Rs.20,000/- is imposed. The

5 **Criminal Appeal No.675/1999**
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appellant shall pay the fine amount of Rs.20,000/- within a period of 4 months from today. In case, the appellant fails to deposit the fine amount, then the sentence awarded by the Trial Court would automatically stand revived.

Resultantly, the judgment and sentence dated 1-5-1999 passed by 2nd A.S.J., Alirajpur in S.T. No.355/1995 is hereby affirmed with aforesaid modifications.

The appellant is on bail. His bail bonds and surety bonds stand discharged. In case the appellant fails to deposit the fine amount within a period of 4 months from today, then he shall be under an obligation to immediately surrender before the Trial Court for undergoing the remaining jail sentence awarded by the Trial Court.

The appeal succeeds and is **allowed in Part.**

(G.S. Ahluwalia)
Judge

Arun*

6 Criminal Appeal No.675/1999
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Judgment post for 21/08/2018

(G.S. Ahluwalia)
Judge
20/08/2018