

A.F.R

HIGH COURT OF MADHYA PRADESH, JABALPUR

M.Cr.C. No.11601/2016

Smt. Vimla Agnihotri

Vs.

Smt. Deepa Agnihotri and another

Present : Hon'ble Shri Justice S.K. Gangele
Hon'ble Shri Justice Anurag Shrivastava

Shri Ashish Mishra, Advocate for the applicant.

Whether approved for reporting: Yes/No

ORDER
(03.04.2017)

The complainant has preferred this petition under Section 378 (3) Cr.P.C for grant of leave to file an appeal against the acquittal of the respondent No.1 from the offence punishable under Section 436 of IPC vide impugned judgment dated 04.08.2015 recorded in ST No.179/2012 by the IV Additional Sessions Judge, Satna (M.P.).

2. As per the facts borne out from the record, the complainant Rajmani Agnihotri lives in village Madhi with his wife Vimla, son Kuldeep and daughter-in-law respondent No.1/accused Deepa. On the date of incident 13.04.2008, in the morning at about 8 O' clock the complainant went to village Barti to call on the Doctor alongwith his wife. After two hours when he returned he found some part of his house and house hold goods were burning and the neighbours, Vipin, Ramayan, Rambax and other village people

were trying to extinguish the fire. On enquiry Vipin and Ramayan informed the complainant that his daughter-in-law Deepa had set a blaze the house. Complainant went to Police Station Rampur Baghelan and submitted a written report of the incident but police took no action. Thereafter complainant filed a complaint before Judicial Magistrate, Satna, which on preliminary enquiry registered under Section 436 I.P.C. vide order dated 30.01.2012 and committed to Sessions Court for trial.

3. During trial the respondent was charged under Section 436 of Penal Code. She abjured guilt. The prosecution has examined six witnesses in its support whereas the respondent had examined herself and one more witness in her defence. The trial Court by passing the impugned judgment acquitted the respondent by holding that the alleged offence against the respondent not found proved beyond reasonable doubt.

4. Learned counsel for the applicant has assailed the impugned judgment of acquittal on the ground that the judgment of acquittal is passed against the evidence on record. The prosecution witnesses have categorically deposed against the respondent who was present in the house at the time of incident. She did not take part in extinguishing the fire. She was threatening loudly to set the entire house on fire. The trial Court ignored the evidence and on wrong appreciation hold, the respondent not guilty. It is, therefore, prayed that by allowing the petition the complainant be granted leave to file appeal.

5. After considering the submission made by the learned counsel for the applicant, it appears that nobody had seen the respondent to set the house on fire. Vimla Agnihotri (PW-1) was not present at the time of incident. She has stated in her evidence that when she returned home, she saw that some part of her house and some cloths, grains and other house hold goods, which were kept in courtyard of the house were burning. Vipin, Ramayan, Molaia, Ganesh and other people were trying to extinguish the fire. In her statement para No.3 and 4 she has categorically admitted that she did not know how the fire arose and who had set the house on fire. The respondent was present there. Vipin, Ramayan and Molaia had told her that the respondent had lit the fire.

6. The prosecution has examined Ramayan Prasad (PW-2), Molaia (PW-3), Ganesh Prasad (PW-4), Vipin (PW-5) and Rambux (PW-6) who were engaged in extinguishing the fire at the time of incident. These witnesses have admitted that they had extinguished the fire. Molaia (PW-3), Ganesh Prasad (PW-4) and Rambux (PW-6) did not depose against the respondent and admitted that they don't know who had lit the fire. Ramayan Prasad (PW-2) depose that when he reached on the spot he found respondent Deepa was standing in the courtyard of the house and she had stated that she would destroy everything. But in his statement under Section 200 Cr.P.C above fact is not mentioned by the witness. This is material omissions, therefore,

the trial Court has rightly disbelieved the above statement of the witness.

7. Vipin Singh (PW-5) deposed that when he reached on the spot he had seen respondent Deepa and her husband Kuldeep there, who were throwing the grains, cloths and utensil in the courtyard of the house. Deepa was shouting that she would ablaze everything. But in his Police statement (Ex.D/5) and the statement under Section 200 Cr.P.C (Ex.D/4) this fact is not mentioned as Deepa was shouting and telling to ablaze the house. This is material omission, therefore, the above statement of the witness cannot be relied upon.

8. Thus from the statement of the witnesses, it appears that at the time of incident when the house was set on fire, only respondent Deepa and her husband Kuldeep were present in the house. Nobody had seen Deepa to lit the fire. Her husband Kuldeep is not examined by the prosecution. No reason was given in this regard. It appears that, witnesses PW-1, PW-4 and PW-5 are trying to exaggerate the incident by stating that the respondent had detained her husband Kuldeep in a room and closed the door from outside. PW-1 had rescued Kuldeep from the room. This important fact is not mentioned in the complaint itself, therefore, the above statement of the witnesses cannot be relied upon. In view of the omission and discrepancies in the statements of the prosecution witnesses, it cannot be believed that at the time of incident respondent was threatening to ablaze the entire

house and property. Thus, merely on the ground that the respondent had not tried to extinguish fire it cannot be presumed that she had ablazed the house. Suspicion however, strong cannot take place of proof. Conviction cannot be based on suspicion.

9. Therefore, the trial Court while considering the defence of the respondent and also the evidence laid by the prosecution rightly arrived at conclusion that the alleged offence against the respondent is not found proved beyond reasonable doubt. There is no illegality in the findings of the trial Court.

10. Therefore, it is not a fit case where leave to appeal can be granted to the complainant. Thus, the petition is hereby **dismissed.**

(S.K. Gangele)
Judge

(Anurag Shrivastava)
Judge

Vin**