

SUPREME COURT OF INDIA

Amar Nath Shukla

Vs.

State of Uttaranchal

CrI.A.No.1477 of 2009

(R.V. Raveendran and B. Sudershan Reddy JJ.)

11.08.2009

JUDGMENT

B.Sudershan Reddy,J.

1. Leave granted.

2. In this appeal by special leave the appellant Amar Nath Shukla had challenged his conviction under Section 436 of the *Indian Penal Code (hereinafter referred to as IPC)*. He was tried by First Upper Sessions Judge, Nainital in S.T. No. 355 of 1989 of the charge of having committed the offences punishable under Sections 436 and 147 IPC. The trial court by its judgment and order dated 29.7.1991 found the appellant guilty of the offence punishable under Section 436 IPC and acquitted him of the charge under Section 147 IPC. He was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 500/-. On appeal, the High Court by its impugned judgment and order dated 21.8.2008 in Criminal Appeal No. 775 of 2001 (Old No. 1529/91) dismissed the appeal preferred by the appellant.

3. The occurrence giving rise to the present appeal is said to have occurred on 26.2.1989 at about 1.00 P.M. The case of the prosecution, as deposed to by the complainant-Sita Ram (PW-3) is that he was living along with his wife and children in a hut near Nagla Shiv Temple, P.S. Lalkuan for the last three years preceding the date of occurrence. It is alleged that the appellant along with his brother-in-law and uncle came to the place where the complainant was residing and started beating him and thereafter set fire to the hut. On account of commission of offence of mischief by fire the entire hut along with the household articles were burnt and reduced into ashes. The appellant along with other persons ran away from the spot. It is the further case of the prosecution that Sitaram reported the details of the incident vide Exhibit KA-1 on the same day at about 16.00 P.M.. Based on Exhibit KA-I the Police Station Lalkuan, District Nainital registered a case under Sections 436 and 323 IPC against the appellant.

4. The police having completed the investigation, filed charge sheet against the appellant. The prosecution in order to establish its case against the appellant and another altogether examined 5 witnesses (PW-1 to PW-5). The statement under Section 313 Cr.P.C. of the appellant was recorded in which he stated that due to prior enmity he has been falsely implicated in the case.

5. In this appeal, Shri M.N. Rao, learned senior counsel appearing on behalf of the appellant did not challenge, nor make any submission as regards the conviction of the appellant under Section 436 IPC. His submission was confined only to the sentence imposed upon the appellant by the courts below.

6. It is brought to our notice that during the pendency of the appeal in the High Court complainant - Sitaram died in the year 2005. That because of initiation of criminal case against the appellant there were some ill-feelings between the appellant and the widow of the complainant - Malti Devi aged 61 years. In order to live in peace and tranquility the appellant and Malti Devi entered into a compromise at the intervention of local elders whereunder an amount of Rs. 1 lakh was given by the appellant to the widow as a solatium. That ever since the compromise, parties are living in peace and maintaining very cordial relations with each other.

7. The wife of deceased Sitaram filed Crl. M.P No. 12467 of 2009 to implead herself as party respondent in this appeal in which the facts stated above are depicted for consideration of this Court. The learned counsel submitted that in view of the subsequent developments the sentence imposed upon the appellant may be reduced to that of the sentence already undergone. Be that as it may, we cannot compound the offence on the basis of the said compromise inasmuch as the offence punishable under Section 436 IPC is non-compoundable nor we can direct the courts below to compound the offence based on the compromise.

8. It is evident from the record that the appellant is a young married man having small kids and he is the only earning member of his family. The incident is of the year 1989. He was in jail for a period of more than 7 months. Considering the nature of allegations leveled against the appellant and considering the period of sentence already undergone and the subsequent developments referred to herein above, we are of the considered opinion that interest of justice would be met by maintaining the conviction of the appellant under Section 436 IPC and reducing the sentence to that of the period already undergone by him. He shall be forthwith released unless required in any other case.

9. The appeal is accordingly partly allowed.