

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.749 of 2001**

Sharda Ram Sahu, Aged 32 years, S/o Chattar Sahu, R/o. Motilal Nagar, Kota, PS Amanaka, Raipur, Original R/o. Vill Kursebhata, PS Charama, Distt. Kanker (CG)

---- Appellant

**Versus**

- The State of Chhattisgarh Through Police Station Amanaka, Distt. Raipur (CG).

---- Respondent

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For the appellant : None present  
For the respondent/State : Shri Wasim Miyan, Panel Lawyer

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**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****31.3.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 06.7.2001 passed by Third Additional Sessions Judge, Session Division Raipur (CG) in Sessions Trial No.419/1998 wherein the said Court convicted the appellant under Section 436 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.1000/- with default stipulations, for committing mischief by fire in the intervening night of 17-18th September 1998 with intend to cause damages to human dwelling of one Vimla Bai at Motilal Nagar, Kota, Raipur (CG).

2. To substantiate the charge, the prosecution has examined as many as 12 witnesses, but there was no eye witness to the incident. Case of the prosecution is based on the statement of

Neeru (PW-4) and as per her version, she saw the appellant escaping from the place of incident. All other witnesses were either assisted the investigation or supported the version of the Neeru. Vimla Bai (PW-3), who is the mother of Neeru, deposed that she had not seen anyone escaping from the field and her version was based on what has been stated to her by Neeru. The Trial Court came to a conclusion on the basis of the fact that Neeru (PW-4) identified one shirt and one pant worn by the appellant at the time of the incident. Even if it is assumed that the appellant had run or escaped from the field at the time of incident, the same is not sufficient to hold that it is the appellant who committed mischief by fire in the house of Vimla Bai.

**3.** It is settled law that “graver the offence, stricter the proof”. There is long mental distance between 'may be true' and 'must be true'. Unless case of the prosecution comes under the category of 'must be true' the same is not sufficient to bring home guilt of the appellant. In the present case, there is only suspicion against the appellant that he was seen escaping from near the place of incident. But that suspicion however strong cannot take place cogent proof of the offence. Theory of identification of any person or any cloth comes into play only when the witness had seen anyone committing the offence. In the present case, no one has seen the appellant committing mischief by fire on the spot and therefore, identification of the appellant is worthless. Except for bald statement of Neeru (PW-4) there is nothing incriminating

against the appellant. The evidence adduced by the prosecution is not sufficient to establish the charge against the appellant. Hence, the finding arrived at by the trial Court is not sustainable as per the settled principles of law.

4. Accordingly, the appeal is allowed. Conviction and sentence passed against the appellant is hereby set aside. He is acquitted of the charges framed against him. The fine amount if paid, shall refunded to the appellant. The appellant is reported to be on bail, no further order is required.

**Sd/-**  
**(Ram Prasanna Sharma)**  
**JUDGE**