

The held that  
presumption of  
common object



The section requires that the offender commits mischief either by fire or by any explosive substance. He must have intention to cause, or he must have knowledge that it is likely that he will thereby cause, destruction of any building which is ordinarily used either as a place of worship, or as a human dwelling, or as a place of custody of property. This offence is a very serious one as is clear from the quantum of punishment prescribed by the section.

Where two accused persons first poured kerosene on the deceased's body and his shop and then set both on fire as a result of which the deceased died and the shop suffered extensive damage, it was held that they were guilty of murder in furtherance of common intention as well as of an offence under this section with common intention. A thatched hut made of reeds and mud used as a human dwelling or as a place of custody of property is a building.

Where a crowd gathered in front of a police station to protest against police inaction in respect of a particular criminal case and committed mischief by fire and rioting but no evidence against the accused persons was produced with respect to committing the alleged acts, it was held that presumption of common object against them could not be drawn and they could be held guilty of whatever they had done individually. A 'kachcha jhumpa' with a thatched ceiling and closed by doors and windows is a building. But an ordinary thatched shed resting on bamboo or pillars, whether wooden or brick, having no doors etc. is not a building. Where as an aftermath of the assassination of the Prime Minister of India extensive looting and arson took place against members of a particular community and the government could not do anything, it was held in a public interest petition filed by the lawyers' association and law students that the state must compensate the victims.

Two accused persons set their enemy's house on fire which engulfed some nearby huts as well for which they were convicted by the lower court under sections 302 and 436 read with section 34. One of them was acquitted by the High Court on the basis of lack of evidence. The Supreme Court set aside the conviction of the other as well because there were charges against two named accused persons and once one of them was acquitted the other was also bound to be acquitted, but observed that had individual charges been brought against them, they would have been held guilty. In State of Rajasthan v. Bhirajram, the Rajasthan High Court ruled that a temporary structure in the field for resting and to take care and watch the harvested crop is not a ' building' within the meaning of section 436 of the Code. The offence under this section is cognizable, non-bailable and non-compoundable, and is triable by court of session.