

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.844 of 2006**

1. Hira Lal Ram, Son of Vishwasnath Ram.
2. Shiv Lal Ram, Son of Vishwanath Ram.
3. Santosh Ram, Son of Vishwanath Ram.
All Resident of Village- Chhotakadih, P.S. Murar, District- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, *Amicus Curiae*
For the State : Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT**

Date : 18-03-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*
appearing for the appellants and Ms. Anita Kumari Singh,
learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant challenging the judgment of conviction and order of sentence dated 13.09.2006/15.09.2006 passed by learned Additional Sessions Judge, F.T.C.-V, Buxar in Sessions Trial no. 10/2001 arising out of Murar P.S. Case No. 11 of 1999, (G.R. No. 419 of 1999) whereby and whereunder appellants have been convicted for the offence punishable under Sections 436/34, 429 of the Indian Penal Code and they sentenced to undergo rigorous imprisonment for seven



years u/s 436/34 of the IPC and they further sentenced to undergo rigorous imprisonment for three years u/s 429 of the Indian Penal Code. Both the sentences will run concurrently.

3. That the prosecution case in short is that on the date of occurrence the informant along with his family members were sleeping in their house made of bricks. A pig worth of rupees three thousand was tied in the house also. The accused persons set fire in the house of informant. The informant and his family members identified the accused persons in the light of fire, villagers and neighbors came on raising the alarm by the informant and put off the fire. He further alleged that clothes, cot and other articles of worth rupees twenty five hundred were destroyed due to fire. The pig of the informant also died in fire. He claimed that the occurrence has taken place due to previous enmity.

4. Notably, the informant went to police station several times and the police officer was not registered the case on 17.02.1999, the informant namely, Sri Kant Harijan filed a complaint case in the Court of learned Chief Judicial Magistrate, Buxar on 18.02.1999, the C.J.M. send the copy



of the complaint to Murar police station for registering the case and investigation. Accordingly, Murar P.S. Case No. 11 of 1999 was registered and after completing the investigation charge-sheet has been submitted against the appellants under Sections 436 and 429 of the Indian Penal Code. Thereafter, cognizance has been taken against the appellants, the case was committed to the court of Sessions for trial and disposal.

5. Charge has been framed under Sections 436/34 and 429 of the Indian Penal Code against the appellants.

6. The case of the defence is the total denial of the prosecution case and they have falsely been implicated in this case due to land dispute and old enmity.

7. The point for determination, whether the prosecution has been able to prove its case beyond the shadow of all reasonable doubts or not ?

8. Altogether four witnesses examined on behalf of the prosecution: namely, P.W. 1 Ramnath Ojha; P.W. 2 Uma Kant Ram; P.W. 3 Bantu Ram and P.W. 4 Sri Kant Ram (informant).

9. P.W. 4 Sri Kant Ram is the informant himself.



According to this witness, he was sleeping in his hut at the time of occurrence. Bantu Ram (P.W. 3), Uma Kant Ram (P.W. 2) and his father Bhadai Ram were also sleeping with him. All of sudden the hut caught fire then he woke up and came out and saw that all three accused persons were fleeing in the Northern side of the house. The accused were identified in the light of fire. A pig was also tied in other hut. The woods, bed, blankets, razai and cot destroyed in the fire. The pig also died in the fire. In course of cross-examination this witness has stated that he filed the case in the court after 10 to 15 days of the occurrence. This witness has further stated that he had got two huts. One hut was about ten hand in length.

10. P.W. 2, Uma Kant Ram is the brother of the informant. According to this witness he was sleeping in his house at the time of occurrence. The informant, his father and Bantu were also sleeping there. This witness woke up on the voice of *Kharkharahat* then went for urination where three persons were standing there. This witness has further stated that those persons set fire in the hut of the Informant. This witness has identified those persons as appellants



namely, Hira Lal, Shiv Lal and Santosh Lal. This witness has further stated that the persons who were sleeping inside the hut also woke up and came out. The accused persons fled away towards North side. According to this witness the wood kept in the hut destroyed in the fire. This witness has further stated that Police recorded his statement after one and half month of occurrence. In course of cross-examination this witness has stated that his Mother has died due to illness after the occurrence. This witness has admitted the previous enmity with the accused persons. His house and the house of informant is situated in same courtyard. The land of the house was purchased in the year 1981-82 from Mane Ram Yadav. Accused Hira Lal has purchased eight decimal land from Baiznath Mahto after the purchase of this witness. The measurement of land of the informant and accused persons has been done several times by the Government Amin and he has obeyed the measurement. A *Panchayati* was also took place regarding the disputed land. The accused persons did not obey the verdict of *Panchayat*. Other witness P.W. 3 also deposed to establish the prosecution case, who is the brother of the



informant (P.W. 4). P.W. 1 is the formal witness, who has proved the formal F.I.R. which is marked as Ext-I.

11. Learned *Amicus Curiae* on behalf of the appellants submitted that the case was lodged after the delay of about 18 days as the alleged occurrence is on 31.01.1999 at about 12 o'clock but the complaint petition has been filed in the Court of learned C.J.M., Buxar on 18.02.1999 and the learned C.J.M., Buxar send the copy of complaint to Murar police station to register and investigation the case. The whole conviction is based on presumption. The prosecution has failed on establishing the case on merit under Sections 436 and 429 of the Indian Penal Code. He submitted that all the prosecution witnesses P.W. 2 and P.W. 3 are own brother of the informant (P.W. 4). They are all interested witnesses and the evidence of this case is not supported by any independent witness and in this case the prosecution has totally failed to examine the Investigating Officer, who visit the place of occurrence and recorded the statement of prosecution witnesses. The I.O is the best person to say that really the occurrence has taken place or not. The prosecution has not examined any



independent witness of this case rather he has been prejudiced in this case due to non examination of Investigation Officer. It is further submitted that P.W. 4 informant has deposed that villagers come at the place of occurrence after the occurrence but he has not taken any name of villagers and the I.O. of this case has not recorded any statement of independent witness. The place of occurrence has not properly proved by prosecution evidence.

12. I have gone through the entire prosecution evidence laid by the prosecution to prove its case. Learned trial Court has failed to consider the evidence in respect of the land dispute, which was going on between the parties and the witnesses are family members and they have deposed their deposition like parrot is totally after thought and on instigation and direction of villagers, who has animus relation with the accused persons. In this case P.W. 4 is the main witness and he stated in his examination that all of sudden the hut caught fire then he woke up and came out and saw that all three accused persons were fleeing away in the Northern side of the house. In this juncture, this



prosecution has failed to prove specific overt act of setting fire against the appellants and the case is not believable that in the night the appellants were identified by the P.Ws. There is no specific evidence adduced on behalf of the prosecution that out of three accused persons/appellants who set hut on fire. In this case there is no seizure list proved and exhibited as material burnt in fire as alleged by the prosecution, what materials and how much costs of materials were destroyed in the alleged occurrence. In absence of non-availability of the seizure list and not proven the same, the prosecution failed to prove in respect of mischief causing set hut and other materials on fire. The prosecution case as well as the defense admitted this point that the informant and appellants have inimical term amongst them and there was land dispute in existence so there is more probability to falsely implicated the appellants in this case.

13. In this case, no burnt materials produced before this Court and from non-examination of the Investigating Officer, the defense prejudiced to contradict the evidence given by the prosecution witnesses and it is



valuable right of the defense who deprived to non-examination of I.O., so the defense is highly prejudiced and in this case the place of occurrence due to non-examination by I.O. not proved and all P.Ws. 2, 3 and 4 are related with each other and they are interested, no reliance can be placed on the evidence of this witnesses. The occurrence of this case took place in the midnight and at that time every person was sleeping and in the FIR no name of any independent witness mentioned and the evidence of all P.Ws. not believable without any independent witness and it would not be safe to convict the appellants without corroboration of the independent witnesses. It is a prudent rule that in absence of independent witness, the evidence of interested witnesses fit to be discarded.

14. I have gone through the entire prosecution and defence evidence, exhibits and also considering the submission of learned counsel for the appellant, learned APP for the State, I am of this view that the prosecution has failed to prove the charge levelled against the appellant by the consistent and cogent evidence and defense has succeeded to raise the doubt in the prosecution version and



the appellant is entitled to get the benefit of doubt. The impugned judgment of conviction and order of sentence is hereby set aside and appellants are acquitted after giving them the benefits of doubt. The instant criminal appeal is **allowed**. The appellant, who is on bail, is discharged from the liabilities of the bail bonds.

15. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellants/accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 6,000/- (Rupees Six Thousand Only) to Mr. Vipul Sinha, towards his professional fee.

(Sunil Kumar Panwar, J)

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