
(2008) 08 JH CK 0078
In the Jharkhand High Court

Arjun Mahato and Sudarshan Mahato	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 34, 436

Citation : (2009) CriLJ 1911

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—The present appeal has been preferred u/s 374(2) of the Code of Criminal Procedure challenging the judgment and order dated 8.2.2001 passed by the learned Additional Sessions Judge-II, Saraikella in Session".; Trial No.193 of 2000 whereby and whereunder he has been pleased to hold the appellants guilty u/s 436 of the Indian Penal Code and sentenced them to undergo imprisonment for seven years.

2. The case of the prosecution, as stated in the written report lo 1:he Officer-in-charge, Raj Nagar Police Station was that on 2.4.2000 when the informant Bhalu Ram Mahato was sleeping in his house along with his family members one Arjun Mahato and Sudarshan Mahato, the appellants herein, set his house on fire and on account of flames of fire he woke up and ran outside ciloiig with his family members and noticed that the appellants were running away after setting the house on fire and in the process left their shoes. According to written report the domestic articles were burnt due to fire and the reason behind the incident was due to a dispute with regard to the Bari land between the informant and the appellants.

3. On the basis of above written report a case u/s 436/34 of the Indian Penal Code was registered vide Raj Nagar Police Station Case No.16 of 2000 dated 3.4.2000 against the appellants. After submission of the charge sheet the case

was committed to the Court of Sessions and the accused persons totally denied the prosecution allegation.

4. Prosecution, in all, has examined seven witnesses in this case. As per the evidence of PW-1 Parmeshwar Mahato it transpires that the occurrence took place in the month of April, in mid night when he was sleeping in the house and after hearing alarm he woke up and came outside the house and went to the place of occurrence and noticed that the house of Bhalu Ram Mahato was burning and people were extinguishing the fire. In his cross-examination he deposed that he cannot say as to who set the house on fire. Similarly PW-2 Maha Hand Mahato has stated in his examination-in-chief that the occurrence took place in the month of April at night and on alarm when he woke up he noticed that people were extinguishing the fire. In his cross-examination he deposed that he went to the place of occurrence when the fire was extinguished. From the evidence of PW-3 Arjun Mahato it transpires that the occurrence took place at night when after hearing the alarm he went to place of occurrence and noticed that fire had caught the corner of the house and people were extinguishing the fire. He also in his cross-examination deposed that he cannot say as to who has set the house on fire. PW-4 Guru Charan Mahato a witness stated that the occurrence took place in the month of Chaitra and he was sleeping in his house and on hearing the alarm he woke up and went to the place of occurrence and noticed that people were extinguishing the fire. In his cross-examination he also deposed that he could not see as to who has set the house on fire. PW-5 Kokil Mahato has deposed in his chief that after hearing alarm he came outside the house and noticed that the house of Bhalu Ram Mahato was burning and he helped in extinguishing the fire. In his cross-examination he deposed that he cannot say as to who has set the house on fire. From the evidence of Bhalu Ram Mahato himself, PW-6, it transpires that the occurrence took place on 2.4.2000 in the month of Chaitra at 12 O'clock at night. At that time he was sleeping in his house and on seeing the flames of fire he came outside the house and noticed that Arjun and Sudarshan, the appellants herein, were putting on their shoes after setting the house on fire. According to him both of them fled away leaving their shoes at the place of occurrence, thereafter the villagers came and helped in extinguishing the fire. He further deposed that a dispute was going on with Arjun Mahato regarding Bari land and therefore he set the house on fire. On the next day he went to the Police Station and got his statement recorded in writing. In his cross-examination he deposed that the land dispute is going on with the mother-in-law of the accused Sudarshan Mahato. From the evidence of PW-7 Sukhdeo Mahato it transpires that he is the son of the informant and in his examination in chief he has only stated that he went to the Police Station along with his father for lodging the complaint.

5. The defence has contended that the prosecution has miserably failed to prove the charge against the appellants but in spite of the aforesaid fact they have been convicted and sentenced to undergo R.I. for 7 years u/s 436 of the Indian Penal Code. The main argument raised by the Counsel for the appellants is that out of

seven prosecution witnesses only the informant has stated that he has seen the appellants at the place of occurrence whereas the rest six prosecution witnesses have stated in their examination-in-chief as well as in their cross-examination that they have not seen as to who set the house on fire. The counsel for the appellants further submits that the impugned order under challenge does not assign any reason for holding the appellants guilty and passing an order of conviction and sentence for 7 years. According to the learned Counsel for the appellants the learned Additional Sessions Judge-II has simply recorded the evidence of prosecution witnesses and passed the order of conviction without even advertng to the cross -examination and the deposition of six witnesses who specifically admitted that they have not seen anybody settling the house on fire. It has also been contended that the entire case is flimsy and false and has been deliberately planted to implicate the appellants herein duo to enmity with regard to the admitted land dispute.

6. I have considered the argument and the evidence of the prosecution witnesses. It appears that except the informant no one has seen the appellants at the place of occurrence. Even the son of the informant in his examination-in-chief has not corroborated the evidence of informant, PW-6. He in his evidence only deposes that he had gone with his father to the Police Station. One thing also does not stand to reason as to why the appellants will remove their shoes for putting the house on fire instead no one will remove the shoes if he is going to put the house on fire. Strangely in the instant case even the I.O. was not examined by the prosecution and in the case diary it is clearly recorded that nothing was found from the place of occurrence. The learned Trial Court has convicted the appellants and sentenced them to 7 years imprisonment based on the following observations only which is quoted as under:

From the evidence on record it transpires that a land dispute is going on in between the informant and Arjun Mahato and with the mother-in-law of Sudarshan Mahato. Enmity cuts both ways. It is established beyond doubt that the house of Bhalu Ram Mahato was set on fire at mid night. There was no possibility of other witnesses to see the accused persons setting the house on fire. Bhalu Ram Mahato woke up in the nick of time and saw his house burning and could see both the accused persons fleeing away after leaving their shoes at the place of occurrence. Therefore, I find the accused guilty of the offence u/s 436 I.P.C.

7. Unfortunately nothing else has been considered, analysed or adverted to by the learned Trial Court nor the evidence of other six prosecution witnesses was referred to before convicting the appellants. If the enmity cuts both ways then the motive could be attributed even against the informant, PW-6, to falsely implicate the appellants herein. This fact further gets corroborated by the evidence of rest of the six prosecution witnesses who admitted and deposed that they have not seen as to who set the house on fire. Strangely even the son of the informant has not deposed about the same and in his examination-in-chief he

only states that he went along with his father to the Police Station. In the case diary at Paragraph 7 it has been specifically recorded that nothing was recovered from the site of occurrence. Unfortunately the aforesaid facts and evidences have not even been considered by the learned Additional Sessions Judge. In the evidence of prosecution witnesses it has come to light that fire was set in one of the corner of the house but the prosecution witnesses are not at all consistent and corroborative to be relied upon on this point. There is not a single independent witness who has supported the case of the informant with regard to the allegation that the appellants set the house on fire. There are material contradictions in the evidence and the case diary. In the aforesaid background the order of conviction u/s 436 I.P.C. passed by the learned Additional Sessions Judge-II, Saraikella in Sessions Trial No. 193 of 2000 is unsustainable in the eyes of law and is accordingly set aside. In the result this appeal is allowed. As the appellants are on bail they are discharged from the liabilities of their respective bail bonds.