
(2018) 01 JH CK 0013
In the Jharkhand High Court
Case No : 719 of 2006

Diwakar Mahato

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 156\(3\)](#) - Power to examine the accused - Police officers power to Investigate cognizable case
[Indian Penal Code, 1860](#)

Citation : (2018) 01 JH CK 0013

Hon'ble Judges : Aparesh Kumar Singh, Rajesh Kumar

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. No one appears for the petitioner or the opposite parties.
2. We have perused the impugned judgment and materials available on record. This revision petition is preferred against the judgment of acquittal dated 08th August, 2006 passed in Sessions Trial No. 20 of 2004, by the court of Learned Sessions Judge, Seraikela-Kharsawan, whereunder accused/opposite parties have been acquitted of the charges for the offence under Section 436 read with 34 of the Indian Penal Code.
3. As per the case of the complainant, the incident is of 27.05.1998 in the evening when on return from the local hat at about 7.30 P.M., he saw burning fire of his house having one room with thatched roof on a portion of plot no. 2496 of R.S. Khata no. 214, village Deoltand and his wife and children were crying. Witnesses of the said case were trying to extinguish the fire and they half succeeded but the remaining half portion of the house was burnt. Articles kept inside as well as hen 15 in numbers had

completely been burnt to ashes. His wife complained of the acts of the accused persons, who had come armed with deadly weapons to their Angan and put kerosene oil to set fire the house. Accused Majhila Mahato had sprinkled kerosene oil while Chhutu Ram Mahato had set fire in the house. Since the police station was 15 KM away, he informed the police on the next day, but till 31.05.1998 they did not come to investigate the matter. As such on 01.06.1998, he filed a complaint case before the learned Court. He further stated that the accused persons have got no right, title and interest nor possession over the aforesaid house of the complainant.

4. Learned C.J.M, Seraikella, referred the matter under Section 156 (3) Cr.P.C. for institution of an F.I.R. and investigation by the police.

Ichagarh P.S. Case No. 33 of 1998 was instituted under Section 435 read with Section 34 of the Indian Penal Code. Charge sheet was submitted

under the said section and cognizance was taken thereafter on 05.08.1998 by the learned A.C.J.M, Seraikella, Jamshedpur. The charges were

framed under Section 435 read with Section 34 of the Indian Penal Code by the learned Court of Judicial Magistrate, 1st class, Seraikella on

02.12.1998. Evidences were also adduced by the prosecution. After examination of the accused under Section 313 of the Cr. P. C. and at the

stage the argument, it was detected that the case against the accused persons came under the ambit of Section 436 of the I.P.C. Thereafter, it was

committed to the court of Sessions for final disposal. Once again charges were framed under the aforesaid sections and the accused persons

pleaded not guilty on being explained of the charges. According to defence, they had been falsely implicated in the said case on account of land

dispute and previous enmity.

5. The prosecution examined six witnesses. P.W. 1 is the informant. From the analysis of his evidence in examination in chief as well as in cross-

examination, learned Trial Court came to a conclusion that he was not an eye witness rather a hearsay witness. He further opined that the alleged

house was a subject matter of dispute between the parties for partition. This witness had deposed that his wife stated about the alleged occurrence.

P.W. 2, Sumitra Devi is the wife of the informant. She in fact in her examination in chief made categorical statement that the informant P.W. 1 was

not present at the time of alleged occurrence. Ranjit Mahato and Doma Mahato came on hulla and extinguished the fire. She admitted the dispute

of land between the accused persons, which was the root cause of the alleged occurrence. The accused persons were "gotiya" and Chhutu Ram

Mahato was her "Chacha-sasur". The learned Trial Court came to an opinion that there is a dispute in the share of the house, which was subjected

to burn. According to this witness, she was alone in the house. P.W. 3, Ranjeet Mahato is the covillager and claims to have seen the occurrence

and the five accused at the place of occurrence. This witness has also stated that the informant was not present in his house. In his examination in

chief, he has stated that accused persons were threatening the informant. He had also stated that the informant was not present rather his wife was

present at the place of occurrence. Therefore, he had made contradictory statements. P.W. No. 4 Doma Mahato, who is also a resident of the

same village, had in his cross-examination though stated about the occurrence as having seen it, but he failed to clearly attribute the role of the

accused persons in sprinkling the kerosene oil and putting the house on fire. The learned Trial Court found contradiction between the evidence of

the other witnesses of the prosecution. P.W. 5, Deo Narayan Layak, who is also a resident of the same village, in cross-examination has stated

that informant was not present rather his wife was present at the place of occurrence. Apart from the name of the accused Majhila Mahato, the

said witnesses have stated nothing about the accused person and their role in the alleged occurrence. In his cross-examination, he did not say

anything in support of the case of the prosecution. The learned Trial Court had reason to doubt his testimony as an eye witness and was treated as

a hearsay witness. P.W. 6, Rabindra Modak is a formal witness, who did not disclose anything about the alleged occurrence.

6. In view of the lack of credibility of the statement of the P.W.1 who was not found to be an eye witness and the contradictions in the statements

of the other witnesses, learned Trial Court formed an opinion that the prosecution has failed to prove the case beyond the shadow of all reasonable doubts.

7. In fact the entire prosecution story was woven around the case set up by the informant in the F.I.R that while on return from the local hat on the

fateful date at 7.30 PM he was witness to the act of burning of his house. This story was completely demolished during the course of trial as his

own wife P.W. 2 and other witnesses have clearly stated that he was not present at the place of occurrence. Prosecution story therefore appears

to suffer from inherent contradictions, which lead to acquittal of the accused persons.

8. On consideration of the material evidence on record, we do not find any illegality or perversity in the judgment of the Trial Court to interfere in

the judgment of acquittal in revision. Accordingly, the instant Criminal Revision Petition stands dismissed.