

(2011) 04 PAT CK 0173

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 279 of 1994

Rajendra Ram and Kameshwar Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 429, 436

Citation : (2011) 59 BLJR 1924

Hon'ble Judges : Anjana prakash, J

Bench : Single Bench

Advocate : Murli Manohar Pd., J.K. Singh, Nand Kumar and Sanjay Kumar, for the Appellant; Pushpa Sinha, for the Respondent

Judgement

Anjana Prakash, J.—The Appellants have been convicted u/s 436/34 IPC and sentenced to RI for ten years as also u/s 429 IPC and sentenced to three years by a judgment dated 24.08.1994/25.08.1994 in S. Tr. No 183 of 1992/124 of 1992 passed by 3rd Additional Sessions Judge, Aurangabad.

2. The prosecution case is that on 22.03.1992 while the informant was in his house the accused persons came and burnt his house upon which he came out and saw the Appellants running away from the place of occurrence.

3. The prosecution examined ten witnesses in all out of whom P.W. 1, P.W. 8 and P.W. 9 the material eye witnesses whereas P.W. 2, P.W. 3 and P.W. 6 are corroborative witnesses. However, these witnesses have not seen the Appellants in the house of the informant nor the name of the Appellants disclosed by any one. P.W. 4 and P.W. 5 have been tendered for cross-examination.

4. On going through the evidence of the witnesses the factum of occurrence even if accepted the participation of the Appellants appears doubtful. Admittedly, there was enmity between the parties over possession of the land for which a Title Suit was pending between them and it is not believable that the Appellants could have been seen by the informant when he was sleeping inside since admittedly

the occurrence is said to have been taken place at night.

5. In view of such inherent improbability in the case, I am inclined to allow the appeal and set aside the judgment dated 24.08.1994/20.08.1994 passed by 3rd Additional Sessions Judge, Aurangabad in S. Tr. No. 183 of 1992/124 of 1992. The Appellants are discharged of the liability of their bail bonds.