
(1990) 03 PAT CK 0015
In the Patna High Court
Case No : Criminal Appeal No. 63 of 1988

Sitaram Pandey @ Sita Pandey

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-03-1990

Acts Referred:

Penal Code, 1860 (IPC) — Section 436

Citation : (1990) 38 BLJR 1188

Hon'ble Judges : N.S. Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.S. Rao, J.—Sitaram Pandey of village Rajbara, district Pelamma, the appellant, stands convicted u/s 436 of India Penal Code, and sentenced to undergo rigorous imprisonment for five years. Feeling aggrieved, he has preferred this appeal.

2. Ishaque Mian, the informant was an original resident of Suggi, police station, Montu, District Palamau. However, for about 5 years earlier to the occurrence, he had started living with his father-in-law Boula Mian in village Rajhara, Bhadu Devi P.W. is the mother-in-law and Motia Devi P.W. is the wife of the informant. It appears that as Ishaque Mian, after shifting to Rajhara had occupied a post and raised his thatched hut on the same, the residents, of Rajhara had become hostile to him.

The prosecution version, in brief, is that during the night intervening 1/2-6-1982, the sleep of Ishaque Mian was disturbed when his that thatched hut had started burning. He had then seen the appellant and his co-accused Kailash Tewari and Ram Jiwan Tewari, since acquitted, standing near the same. They had then started running away. On alarm raised by Ishaque Mian, his wife and parents-in-law, and for that matter villagers in general had rushed. In spite of best efforts, the hut could not be saved. On the basis of statement of Ishaque Mian recorded by the police in police station Patan on 2-6-1982 at 6-15 a.m., the case was

registered. After completion of the investigations, the appellant and his co-accused were charge-sheeted.

3. Out of six witnesses examined by the prosecution, Bhado Devi P.W. 1 is the mother-in-law and Motia Devi P.W. 2 the wife of the informant. Bishtu Mistri P.W. 3 and A. Thakur P.W. 5 had allegedly seen the appellants running away at same distance from the burnt hut during the night in question. Mahendra Pandey P.W. 4 had attested vide seizure memo which the police had collected the ashes, etc. from the place of the occurrence, Lakaman Manjhi P.W. 6 was only tendered for cross-examination. Ishaque Mian, the informant, could not be examined as he had reportedly died on 13-3-1983.

4. The appellant, like this co-accused, had denied the prosecution allegation and stated he was innocent. D. W. 1 Jai Kumar's evidence is not relevant for the purpose of decision of this appeal, as the same related to the acquitted accused. Jatadhari Dubey D. W. 2 is the Sarpanch of Grampanchayat Getta. He had deposed that the appellant was with him at his house during the night in question.

5. After hearing learned Counsel for the parties and going through the records, I am of the considered view that as the prosecution were against the appellant is not free from doubt, this appeal deserved to succeed.

6. It has remained undisputed that the hut of the informant had been burnt during the night of 1/2-6-1982. Now according to the prosecution, the appellant had put the same to fire. From his side, a case of denial was put forward. The material question for determination is to see as to if satisfactory evidence is available for bringing home the guilt against the appellant.

7. The informant was the first person to have noticed the fire. His version contained in the F.I.R. was that when he and got up, he had seen the appellant and his co-accused running away, he had further mentioned in the name that he was then all alone, he could not secure any culprit, and that his wife, parents-in-law and other Villagers had subsequently reached on hearing his hulla. The names of P.Ws. 3 and 5 are conspicuously missing from the F.I.R. P.W. 2 equally substantially improved upon the version by stating at trial that she had seen a burning Danda in the hand of the appellant. That fact was also not mentioned in the F.I.R. Her evidence and those of others examined is that they had seen the appellant running away. P.W. 3. had stated that the appellant was then running away near his own house Admittedly, the villagers in general had started running on hearing halla of the informant and if somebody had seen the appellant near his house during that night that cannot be said to be incriminating. At best, a case of suspicion is against the appellant. Law is well settled that suspicions however strong cannot take the place of proof. The material brought on record is insufficient for proving the charge against the appellant conclusively.

8. For reasons stated above, this appeal succeeds and is hereby accepted. Conviction and sentence of the appellant are set aside, and he is acquitted of the

charge. The appellant is on bail. His bail bonds are cancelled, and he is discharged from the liabilities of the same.