
(2003) 07 JH CK 0108

In the Jharkhand High Court

Case No : Criminal Appeal No. 2 of 1996 (R)

Sudhir Singh and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 436

Citation : (2004) CriLJ 1073 : (2003) 4 CurCriR 350 : (2003) 3 JCR 513 :
(2003) 3 JLJR 433

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : A. Kumar, for the Appellant; J.P. Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

Deoki Nandan Prasad, J.—This appeal has been directed against the judgment, of conviction and order of sentence dated 4.1.1996 passed by 1st Additional Sessions Judge, Giridih in Sessions Trial No. 321 of 1993, whereby and whereunder the learned trial Court convicted the appellants u/s 436 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for seven years each. The learned trial Court further convicted the appellants Sudhir Singh, Ruplal Modak alias Rupu Modak, Kashi Hazam and Kailash Thakur u/s 147 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for two years whereas appellants Mitlal Rajak and Niranjana Modak were also convicted u/s 148 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for two years. However, the sentences were ordered to run concurrently.

2. The prosecution case in brief is that on 21.1.1991 at about 11.30 p.m., the informant Choukidar Lakhan Turi lodged the first information report alleging there in that on 22.1.1991 at about 11.30 p.m., when he was sleeping in his house, all the accused persons along with others came at the place of his house and started committing mischief by setting fire to his dwelling house. He claimed

to have identified 10 to 15 persons standing on the angan having lukati in their hands. He indentured the appellants, namely, Mitlal Rajak, Rupu Modak, Kailash Manjhi, Kashi Hazam, Niranjana Modak, Kailash Thakur, Chaman Mahto, Jagdish Manjhi, Rameshwar Manjhi, Budhan Manjhi, Kailash Mahto, Sahra Mohli, Gulfa Mohli. Dasrath Manjhi and Sheo Narayan Prasad and they were armed with tangi. bhala guns etc. His house was set on fire and they were also raising alarm for killing family members. Thereafter the villagers assembled at the spot and then the accused persons fled away. It is also alleged that the informant tried to extinguish the fire but the western house was burnt to ashes.

3. On the basis of the fardbeyan, a first information report was lodged under Sections 144, 436 and 307 of the Indian Penal Code and Section 27 of the Arms Act. The police investigated into the case and submitted charge-sheet against all the appellants showing other accused persons as absconders.

4. The witnesses were examined in the Court below and after hearing both sides and considering the evidence on record, the trial Court convicted and sentenced the appellants in the manner as stated above, hence this appeal.

5. At the very outset, it may be mentioned here that the trial Court did not find the case true u/s 27 of the Arms Act as well as u/s 307/ 149 of the Indian Penal Code as the prosecution miserably failed to establish the charges against the appellants and, as such, the appellants were acquitted of the said charges.

6. Altogether six witnesses have been examined by the prosecution in support of its case. PW 1 is the informant who has not supported the prosecution case in any manner. He clearly deposed that he has not seen the persons who had set fire to his house. He claimed to have identified the appellants and others at the relevant time having deadly weapons but he has not specific about committing any mischief by setting on fire by any of the appellants.

7. PW 2 is the son of the informant, though claimed in paragraph 1 that he had seen the appellants in setting fire but in his cross-examination he clearly deposed that he came out from his room after opening the door when he found that the house is already set on fire and the persons said to have set of fire already fled away and they were at a distance of 500 to 600 yards. The said night was also dark night. There was no source of identification of the appellants. Admittedly the appellants were seen fleeing away at a distance of 500 to 600 yards.

8. PW 3, wife of PW 2, stated that they were sleeping in the house which was closed from outside and when the villagers came there, they had actually unbolted the door and thereafter they came out from the house and saw the house in burnt condition. She also deposed that the fateful night was the dark night and when she came out along with others from the room, she did not see any body present there. As to who set on fire, she could not be able to see those persons.

9. PW 4, wife of PW 1, claimed to have identified the appellants by the hole of the door from inside, but again she admitted in para 11 of her cross-examination that the accused persons including the appellants already fled away for about two to three miles away and as such, she could not see them. She also deposed that the villager actually unbolted the door of her house and thereafter they came out of the house.

10. PW 5, said to be an independent witness, has also not identified any of the appellants. He has been declared hostile by the prosecution. PW 6 is a formal witness. The accused persons were examined u/s 313 of the Code of Criminal Procedure and they have denied the allegation.

11. Obviously PW 1, being the informant, has given a complete go by to the prosecution case as he has not supported the prosecution case in any manner nor he had seen the appellants for committing mischief by setting on fire. PWs 2, 3 and 4 also contradicted in their evidence as PW 2 claimed in para 11 that the accused persons had already fled away 500 to 600 yards and thereafter they saw them and, as such, his story about identification also becomes very suspicious. The Investigating Officer has not been examined in the case resulting in causing prejudice to the case of the defence as neither any article said to have been burnt during the occurrence had been produced in the Court nor it has been stated anywhere as to what those domestic articles said to have been burnt during the occurrence. The whole prosecution case in this way becomes very suspicious, as there is nothing specific or direct indicating as to who are actually responsible for committing mischief by setting fire. No one can be convicted under assumption or under vague allegation. It may be noted here that, though two appellants, namely, Mitlal Rajak and Niranjana Modak were convicted u/s 148 of the Indian Penal Code but nowhere it has been stated as to what type of deadly weapons they were possessing at that time.

12. The testimony of the PWs is quite contradictory as PW 2 stated that he came out from the house after opening the door as he unbolted the door from inside whereas PWs 3 and 4 stated that the door of the house was opened by the villagers from outside and thereafter they came out. Thus the story of identification without any source of light is also far from reliance. The whole allegation without corroboration runs under suspicion and for which the appellants cannot be held responsible for the same. Thus I find that the learned trial Court committed error in convicting the appellants on assumption, which cannot be the basis for holding the appellants guilty.

13. Thus it is evident that the prosecution has miserably failed to establish the charge levelled against the appellants beyond all reasonable doubts as required under law.

14. In the result, I find merit in this appeal, which is, accordingly, allowed. The judgment of conviction and sentence passed by the learned trial Court is set aside. Thus all the appellants are acquitted of the charges levelled against them.

The appellants are on bail. They are discharged from the liabilities of their bail bonds.