

**(2006) 07 JH CK 0131**  
**In the Jharkhand High Court**

Surya Paharia

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

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**Date of Decision :** 20-07-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313  
Penal Code, 1860 (IPC) — Section 436

**Citation :** (2006) 3 Crimes 317 : (2006) 4 JCR 620

**Hon'ble Judges :** Rakesh Ranjan Prasad, J; Dabbiru Ganeshrao Patnaik, J

**Bench :** Division Bench

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**Judgement**

1. The sole accused Surya Paharia having been put on trial for the charge u/s 436 of the Indian Penal Code was found guilty and was convicted u/s 436 of the Indian Penal Code and consequently was sentenced to undergo imprisonment for life.

2. The informant Madan Kisku (PW-3) who happens to be the maternal uncle of the appellant had given a piece of land a year before from the date of occurrence. i.e., 14.4.1988 over which the appellant after constructing a house was residing with his wife. In course of the time he married another girl and due to that reason there used to be altercations among them and, therefore, the informant asked the appellant to leave the village. Upon it, the appellant left the place and came along with his second wife, at her house to live and extended threat of setting the house of informant on fire. Thereafter, ten days before the date of occurrence one Logra Paharia came to his house and had a drink (toddy) and thereafter informed him that the appellant had paid a sum of Rs. 1000/- to him for the purpose of killing him, but the informant did not take it seriously. This is said to be the motive.

Further case is that on 14.4.1988 while he alongwith all other villagers except one or two had come to a pond for fishing at that time at about 11 a.m. some one saw smoke coming out from his house, who ran over there and having seen the house in ablaze put off the fire. In that course Sakal Hembrom (PW-1) and

Miss Tara Kuri (PW-2) informed that they saw the appellant fleeing away towards eastern side and by the time villagers reached over there, he had gone away. Further case is that on account of house being put on fire careals, cloths, radio etc. kept in the room were burnt. Thereafter the informant submitted written report (Ext. 1) before the Officer-in-charge of Lalmatia Police Station, on the basis of which a case was registered u/s 436 of the Indian Penal Code against the sole appellant. The matter was taken up for investigation and in course of investigation, the Investigating Officer visited the place of occurrence, seized burnt piece of bamboo, wood, paddy etc. and prepared a seizure list (Ext. 2). After completion of investigation, police submitted charge-sheet and, accordingly, cognizance of the offence was taken. In due course, when the charge was framed, accused pleaded not guilty and claimed to be tried.

3. During trial, the prosecution examined as many as five witnesses Patwani Murmu (PW-5) was tendered for cross-examination. PW-4 Narad Thakur is a formal witness who has put his signature over the seizure list (Ext. 2). PW-3 Madan Kisku the informant, is admittedly not an eye-witness. PW-2 Miss Tara Kuri also appears to be hearsay witness. PW-1 Sakal Hembrom has claimed to be an eye-witness and has deposed that, the appellant after setting the house on fire fled away towards eastern side. After the prosecution case was closed, the appellant was questioned about the incriminating circumstances u/s 313 of the Code of Criminal Procedure to which he denied.

4. On the basis of evidences brought on record, learned Sessions Judge found the appellant guilty and convicted and sentenced him as aforesaid.

5. Learned Counsel appearing for the appellant submitted that trial Court convicted the appellant on the sole testimony of PW-1 Sakal Hembrom, who claimed himself to be an eye-witness, but, in fact, he was not an eye-witness to the occurrence as he in his statement made u/s 161 of the Code of Criminal Procedure had never stated that he saw the appellant setting the house on fire. Rather, he stated before the police that he saw the appellant fleeing away and, therefore, in cross-examination he was confronted with his earlier statement made u/s 161 of the Code of Criminal Procedure that he is not an eyewitness to the occurrence which he denied and in that situation on account of non-examination of the Investigating Officer, case of the defence gets prejudiced to a great extent and, therefore, the appellant is entitled to be acquitted.

6. Heard learned Counsel appearing for the State.

7. Having heard learned Counsel for the parties and on perusal of the records, we do find that it is a case of the prosecution as has been made out in the First Information Report (Ext. 2) that, when people noticed smoke coming out from the house of the informant, they came to the place and put off the fire and there PW-1 Sakal Hembrom and PW-2 informed to the informant that they saw the appellant fleeing away. Thus, the First Information Report suggests that neither PW-1 nor PW-2 did actually see the appellant setting the house on fire. PW-1

Sakal Hembrom in his evidence had claimed to have seen the appellant setting the house on fire but when he was confronted with his earlier statement that he did not see any person setting the house on fire, he denied. On the other hand, PW-2 Miss Tara Kuri in her evidence has said that she did not see any person setting the house on fire, rather saw a person fleeing away whom she did not identify.

8. Under the aforesaid situation, non-examination of the Investigation Officer certainly has caused prejudiced to the appellant. Furthermore, no reliance can be placed on the testimony of the informant, who though has deposed that he came to know from PW-1 Sakal Hembrom that the appellant set the house ablaze, but PW-1 in his evidence has never said that he had made such statements to the informant PW-3. Therefore, the evidence of PW-3 becomes inadmissible. Moreover, prosecution has also failed to prove the motive as has been assigned in the First Information Report, Ext. 2.

9. Under the aforesaid circumstances, the appellant deserves benefit of doubt. In the result, the impugned judgment of conviction and order of sentence is hereby set-aside and the appellant is acquitted and is discharged from the liability of the bail bonds and is directed to be released forthwith, if not wanted in any other case.