
(2017) 04 JH CK 0094
In the Jharkhand High Court
Case No : 87 of 2002 (R)

The State of Jharkhand, & ors.

APPELLANT

Vs

Arun Kumar Dhar

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 107](#) - Security for keeping the peace in other cases
[Indian Penal Code, 1860](#), [Section 435](#) - Mischief by fire or explosive subst

Citation : (2017) 04 JH CK 0094

Hon'ble Judges : Rongon Mukhopadhyay

Bench : SINGLE BENCH

Advocate : Tarun Kumar Mahto, Nehru Mahto

Judgement

1. Heard the parties. This application is directed against the judgment dated 12.2.2002, passed by the learned 3rd Additional Sessions Judge, Bermo at Tenughat in Cr. Appeal No. 33 of 1999/08 of 2001, whereby and whereunder, the judgement and order of conviction and sentence passed by the learned Judicial Magistrate, 1st class, Bermo at Tenughat in G.R. Case No. 1060 of 1996, convicting the petitioners for the offence under section 435 of the Indian Penal Code and sentencing them to undergo S.I. for two years has been affirmed.

2. An FIR was instituted on the allegation that on 11.2.1996 at about 12 A.M. when the cousin brother of the informant had come out from his house for the purpose of answering call of nature he saw that the straw and the paddy crops lying in Khalihan were burning and two persons were fleeing away. It is also alleged that the said witness had seen a motorcycle in a running condition and the persons who had set fire on the straw had fled away on the motorcycle. The witness had identified all the three persons as the petitioners in the present case.

3. Based on the aforesaid allegations, G.R. Case No. 1060 of 1996 was instituted, in which after investigation chargesheet was submitted under section 435 of the

Indian Penal Code, pursuant to which cognizance was taken and after charge was framed, trial proceeded. On conclusion of trial, learned trial court having found the petitioners guilty for the offence under section 435 of IPC had sentenced them to undergo S.I. for two years. The appeal preferred by the petitioners being Cr. Appeal No. 33 of 1999/08 of 2001 was dismissed by the 3rd Additional Sessions Judge, Bermo at Tenughat, by judgement dated 12.2.2002.

4. It has been submitted by the learned counsel for the petitioners that the entire conviction is based on the evidence of P.W-1-Shyam Sundar Mahto. It has further been submitted that admittedly the occurrence is said to have taken place in midnight and it would have been well nigh impossible for P.W-1 to have identified all the three persons. It has also been submitted that since the identification is itself doubtful, the petitioners be acquitted from the charges levelled against them under section 435 of the IPC.

5. Learned A.P.P. has opposed the prayer made by the learned counsel for the petitioners.

6. In course of trial, seven witnesses were examined on behalf of the prosecution. P.W-2-Ras Bihari Rajak. P.W-3-Amrit Mahto. P.W-4- Lalan Mahto and P.W-5-Basudeo Rabidas are hearsay witnesses, who have stated that it was P.W-1 who had disclosed about the presence of the petitioners in setting fire in haystack. This witness had come to the place of occurrence on hearing the cry of alarm from the informant-P.W-6. P.W-1-Shyam Sundar Mahto is the only eye witness to the occurrence, who had stated that he had come out from his house at midnight to answer call of nature when he had seen two persons fleeing away after setting fire in haystack. This witness has further stated that one person was sitting in a motorcycle and that three of the accused persons had fled away after the incident. This witness has also identified all the petitioners of having taken part in commission of the offence. P.W-6-Jailal Mahto is the informant of the present case, who had stated about the disclosure made to him by P.W-2 and the persons, who were seen fleeing away after setting fire in haystack. P.W-7 is the Investigating Officer who had given a detailed description of the place of occurrence and also seized various articles and prepared the seizure list. This witness has further stated that several burning materials were found at the place of occurrence. On the question of enmity, the Investigating Officer has stated that it was at his instance a proceeding under section 107 Cr.P.C. was instituted between the petitioners and the informant.

7. Thus the prosecution case hinges upon the evidence of the sole eye witness P.W-1-Shyam Sundar Mahto. The evidence of P.W-1 inspires confidence in view of the FIR instituted by P.W-6-Jailal Mahto who had stated about the disclosure made by P.W-1 about the involvement of the petitioners. P.Ws, 2, 3, 4 and 5 are although not the eye witnesses to the occurrence but have very categorically stated about the disclosure made by P.W-1 indicating the part played by the petitioners in burning the haystack of the informant. This witness had come to the place of occurrence on the cry of alarm raised by P.W-6 and had seen the

haystack burning. The occurrence is thus found proved by the evidence of the prosecution witnesses as well as the evidence of I.O. So far as identification of the petitioners is concerned, the prosecution in view of the evidence of P.Ws-1 and 6 has been able to prove their presence in the place of occurrence and their active participation in committing act of burning of haystack of the informant. Although learned counsel for the petitioners has stressed much about the mistaken identity of the petitioners in view of the time of occurrence but as would appear that when P.W-1 had come out from inside the house, the haystack was burning and thus sufficient light must have been present to identify the petitioners in committing the offence.

8. Thus, the prosecution having been able to prove its case beyond all reasonable doubt, learned trial court had rightly convicted the petitioners for the offence under section 435 of the IPC. There being no reason to conclude otherwise, the judgement of conviction passed against the petitioners is sustained. However, with respect to the sentence, which has been imposed upon the petitioners, it appears that they are facing the rigors of the prosecution since 1996 and have also for some time remained in custody. Considering such fact, the sentence imposed upon the petitioners is modified to the period already undergone. This application, therefore, stands dismissed with the aforesaid modification in sentence imposed upon the petitioners.