

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.23 of 2011

1. Vishundev Mehta, Son of Late Gulay Mehta
2. Sanjay Mehta, Son of Sri Vishundev Mehta
3. Ajay Mehta, Son of Sri Vishundev Mehta
4. Nand Kishor Mehta, Son of Sri Vishundev Mehta
All are residents of Village Rahimpur, P.S. Sour Bazar, P.O. Kachara, District Saharsa

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Uday Bhanu Roy, Advocate Mr. Anant Kumar-1, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 13-02-2018

Heard learned counsel for the appellants and the learned APP for the State.

2. The instant appeal has been preferred against the judgment of conviction and order of sentence dated 27.11.2010 and 30.11.2010 respectively, passed by learned Additional Sessions Judge, Fast Track Court No.6, Saharsa in Saur Bazar P.S. Case No.254 of 2005, giving rise to Sessions Trial No.170 of 2006 whereby all four appellants have been convicted being found guilty for committing offence under Sections 436/34 of the Indian Penal Code and sentenced to undergo five years of RI and also fine of Rs.2000/- each and in case of default of making fine to further undergo two months of simple imprisonment.



3. The present case was lodged by Mahendra Pathak (PW11) instituting Saur Bazar P.S. Case No.254 of 2005, registered under Sections 436 and 427 of the Indian Penal Code alleging therein that due to land dispute Vishundev Mehta, who forcibly wanted to usurp his land but faced resistance so nursed enmity hence in the night of 21.12.2005 while he was sleeping after having dinner, the appellant Vishundev Mehta along with other accused persons, namely, Sanjay Mehta, Ajay Mehta and Nand Kishore Mehta came and set ablaze his house. Many villagers turned up there hearing alarm raised by him but house hold articles got burnt causing loss to the tune of Rs.25,000/-.

4. The police after registering the FIR in the matter started investigation and on its completion submitted charge-sheet against all four accused persons. Considering the police report, i.e. the charge sheet cognizance was taken and the accused persons were put on trial after framing of the charge and commitment of the case and on its conclusion convicted by the trial court.

5. Learned counsel for the appellants submits that there was enmity in between the appellants and the informant, Mahendra Pathak (PW11) owing to land dispute and due to this reason the appellants have been falsely implicated by him. The occurrence is of night and there is no eye-witness. Alternative argument of the learned counsel for the appellants is that the so called house set ablaze by the



accused persons was not a residential house rather a hut and used for storage of foodgrains, a separate temporary structure from the residential house as is evident from perusal of the seizure list (Ext.5), so the conviction under Section 436 IPC is not correct rather it should have been under Section 435 IPC. Moreover, appellant no.1 has undergone period of custody for more than five months and rest others have undergone for more than four months moreover the alleged occurrence is of the year 2005 so much time has lapsed since the alleged occurrence.

6. Learned counsel for the State submits that altogether 12 witnesses have been examined and all have supported the case of the prosecution and out of these witnesses many are independent witnesses, the co-villagers, who are not inimical to the appellants, therefore, their testimony cannot be disbelieved.

7. Having considered the rival submissions and on perusal of records, the Court finds that altogether 12 prosecution witnesses have been examined including the IO of the case (PW12). Rest other witnesses are Sudhir Kumar Mehta (PW1), Wakil Thakur (PW2), Sheo Narayan Thakur (PW3), Sushil Kumar (PW4), Chandramauli Prasad Singh (PW5), Fudan Thakur (PW6), Bahadur Thakur (PW7), who have not supported the case of the prosecution, Mantu Thakur (PW8), who is also a hearsay witness not supported the case of the prosecution, Lalo Yadav (PW9) was declared hostile as deposed that



the hut was used for storage of the food-grains, Lakhi Chand Mehta (PW10) also has not seen the occurrence.

8. Now whether the said hut was a dwelling house or not that is to be considered in the present appeal. Let us examine the evidence of Mahendra Pathak (PW11) in order to ascertain this fact. He has deposed in paragraph-10 that the hut was used as a dwelling house and there was also utensils of iron and other metal but shows ignorance whether such articles were seized by the IO from the place of occurrence, whereas the fact remains that seizure list marked as Ext.5 clearly indicates recovery of only four pieces of bamboo and some ashes from the place of occurrence, so only conclusion is that the so called hut was not a dwelling house. A dwelling house is a house ordinarily used for the residence of human beings, which contains some furnitures also includes utensils, clothes and other various house hold articles but in the absence of these articles as remnant of the burn clearly indicates it was used not as dwelling house rather for the storage of the food-grains or other purpose. Laleshwar Yadav @ Lalo Yadav (PW9) though declared hostile by the prosecution but has deposed that hut was used for storage of rice and wheat. Section 436 IPC relates to causing mischief by fire or explosive substance with intention to destroy the house. Ordinarily house is a place of worship or a human dwelling or as a place for custody of property. The seizure list (Ext.5) does not even indicate



the hut was used as a dwelling house, so causing mischief by fire or explosive substance with intention to cause damage in case of agricultural produce worth Rs.10/- or onward is the offence coming within the purview of Section 435 IPC, so the conviction by the trial court under Sections 436/34 IPC is not correct in absence of evidence that hut was used or dwelling unit, so conviction is modified to conviction under Sections 435/34 IPC and all the four appellants are sentenced to the period already undergone by them. Since all are on bail, so they are discharged from the liabilities of their respective bail bonds.

9. With the aforesaid modification in the conviction and sentence, the appeal stands dismissed.

(Arun Kumar, J)

S.KUMAR/-

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