

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.524 of 2004

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Sarjoo Ram , S/o late Ram Chander Ram, R/v- Fateha, P.S.- Aurangbad
(Muffassil), District- Aurangabad.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ravi Kant Tiwary, Amicus

For the Respondent/s : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 29-11-2025

Mr. Ravi Kant Tiwary, learned counsel present in court at the time of hearing agreed to assist this Court as amicus and, therefore, this Court appointed Mr. Ravi Kant Tiwary, as an *Amicus Curiae* to assist in disposal of present appeal.

2. The present appeal has been preferred by the appellant-convict under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated and order of sentence dated 21.07.2004 passed by court of learned Addl. Sessions Judge, (Fast-Track) Court No. IV Aurangabad in Sessions Trial No. 230 of 1998/84 of 2003,



whereby the concerned Trial Court has convicted appellant under Section 436 of the IPC, and sentenced to undergo rigorous imprisonment for two years and acquitted him under Section 323 of IPC.

3. The brief facts as per FIR, the informant namely, Bhola Ram (not examined) had a land dispute with his brother namely, Sarjoo Ram (appellant). Due to said land dispute one altercation took place between them, during which appellant abused and threatened him. When the informant protested, appellant assaulted him with a *lathi* on his head, causing injuries. He further alleged that due to previous enmity, appellant set his house on fire at night while he and his family were sleeping. On hearing villagers shouting “Aag! Aag!”, he came out, rescued his family members, and the villagers later assembled and extinguished the fire. Several rooms and household articles were destroyed in the incident.

4. On the basis of aforesaid information, Aurangabad (M) P.S. Case No. 478 of 1996 was lodged for the offence punishable under Section 341, 323, 504 and 436



of IPC.

5. After completion of investigation the charge-sheet was submitted before the learned CJM, Aurangabad who upon the perusal of material collected during investigation took cognizance of the offence and committed the case before the court of sessions for its trial and disposal.

6. Learned trial court accordingly framed charges on 21.12.1996 against appellant-accused, who upon explanation pleaded as “not guilty” and claimed trial.

7. To substantiate its case, before learned Trial Court the prosecution has examined altogether 6 witnesses.

None of the witness examined in defense. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Ram Sunder Yadav
P.W. 2	Naresh Yadav
P.W. 3	Basanti Devi
P.W. 4	Santosh Kumar
P.W. 5	Ram Jatan Yadav
P.W. 6	Yogendra Bhuiyan

8. Apart from the oral evidence, the prosecution has also proved the following documents in order to prove the charges:-



Sl. No.	Exhibit Nos.	List of documents
1.	Exhibit-1	<i>Fardbeyan</i>
2.	Exhibit-2	Formal FIR

9. The statement of the appellant-accused was recorded under Section 313 of the Code after stating incriminating evidences/circumstances as surfaced during the trial, which he denied and shows complete innocence.

10. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant-convict for the offences under Section 436 of IPC and sentenced him in the manner as stated above.

11. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant-convict has preferred the present appeal.

12. Hence, the present appeal.

13. It is submitted by Mr. Ravi Kant Tiwary learned *Amicus Curiae*, that in present appeal informant namely, Bhola Ram was not examined and therefore, the FIR and its content was not proved. It is submitted that even PW-1 and



PW-2 failed to support the case of prosecution. PW-3 who is the wife of the informant stated that she implicated the appellant only for the reason that he advanced threat to her husband. Investigating Officer (I.O.) of this case was also not examined during the trial and therefore, on the basis of all such evidences, the recording of judgment of conviction by learned trial court is completely unfounded and same is fit to be set aside/ quashed.

14. Mrs. Anita Kumari Singh, learned APP for the State while opposing appeal submitted that the witness supported the occurrence and on the ground of minor contradictions the judgment of conviction as recorded by learned trial court cannot be viewed with doubt.

15. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by the learned counsel appearing on behalf of the parties.

16. It would be apposite to reproduce Section 436 of IPC, being major section in which charges was framed by learned trial court, for better understanding of the law:

"436. *Mischief by fire or explosive substance with*



intent to destroy house, etc.--Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

17. Upon perusal of record it appears that Bhola Ram, who is the informant of this case, was not examined during the trial.

18. PW-1 namely, Ram Sunder Yadav and PW-2 namely, Naresh Yadav, were declared hostile supported the occurrence but completely denied that they are aware about the person who put the house of informant on fire and for the said reason they were declared hostile by the prosecutions.

19. PW-3 is Basanti Devi, who is wife of the informant (not examined) it appears from her testimony that the occurrence is of year 1996 which took place mainly out of ancestral land dispute. It also appears from her testimony that at the time of occurrence she was inside her room, upon court questions she categorically stated that she disclosed the name of the appellant-accused before police only for the



reason that being elder brother of her husband he advanced threat prior to the occurrence, when a dispute surfaced arising out of partition of ancestral land. She also appears deposed that she never stated to police that during fire cloth, grains and others items worth of 50,000/- was burnt.

20. PW-4 namely, Santosh Kumar who is son of the informant supported the occurrence but failed to depose that who put the house, in issue, on fire.

21. PW-5 namely, Ram Jatan Yadav and PW-6 namely, Yogendra Bhuiyan are the former witnesses who are advocate-clerks and endorsed the signature of police officers who signed over formal FIR and identified the signature of informant but as they had no any occasion to work with I.O. in any capacity, their testimonies cannot be relied upon or appears relevant to the extent of identification.

22. In view of aforesaid factual discussions, it transpires that though prosecution witnesses supported the occurrence, but failed to suggest that non-else than this appellant-accused put house of informant on fire. Even PW-3 who is the wife of the informant deposed about the name of



this appellant only due to suspicion as he advanced threat to her husband prior to the occurrence.

23. In view of aforesaid factual submissions as the informant of this case and also the I.O, failed to examine during the trial, where none of the prosecution witnesses as discussed aforesaid appears supported the involvement of accused-appellant *qua* occurrence, it can be safely arrived on the conclusion that prosecution miserably failed to established its case beyond all reasonable doubt.

24. Accordingly, the appeal stands allowed.

25. The impugned judgment of conviction and order of sentence dated 21.07.2004 passed by court of learned Addl. Sessions Judge, (Fast-Track) Court No. IV Aurangabad in Sessions Trial No. 230 of 1998/84 of 2003 is accordingly set aside.

26. The appellant, above-named, is acquitted of the charges levelled against him. Since the appellant is on bail, he is discharged from the liabilities of his bail bond. Sureties stands discharged.

27. Fine if any paid, be returned to appellant hence



forth.

28. Office is directed to send back the lower court records along with a copy of the judgment to the court below, henceforth.

29. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5000/- (Rupees Five Thousand only) to Mr. Ravi Kant Tiwary, *Amicus Curiae* as consolidated fee for rendering her valuable professional service for the disposal of present appeal.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2025.
Transmission Date	02.12.2025.

