

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2162 of 2019**

Arising Out of PS. Case No.-135 Year-2010 Thana- FALKA District- Katihar

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Om Prakash Mandal S/O Kusumlal Mandal R/O Village- Gopalpatiti, P.S.-
Falka, District- Katihar

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Indrajeet Kumar, Advocate Mr. Bhola Prasad, Advocate Mr. Mukesh Kumar Jha, Advocate
For the Respondent/s	:	Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 11-02-2025

Heard the learned Senior Counsel for the appellant; Sri
D.K. Sinha and the learned APP for the State.

2. This appeal is directed against the judgment and order dated 14.5.2019 passed by the Additional Sessions Judge FTC-1, Katihar in S.T. No. 215 of 2012 arising out of Falka P.S. Case No. 135 of 2010 by which the appellant has been held guilty for committing offence under Sections 147, 323, 448, 427 and 436 of the Indian Penal Code and accordingly the appellant has been convicted and sentenced to undergo RI for one year each for



offence under Sections 147, 323, 448, 427, of the Indian Penal Code and RI for 10 years for offence under Section 436 of Indian Penal Code and a fine of Rs. 5000/- has also been awarded for offence under Section 436 of the Indian Penal Code and in default of payment of fine, further four months imprisonment.

3. As per the prosecution case, one Musahru Muni submitted a written statement before the S.H.O., Falka Police Station alleging therein that on 26.07.2010 at about 9-10 AM Kusum Lal Mandal and others including the appellant attacked on his house by assaulting his wife, daughter, daughter-in-law and children and ordered to vacate the house otherwise they will commit loot and will set the house on fire. It is further alleged that when the informant was going to the police station, co-accused Husho Mandal and Rajesh Mandal intercepted him and in the meanwhile, they started committing loot and took away many household articles, cash of Rs. 2,000 from the shop of the nephew of the informant and set the house on fire causing loss of Rupees 20,000 to the informant.

4. On the aforesaid written information, F.I.R. *vide* Falka P.S. Case No. 135/2010 was instituted u/s 147, 148, 323, 448, 452, 379, 427 and 436 of I.P.C. against 20 persons including the appellant and the police took up investigation and on completion



of investigation first charge sheet was submitted *vide* charge sheet no. 128/2010 and later on, supplementary charge sheet no. 146/2010 was submitted against 13 accused persons and after cognizance and procedural compliance the case was committed to the Court of Sessions for trial. Charges were framed for offence u/s 147, 148, 323, 448, 427 and 436/34 of I.P.C. which the appellant denied and pleaded not guilty.

6. The prosecution examined 8 witnesses namely Babli Devi (PW-1), Kavita Devi (PW-2), Chanda Devi (PW-3), Gunjan Devi (PW-4), Chandra Shekhar Singh (I.O. & PW-5), Shri Pat Singh (PW-6 & I.O.), Dr. Ram Narayan (PW-7) and Musahru Muni (PW-8 & Informant) and apart from oral evidence, documentary evidence also brought on record.

7. It has been submitted by the learned senior counsel for the appellant that on behalf of the defence also, some documentary evidence were brought on record to prove their title and possession over the land in question dispute regarding which the alleged occurrence have taken place. He further submitted that the Trial Court failed to consider the documentary evidence produced by the defence as Ext. A, B, C, D and E with regard to land in question from which it is proved that the land in question is in possession of the landlord i.e., defence side so question of



dispossession of the informant by committing alleged occurrence does not arise. Out of 8 prosecution witnesses, PW 1, PW 2, PW 3, PW 4 and PW 8 are party witnesses and their deposition cannot be believed as gospel truth if it is not supported by independent witnesses and in this case no independent witness of the village had supported the prosecution witness.

8. It is next submitted by the learned senior counsel for the appellant that for the same occurrence Falka P.S. Case No.136/2010 was instituted by the defence side u/s 323, 324, 436/34 of I.P.C. He further submitted that the investigation was not done properly as is evident from the deposition of PW-6 who did not record the restatement of informant. There is a bona-fide land dispute between the parties, so there is every chance of false implication.

9. The learned APP for the State has supported the impugned judgment but he has not been able to defend the case of the prosecution and the fact that almost all the witnesses have said that they had not seen as to who set fire to the hut.

10. I have considered the submissions of the parties and have gone through the materials available on record.

11. P.W-1 is one Babli Devi who has supported the prosecution case and in her deposition she has said that it is the



appellant who had set fire to the hut but in her cross-examination she has said that after regaining consciousness she came to know that her hut burnt.

12. Similar is the deposition of PW-2 (Kabita Devi). She in her deposition has said that she was inside the hut and when she came out of the hut, she saw that the fire is in the backside of the hut.

13. PW-3 (Chanda Devi) in her deposition has said that after she regained consciousness, she saw that her hut was burnt.

14. PW-4 (Gunjan Devi) in her deposition has said that the appellant had set fire to the hut but in her cross-examination, she says that when she came out of her hut, she saw that her hut was on fire.

15. PW-5 (Chandra Sekhar Singh) and PW-6 (Shri Pat Singh) are the Investigating Officers of the case.

16. PW-7 (Dr. Ram Narayan Jha) is the doctor.

17. PW-8 (Mushahru Muni) is the informant of the case. In the FIR he has said that it was Sanjay Mandal who set fire to the hut but in Court, he has said that it was the appellant who had set fire to the hut.

18. From the discussions made above, it appears that PW-1 to PW-4 have not seen the occurrence. They came out of the



hut after the fire had already started. They did not see as to who had set fire to the hut and they in the hospital have come to know that their hut was burnt. Though they were assaulted by the accused persons but the allegation of setting fire is made against the appellant by all the witnesses. The informant similarly has to be disbelieved as he has given a different version in the FIR but in the Court he has changed the same.

19. In these circumstances the accusation against the appellant cannot be proved by the witnesses who are not eyewitnesses and the prosecution has not been able to prove the allegations levelled against the appellant beyond reasonable doubts.

20. In view of the above, the appeal stands allowed and appellant is acquitted of all charges levelled against him.

21. Accordingly, the judgment and order dated 14.5.2019 passed by the Additional Sessions Judge FTC-1, Katihar in S.T. No. 215 of 2012 arising out of Falka P.S. Case No. 135 of 2010 is hereby set aside.

22. Since the appellant is on bail, he is discharged from the liabilities of the bail bonds.

23. Let the LCR be sent back to the concerned Court below forthwith.



24. Interlocutory application/s, if any, also stand disposed off accordingly.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	NAFR
CAV DATE	N/A
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