

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.70 of 2013

Arising Out of PS. Case No.-20 Year-1989 Thana- BODHGAYA District- Gaya

Basudeo Yadav, S/O Late Jagan Yadav, Resident Of Village Sewabigha, P.S.
Bodhgaya, District Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sunil Kumar Pathak, Advocate Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. S.N. Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 31-03-2026

Heard Mr. Sunil Kumar Pathak learned counsel for
the appellant and Mr. S.N. Prasad, learned APP for the State.

2. This criminal appeal has been preferred against the judgment dated 10.01.2013 and order of sentence dated 15.01.2013 passed in Sessions Trial No. 517 of 2009/304/1990 arising out of Bodhgaya P.S. Case No. 20 of 1989 by Adhoc Addl. District and Sessions Judge III, Gaya whereby the learned trial court convicted the appellant under Section 436 of the Indian Penal Code and sentenced him to undergo 10 years of imprisonment along with a fine of Rs.1000/- and in lieu of deposit of fine to further undergo imprisonment for six months.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has



preferred the present appeal before this Court. The appellant has assailed the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellant.

BRIEF FACTS OF THE CASE

4. The case of the prosecution, in brief, is that on the basis of a written report submitted by the informant, addressed to the Officer-in-Charge of Digha Police Station, the present case came to be instituted. It is alleged that on the date and time of occurrence, all the named accused persons, variously armed with firearms, cartridges and bombs, arrived near the house of the informant and started abusing him and his family members in filthy language. When such conduct was protested, accused allegedly exhorted his companions to destroy the house of the informant by hurling bombs. Pursuant thereto, Nuran Yadav is said to have thrown two bombs one after another, causing injuries to Bhuneshwar and Ishwar Yadav. It is further alleged that Ishwar Yadav, armed with a country-made gun, fired at the informant party, though the shot misfired. The prosecution further alleges that thereafter Basudeo Yadav set fire to a hut belonging to Naresh Singh of the same village. On alarm being



raised and upon arrival of Naresh Singh, the accused persons fled away towards their respective houses. The occurrence is stated to have been motivated by prior enmity, and the informant prayed for appropriate legal action against the accused persons.

5. After institution of the FIR, the police proceeded with the investigation and after completion of the investigation, charge-sheet was submitted. Thereafter, the trial court took cognizance against the appellant and the case was committed to the Court of Sessions for trial.

ARGUMENT ON BEHALF OF THE APPELLANT

6. Learned counsel appearing on behalf of the sole appellant submitted that the charges were framed on 28.04.1992 under Sections 147, 436/149, 148, 325 IPC, as well as under Section 3(4) of the Explosive Substances Act and Section 27 of the Arms Act. Altogether nine accused persons faced trial, out of them, eight accused persons were acquitted by the same judgment and order as the prosecution failed to prove the charges against them. However, the present appellant alone was convicted under Section 436 IPC. The prosecution examined only four witnesses during the trial and all the witnesses are close relatives of the informant, and no independent witness from the village/place of occurrence was examined. P.W-1 is



own brother of the P.W-4(informant), P.W-3 is son of P.W.-1 and P.W.2 is nephew (*Bhgina*) of P.W.4. Learned counsel further submitted that the existence of prior enmity between the parties is admitted. There were ongoing land disputes and civil litigation. It has also come in evidence that an earlier case of theft was instituted by the prosecution side, in which the accused persons were acquitted. Proceedings under Sections 145 Cr.P.C. and 107 Cr.P.C. were also pending between the parties concerning the same land dispute, indicating longstanding hostility. There is no objective or reliable evidence on record to establish the alleged act of burning. Therefore, the charge under Section 436 IPC has not been proved beyond reasonable doubt. The Investigating Officer and the Doctor were not examined. No injury report has been proved. Further, no sanction relating to the Explosive Substances Act has been brought on record. Non-examination of the Investigation Officer has caused serious prejudice to the defense, as the manner of occurrence has not been established. The place of occurrence has not been properly proved. Contradictions in the testimony of prosecution witnesses could not be duly confronted and proved.

7. Learned counsel further submitted that P.W.-4 has himself admitted that the sole appellant Basudeo Yadav had set



the hut on fire by throwing a burning matchstick on the hut. P.W.-4, in his cross examination, has admitted in paragraph no. 16 that the bomb was thrown by one co-accused Mohan Yadav and further in paragraph no. 18, he has admitted that the incidence took place in the month of February and due to dew, the hut remains moist. P.W.4 (informant) is the eye witness and he has failed to produce any corroborative evidence on record to establish that beyond reasonable doubt the hut was sat on fire. Even the burnt articles were not found on the spot.

8. Learned counsel further submitted that P.W.4 (informant) and other prosecution witnesses have admitted that nobody was residing in the hut or the said hut is residential house. The fact that nobody was residing in the hut is also supported by the evidence that no articles like utensils or other households articles were recovered from the place of occurrence. The Investigating Officer had not collected any incriminating articles from place of occurrence. The Investigating Officer has not been examined. He further submitted that in absence of examination of any independent witness and without any objective finding with regard to the burning in question, the prosecution has miserably failed to establish the allegation against the appellant. There was a civil



dispute regarding a piece of land and P.W-4 (informant) has admitted that the appellant is his co-villager in which respect, 145 and 107 proceeding has also been contested between the parties. In view of the dispute already between the parties, there is every possibility of implicating the appellant by making a false allegation.

ARGUMENT ON BEHALF OF THE STATE

9. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences.

ANALYSIS AND CONCLUSION

10. Heard the parties.

11. The present appeal has been filed questioning the conviction recorded and fine imposed under Section 436 of the I.P.C. against the sole appellant. In the present case I.O. has not been examined, therefore, there is no question of seizure list having been prepared on his part. It is the case of the prosecution that the accused/appellant is the order giver and had set the hut of the informant on fire along with other accused persons.



12. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

13. With reference to the aforesaid rival legal contention urged on behalf of the parties, I have carefully examined the case to find out whether the impugned judgment warrants interference by this Court on the charge levelled against the accused/appellant under Section 436 of the I.P.C.

14. It would be appropriate to reproduce the provisions of Section 436 of the IPC for the sake of convenience and better understanding of the facts, which are as under:-

“436. Mischief by fire or explosive substance with intent to destroy house, etc.
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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 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. ”

15. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete



innocence.

16. The learned trial court, on the basis of materials as collected during the course of investigation, passed the judgment dated 10.01.2013 and order of sentence dated 15.01.2013 for the offences under Section 436 of the IPC.

17. During the trial, the prosecution has examined altogether four witnesses, namely:

1. P.W.1 – Neman Dusadh

2.P.W.2 – Mohan Paswan

3.P.W.3 – Ram Prawesh Paswan

4. P.W.4 – Dhanu Paswan (Informant)

18. From the perusal of records, I proceed to analyse the statements of the prosecution witnesses whether they have supported the prosecution case.

(i) P.W.1 Neman Dusadh- He has stated that the occurrence took place on 28.02.1989 at about 6:00 P.M. He was present at the cabin of Naresh Singh along with his son Tileshwar Manjhi and rushed to the place of occurrence on hearing alarm. He saw Basudeo Yadav lighting a matchstick and setting fire to the house of his brother. He further stated that Ishwar Yadav was armed with a country-made gun and fired,



while another accused hurled bombs. He identified several accused persons present at the place of occurrence. In cross-examination, he admitted prior land disputes and proceedings under Sections 145 and 107 Cr.P.C. between the parties. He detailed the land particulars, including khata and plot numbers. He stated that he saw smoke from bomb explosions and the act of setting fire from a distance of about five bamboos. He further stated that the fire was extinguished and some cereals were also burnt. He denied the suggestion of false implication due to land enmity.

(ii) P.W.2 Mohan Paswan- He has deposed that the Investigating Officer seized burnt bamboo pieces and other materials in his presence and his thumb impression was obtained on the seizure list. In cross-examination, he admitted that the informant is his maternal uncle and that he has been residing with him since childhood. He further admitted that there existed land disputes and proceedings under Sections 144 and 145 Cr.P.C. between the parties. He also admitted that the seized articles were not produced before the court. He denied the suggestion that no seizure was made and that he has falsely deposed.

(iii) P.W.3 Ram Prawesh Paswan- He has stated that



the occurrence took place on 28.02.1989 at about 6:00 P.M. while he was at his house. He deposed that several accused persons came raising alarm, assaulted, and set fire to the houses of Dhanu Paswan and himself. He further stated that one accused hurled bombs and Ishwar Yadav fired from a firearm. He stated that Muneshwar Paswan sustained splinter injury on his knee and was taken for treatment. In cross-examination, he admitted land disputes and prior proceedings under Section 144 Cr.P.C. He stated that he had obtained land under Parwana and described the location and boundaries of the land. He further admitted earlier disputes relating to cutting of paddy crops. He stated that he saw smoke and flames and that the fire was extinguished with water from a well. He also admitted that no bloodstains were found on clothes or cot. He denied the defence suggestion that no such occurrence took place and that he has falsely deposed.

(iv) P.W.4- Dhanu Paswan- He, being the informant, has deposed that the occurrence took place on 28.02.1989 at about 6:00 P.M. while he was present at his house. He has stated that all the accused persons came near his house armed with bombs and country-made guns and started abusing at his doorstep. Upon objection, accused Basudeo Yadav instigated



others to assault. Thereafter, Mohan Yadav allegedly hurled two bombs one after another, causing injury to his nephew Bhuneshwar Yadav. He further stated that Ishwar Yadav fired twice, however, no one from the informant side sustained injury from firing. He has further deposed that Basudeo Yadav set fire to his hut by lighting a matchstick, resulting in burning of the house. On alarm being raised, villagers assembled and the fire was extinguished. He proved the written report lodged at Bodh Gaya P.S., which was marked as Ext. 1. In cross-examination, he admitted that Neman is his brother and Mohan is his nephew, and all have separate houses. He described the topography of the place of occurrence and stated that there was smoke due to bomb explosions and fire was noticed within 2–3 minutes. He admitted that only bamboo and straw materials were burnt and no valuable articles or diesel-related materials were destroyed. He denied the defence suggestion that no such occurrence took place or that the case was falsely instituted due to land dispute.

19. The record reveals that P.W.-1 to P.W.-3 are closely related to the informant (P.W.4) and, therefore, fall within the category of interested witnesses. Their testimonies show that they are either family members or close relatives of the victim and thus have a direct interest in the outcome of the



case. It is a settled principle of law that though the evidence of an interested witness cannot be discarded solely on that ground, the same requires careful scrutiny and cautious evaluation before being relied upon. In the present case, the conviction of the appellants has been primarily based upon the testimonies of these interested witnesses without adequate independent corroboration from any neutral or independent witness, which renders the prosecution case doubtful. Therefore, the evidentiary value of such testimonies requires strict scrutiny while assessing the guilt of the accused/appellants.

20. The courts have consistently held that interested witnesses are prone to exaggeration, omission, or distortion of facts to favor their own position. Consequently, their evidence cannot be deemed wholly reliable or sufficient on its own to establish the charges. It is imperative that such testimonies be corroborated by independent, credible, and unimpeachable evidence before any adverse inference or conviction is drawn. In this regard, reference can be drawn from the judgment passed by the Apex Court in para nos. 32 and 33 in the case of ***Nand Lal v. State of Chhattisgarh***, (2023) 10 SCC 470, which are reproduced hereinafter:

“32. Undisputedly, the present case rests on the evidence of interested witnesses. No



doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [Vadivelu Thevar v. State of Madras, 1957 SCC OnLine SC 13 : 1957 SCR 981 : AIR 1957 SC 614] , has observed thus : (AIR p. 619, paras 11-12)

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty, inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.”

21. In the instant case, it is evident that all the



prosecution witnesses are interested witnesses, having direct or indirect stakes in the outcome of the matter. Their testimonies, therefore, cannot be accepted at face value without careful scrutiny. What emerges from the settled principles of law is that the evidence of interested witnesses must be examined with caution but cannot be discarded merely on the ground of relationship or interest. Where such witnesses are found to be neither wholly trustworthy nor entirely unreliable, the Court must carefully scrutinize their testimony to determine its credibility and probative value. If the testimony of an interested witness is clear, cogent, consistent, and inspires confidence, it can form the basis for conviction, even in the absence of independent corroboration. However, where the evidence is riddled with contradictions, improvements, or material gaps, its reliability may be doubtful, and conviction based solely on such testimony would be unsafe. The guiding principle remains that the Court must weigh the testimony of interested witnesses pragmatically and cautiously, ensuring that the conviction is founded on credible and trustworthy evidence.

22. The records disclose that the Investigating Officer was also not examined during the course of trial. Undoubtedly, Investigating Officer is a material witness, being essential to



explain the manner in which the investigation was conducted and the steps taken during investigation. His examination also affords the defence an opportunity to test the fairness of the investigation. However, it is well settled that the mere non-examination of the Investigating Officer does not *ipso facto* vitiate the prosecution case. The effect of such omission has to be assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice has been caused to the accused and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 18 in the case of ***Rajesh Patel v. State of Jharkhand***, reported in **(2013) 3 SCC 791**, is reproduced hereinafter:

“18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason



that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law."

23. The learned trial Court has not given due consideration to the lacuna as pointed out by the defense, even considering that the prosecution has also admitted that there was a civil dispute regarding a piece of land and P.W.-4 (informant) has admitted that the appellant is his co-villager and the proceeding under Section 107 and 145 has also been contested between them. I am of the view that the learned trial Court has committed serious error in arriving at a conclusion that the appellant has committed the offence punishable under Section 436 of the I.P.C. The material contradictions as referred above were not noticed by the learned Trial Court, which resulted in perverse finding against the sole appellant for recording conviction against him and to impose the sentence. In order to prove offence punishable under Section 436 of the IPC, it is necessary that the prosecution must establish basically the offence of mischief. In other words, it is necessary to establish



by evidence (i) that the accused caused destruction of the property (ii) the act of destruction resulted in diminishing the value or utility of the property or injury to certain person or property (iii) the accused had committed the act intending or knowing that he was likely to cause loss or damage to any property (iv) causing of such injury or wrongful act. It is further necessary to establish (v) that the property injured consists of a building (vi) that the building was ordinarily used as a human dwelling or as a place for custody of property. Considering all these essential ingredients required to be established for commission of offence punishable under section 436 IPC and considering the entire evidence on record and having regard to the peculiar facts of the case, I am of the opinion that if the impugned judgment is allowed to stand, it will lead to miscarriage of justice, as such, the impugned judgment is liable to be quashed and set aside.

24. Accordingly, the present appeal is allowed.

25. The impugned judgment dated 10.01.2013 and order of sentence dated 15.01.2013 passed by Adhoc Addl. District and Sessions Judge III, Gaya is hereby set aside. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant is



on bail, as such, he is discharged from the liability of his bail bonds. The fine deposited by the appellant, if any, shall be refunded to him.

26. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	06.04.2026
Transmission Date	06.04.2026

