

Smt. Perbata Vs. State

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Court : Allahabad

Decided On : Sep-18-1989

Reported in : 1990CriLJ1665

Judge : D.K. Trivedi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - sections 435 and 436

Appeal No. : Criminal Appeal No. 475 of 1982

Appellant : Smt. Perbata

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Jyotendra Misra, Adv.

Judgement :

D.K. Trivedi, J.

1. This criminal appeal is directed against the judgment and order dated 17-5-1982 passed by the IInd Addl. Sessions Judge, Barabanki. Appellant Smt. Perbata was convicted under section 436 IPC and sentenced to 2 years' R. I.

2. The prosecution case in brief was that on 11-5-80 at about 9.00 a.m. the accused happened to pass over the Sehan of the complaint and she received

some injury from the pegs lying on the Sehan. It is said that she (accused) set fire to the Tatia of the Marha and caused a loss of Rs. 400/-. An FIR was lodged by P. W. 1 Ram Chandra on the same day at about 12.20 in the noon at police station Masauli. The First Information Report is Ex. Ka-1. The investigation was conducted by Sri Radhey Shyam Pandey P. W. 3, S. O. Masauli.

3. In support of its case, the prosecution examined two witnesses namely P: W. 1 Ram Chandra and P. W. 2 Sohan Lal as eye witness. P. W. 3 Sri Radhey Shyam Pandey is the Investigating Officer. On the other hand, the appellant accused denied the prosecution case and she examined Banshi Lal D. W. 1 who stated that the Marha of Satgur was burnt by the complainant. The learned trial judge after considering the evidence on record believed the statements of P. W. 1 and P. W. 2 and convicted the appellant under Section 436 IPC. Aggrieved by the said judgment and order the appellant filed the present appeal in this court.

4. I have heard the learned counsel for the appellant as well as the learned Government Advocate.

5. The main contention of the learned counsel for the appellant is that no case under Section 436 IPC is made out and the offence as alleged by the prosecution is made out only under Section 435 IPC. He pointed out that according to statement of P. W. 1 itself the Marha was burnt which was structure made by the Chhappar and, therefore, the said structure cannot be said to be the house as defined under Section 436 IPC. He further pointed out that according to statement of P. W. 1 there was no necessary furnishing in the Marha and the Marha was covered by Tatia. In para 13 of the cross-examination he admits that:--

'MANDHE ME UTTAR PASHIM PURAB TATLA LAGI THI. DAKHIN KI TARAF KHULA THA.'

From the perusal of the statement of P. W. 1 it appears that the structure made is only by Chhappar and not by bricks and it has no necessary furnishing such as doors, bars etc. Learned counsel for the appellant cited a case of Smt. Jashmero v. State of Harayana reported in 1980 Cri LJ NOC 46 (Punj and Har) in which relying on the case of Allahabad High Court reported in 1952 Cri LJ 299 held that

the structure made of straw and not of bricks and mortar may be considered a building, if it has got necessary furnishing needed for a building such as doors bar etc. Section 435 IPC is wide enough to include the entire incidental loss suffered by the owner. But the distinction between the offence under sections 435 IPC and 436 IPC is that Section 435 IPC envisaged mischief by setting fire to any property other than building whereas Section 436 IPC envisage mischief by fire to any building which is ordinarily used as a human dwelling including place of custody of property or place of person. An Ordinary thatched shed resting on bamboos or bricks pillar having no doors cannot be treated as building within the meaning of the term used under Section 436 IPC. In my opinion in the present case Marha has a thatched shed resting on pillar having no doors etc and therefore, it cannot be treated a building as defined under Section 436 IPC. In view of the facts stated above, in my opinion, the apellant should be convicted under Section 435 IPC. The conviction under Section 436 IPC is, therefore, set aside and she is convicted under Section 435 IPC. The learned counsel for the apellant pointed out that she is not a previous convict and she is a lady and therefore, it would not be proper to send her again to the jail. According to him the apellant has already served out the setence of more than 1 month and, therefore, sentence of already undergone is sufficient, in this case. In my opinion, the contention of the learned counsel for the apellant has force and it would not be proper to send her again to jail. She has already served out the. sentence of more than 1 month'. Therefore, in my opinion ends of justice would meet if she has been awarded a sentence of already undergone under Section 435 IPC. She is on bail. She need not surrender. Her bail bonds are hereby cancelled.