

Jagannath Vs. State of M.P.

Jagannath Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/504911

Court : Madhya Pradesh

Decided On : Dec-14-2001

Reported in : 2002(3)MPHT107; 2003(3)MPLJ448

Judge : S.L. Kochar, J.

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

Appeal No. : Criminal Appeal No. 93/93

Appellant : Jagannath

Respondent : State of M.P.

Advocate for Def. : S. Salim, Panel Lawyer

Advocate for Pet/Ap. : Deepak Rawal, Adv.

Disposition : Criminal appeal allowed

Judgement :

S.L. Kochar, J.

1. This appeal has been directed by the appellant against the judgment dated 18-2-93, passed by the Additional Sessions Judge, Barwaha (West Nimar), convicting and sentencing the appellant for the offence under Section 436 of the Indian Penal Code to RI for 5 years and fine of Rs. 2,000/-, in default of payment of fine further

RI for six months.

2. The prosecution case in nut-shell is that on 23-4-1992 in the noon, a dispute of partition had taken place between the appellant Jagannath and his father Bhuwaniram and brother Rameshwar as well. It is alleged by the prosecution that during that dispute, the appellant issued threat for ablazing the house. On the same day in the noon at about 2.30 p.m., one part of the house, in which Bhuwaniram along with his son Rameshwar and the present appellant were residing started burning and the appellant was seen going with a tin container (KANSARA). This was witnessed by P.W.1 Chunnilal and P.W.2 Bhaiyalal, the cousin brothers of the appellant, who were residing adjacent to the house of Bhuwaniram. In the alleged incident, a part of the house of these witnesses was also damaged.

3. On the date of the incident i.e., 23-4-1992 nobody had reported the matter in the police station but as per the First Information Report (Ex. P-17), proved by P.W. 7 the Investigating Officer Sub-Inspector Gajanan, posted at Police Chowki, Bediya, Police Station, Sanawad, who after gathering the knowledge about the incident of arson of the house of Bhuwaniram in Village Bulgaon, reached over there and saw that the villagers were extinguishing the fire. Thereafter, he started investigation right from 23-4-1992 and on 27-4-1992 he was given information by the witnesses P.W. 1 Chunnilal and P.W. 2 Bhaiyalal that before half of an hour of the burning of the house, they over-heard the quarrel between the appellant and his father Bhuwaniram and after some time the appellant entered inside the house with a tin container through the court-yard. The appellant remained inside the house for some time, again came out with his son Dinesh having a box (Peti) with them. He looked the house from outside and went away from that place. Only thereafter, they had seen the fire in the house.

4. On the basis of the statements of P.W. 1 Chunnilal and P.W. 2 Bhaiyalal dated 27-4-1992, the police registered Crime No. 46/92 at Police Chowki, Bediya and thereafter on the basis of this FIR again Crime No. 199/92 was registered on 28-4-1992 at 9.00 a.m. at Police Station, Sanawad. After completion of the investigation, the charge-sheet was filed under Section 436 of the IPC against the

appellant.

5. The learned Trial Court framed the charge under Section 436, IPC against the appellant, which was strongly denied by the appellant. His defence was that much prior to the date of the incident, he fell ill and was taking regular treatment. He was also not residing in the house, which was the subject-matter of this case but was residing in another house situated near the river. In his defence, he has submitted medical documents, which were marked as Ex. D-1 dated 18-4-1992, 7-5-1992 and 15-5-1992. He has also examined D.W. 1 Bhuwaniram s/o Padam. He has also submitted before the Trial Court that P.W. 1 Chunnilal, P.W. 2 Bhaiyalal and P.W. 4 Hiralal have falsely implicated him because of previous ill-will and thus a false case has been concocted by the police at their instance while sitting in the court-yard of D.W. 1 Bhuwaniram s/o Padam.

6. Shri Deepak Rawal, learned Counsel for the appellant submits that a false case has been concocted against the appellant because in the same incident the house of P.W. 1 Chunnilal and P.W. 2 Bhaiyalal had also burnt and damaged. They are the real cousin brothers of the appellant and because of the property dispute, they had even no talking terms with the appellant and his father and other family members. If in fact, the appellant was the perpetrator of the crime and the same was within the knowledge of these witnesses, why they did not lodge the report in the police station immediately Not only this, on he same day the Patwari, Tehsildar and Police Officials had reached in the village but none had disclosed before them against the appellant or even raised any suspicion against anybody. The whole case has been concocted after about 4-5 days by the police while sitting in the court-yard of D.W. 1 Bhuwaniram s/o Padam and this fact has been fully supported by the defence witness D.W. 1 Bhuwaniram. At the same time, the learned Panel Lawyer for the State Shri Abdul Salim submits that there is sufficient evidence on record to establish that the appellant had set the house on fire. All these facts were disclosed by the witnesses on 25-4-1992 in the village Panchayat, where they had given their statements in writing marked Exs. P-1 and P-2. Both these statements of P.W. 1 Chunnilal and P.W. 2 Bhaiyalal were produced before the Police and the Police had prepared the seizure memo of these statements on 19-5-1992. The contention of Shri Salim is that the learned

Trial Court has in detail considered each and every aspect of the case and there is no flaw in the same.

7. Having heard the learned Counsel for the parties and after perusing the entire record, this Court is of the considered view that the conviction and sentence of the appellant are not sustainable and he is entitled for acquittal.

8. The alleged incident had taken place on 23-4-1992 at 2.30 p.m. the whole village was assembled there for extinguishing the fire. Witnesses Chunnilal (P.W. 1), Bhaiyalal (P.W. 2) and Hiralal (P.W. 4) were also present but none had gone to the Police Chowki for lodging the report. Not only this, the documents Ex. P/17-A proved by the Investigating Officer (P.W. 7) Sub-Inspector Gajanan speaks unambiguously the Sub-Inspector of Police Chowki, Bediya had reached on the scene of occurrence on 23-4-1992 itself but nobody gave any information or even disclosed suspicion against the appellant. The contents of documents Ex. P-17 and Ex. P/17-A also clearly show that the Sub-Inspector of the Police Chowki, Bediya reached the village Bulgaon after acquiring the knowledge of burning of house but these documents as well as the statement of this witness P.W. 7 Sub-Inspector Gajanan is nowhere revealing the fact that how he received the information about the burning of the house of Bhuwaniram. The FIR (Ex. P-17) is also indicating the fact that for the first time during the course of the enquiry on 27-4-1992 P.W. 1 Chunnilal and P.W. 2 Bhaiyalal had given some information about the entrance of the appellant with tin container inside the house and also after some time coming out with the box along with his son and only thereafter the house started burning. On the basis of the statements of these witnesses, the Investigating Officer had presumed that the appellant was the person, who set the house on fire.

9. The statement of P.W. 1 Chunnilal and P.W. 2 Bhaiyalal could not be relied upon for the purposes that on 25-4-1992 they had given their statements (Ex. P-1 and P-2) in writing in the Panchayat. It appears that both these statements were prepared in ante date and lime because the same were seized through the seizure memo Ex. P-3 on 19-5-1992 much after 20 days. If these statements were really recorded on 25-4-1992, there was no reason for these witnesses or any other

witnesses like P.W. 4 Hiralal etc. not to disclose and produce the same before the police. The seizure of these two statements after such a long time is belying the prosecution case and, therefore, the whole prosecution case is liable to be disbelieved.

10. Both the star witnesses of the prosecution (P.W. 1) Chunnilal and (P.W. 2) Bhaiyalal have admitted the fact that they had no talking terms with the appellants and his family members since last about 30 years. In these circumstances, it would be hazardous to rely on the statement of these witnesses, who kept silence for a long period though they were sufferer.

11. In view of the aforesaid facts and circumstances of the case, the appellant deserves to be acquitted, therefore, his appeal is allowed. He is on bail. His bail bonds are directed to be discharged. If the fine amount has been deposited, the same may be refunded to the appellant after due verification.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com