

**Rabindranath Gounda Vs. State**

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**Court :** Orissa

**Decided On :** Feb-17-2003

**Reported in :** 2003CriLJ2752

**Judge :** L. Mohapatra, J.

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

**Appeal No. :** Criminal Revn. No. 567 of 1999

**Appellant :** Rabindranath Gounda

**Respondent :** State

**Advocate for Def. :** Addl. Standing Counsel

**Advocate for Pet/Ap. :** B. Rath, ;J. Rath, ;M.K. Panda, ;P.K. Panda, ;P.S. Samantrai, ;M.R. Singhdeo, ;K.K. Mohaparta, ;S.L. Kumar and ;S.K. Jethy, Advs.

**Judgement :**

ORDER

**L. Mohapatra, J.**

1. This revision is directed against the judgment and order passed by the courts below convicting the petitioner under Section 436 of the Penal Code. Though trial Court imposed sentence of imprisonment for seven years, in appeal the same has

been reduced to three years. The trial Court further directed for payment of fine of rupees one thousand out of which rupees eight hundred was directed to be paid to P.W. 4, Kalicharan Panda as compensation and so far as that part of sentence is concerned, the appellate court has not interfered with the same,

2. Case of the prosecution is that accused-petitioner is the neighbour of Kalicharan Panda (P.W.4) and they were in inimical terms. On 18-3-1995 at about 10.30 A.M. when wife of P. W. 4 Gitanjali Panda (P.W. 5) and sister-in-law Subhalaxmi Sahu (P.W. 3) had been to the adjacent bari of their house to pass urine, they saw the accused-petitioner standing on the roof of his house. They further saw that the accused-petitioner lighted a match-stick and threw the same to the roof of their thatched house. It is stated that the match stick got automatically extinguished and the accused-petitioner again lighted a bundle of straw and threw the same to the roof of the house, as a result of which the thatched room started burning. Thereafter P. Ws.3 and 5 ran to the village street and shouted for help. Hearing their shout the villagers came and extinguished the fire. It is also alleged that due to such fire, the informant sustained a loss of rupees one thousand.

3. Plea of the accused-petitioner is one of complete denial and in his statement under Section 313, Cr. P. C. he has stated that fire caught from inside the kitchen of P.W. 4 and he had been falsely implicated due to previous enmity.

4. Both the courts below accepting the evidence of eye-witnesses P. Ws. 3 and 5 convicted the petitioner under Section 436 of the Penal Code, The trial Court convicted the petitioner under Section 436 of the Penal Code and sentenced to imprisonment for seven years and to pay fine of rupees one thousand, out of which Rs. 800/- to be paid as compensation to P.W. 4. The appellate court confirmed the order of conviction and the sentence of imprisonment was reduced to three years and so far as fine is concerned, the appellate court did not interfere with the same.

5. Shri Rath, learned counsel for the petitioner challenges the findings of both courts below stating that evidence of P.Ws. 3 and 5 do not indicate that they have seen the accused-petitioner setting fire to the house of P.W, 4. According to Sri Rath, the story narrated during investigation by these two witnesses has been

developed at later stage during trial and in view of the contradictions appearing in evidence of these two witnesses, no reliance could be placed on their version. Sri Rath also submitted that previous enmity being admitted courts should have been more careful in accepting evidence of P.Ws. 3 and 5 who are undoubtedly interested witnesses.

6. Learned counsel for-the State, on the other hand, submits that evidences of P.Ws. 3 and 5 are consistent and there being no discrepancy in evidence with regard to the offence alleged, both the Courts below rightly accepted the evidence and convicted the petitioner for the offence committed by him and this Court in exercise of revisional jurisdiction should not disturb the concurrent findings of fact.

7. From the discussions made by both the Courts below, it appears that P.Ws. 3 and 5 are two eye witnesses to the occurrence. P.W. 3 who is sister-in-law of P. W. 4 in her evidence has stated that on the date of occurrence she and P.W. 5 had been to their bari side to pass urine. They saw the petitioner who is a neighbour standing on the roof of his house and also saw his throwing one lighted match stick to the roof of their house. She has further stated that as the match-stick extinguished the petitioner lighted a bundle of straw and threw the same to their roof. Seeing this she and P. W. 5 came to the village street and shouted for help. In cross-examination, effort has been made to establish as to at what point of time P. Ws.3 and 5 saw the accused-petitioner setting fire to the house of P. W. 4. Though in cross-examination the accused-petitioner succeeded to the extent as to who sat for urination first, nothing has been brought out to disbelieve this witness so far as setting of fire to the house of P. W. 4 by the accused petitioner is concerned. Similar is the evidence of P. W. 5 who is the wife of P. W. 4 and eye witness to the occurrence. On examination of the evidence of this witness also, I do not find that there is anything to disbelieve her. On the other hand, the evidence of P. W. 5 gets corroboration from the evidence of P. W. 3 in every respect. Since both the eye witnesses are consistent in their evidence that the accused -petitioner set fire to the house of P.W. 4, I do not find any reason to disturb the findings arrived at by both the Courts below that the accused-petitioner committed the offence under Section 436 of the Penal Code.

On the question of sentence, learned counsel for the petitioner submitted that total damage caused to the house of P. W. 4 is rupees one thousand and as is evident from the evidence of prosecution witnesses the kitchen of P. W. 4 had been damaged. He also submits that the trial Court had not only imposed fine of rupees one thousand but also directed payment of rupees eight hundred to P. W. 4 as compensation and therefore this Court may consider further reduction of sentence of imprisonment which in fact has been reduced by the lower appellate Court from seven years to three years.

8. Considering the gravity of offence and the damages caused to the house of P. W. 4. I find that there is force in the argument of Sri Rath with regard to sentence and accordingly while confirming the order of conviction under Section 436 of the Penal code. I direct the sentence to be reduced to one year imprisonment. So far as fine is concerned, the order of the trial Court is not interfered with. The period of custody already undergone during pendency of the proceeding be set off.

The Criminal Revision is disposed of.

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