

Bibhishan Kanhar Vs. State of Orissa

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Court : Orissa

Decided On : Feb-10-1994

Reported in : I(1995)ACC43; 78(1994)CLT315

Judge : K.C. Jagadeb Roy, J.

Appellant : Bibhishan Kanhar

Respondent : State of Orissa

Judgement :

K.C. Jagadeb Roy, J.

1. The petitioner has been convicted under Section 436 IPC by the Assistant Sessions Judge, Phulbani, Camp-Balliguda in Sessions Case No. 49 of 1987 (S.T. No. 6/88) by his order dated 14.7.88 and has been sentenced to undergo R.I. for 4 years and to pay a fine of Rs. 500/-, in default, to undergo R.I. for a further period of three months and the period already undergone as U.T.P. was directed to be set off. Against this order, the petitioner preferred an appeal before the Sessions Judge, Phulbani bearing Jail Criminal Appeal No. 41 of 1988 which was dismissed by the Sessions Judge by his order dated 2.3.89 and the orders of conviction and sentence passed by the Trial Court were upheld. Hence this revision.

2. The facts leading to the prosecution are as follows:

On 8.12.86 at 5 p.m. the accused went to the shop of the informant (P.W. 1) and asked him to give a match box on credit. Since it was evening and he was performing puja in the shop. He refused to give the match box on credit. There was also outstanding amount against the accused for having taken articles earlier which has not been paid. At the refusal of the informant to give the match box on credit, the accused became angry and in presence of P.W. 3 stated that the informant shall face dire consequences for his refusal. In the same evening, as it was alleged by the informant, the accused-petitioner came and set fire to his dwelling bouse, whose situation has been indicated in the spot map, which is given in the paper book. The dwelling house of the informant consists of premises of which apart is used as the living room and there was a 'Dhinki Sala' which was a thatched one situated on the part of the remaining portion. The roof of 'Dhinki Sala' was set on fire but the quantum of damage is not brought on the record. Out of six witnesses examined P.W. 6 is the Officer-in-charge whereas the P.W. 1 is the informant himself who was the shopkeeper, P.W. 2 is the wife of the informant and P.Ws. 3, 4 and 5 are the villagers. P.W. 3 stated that when P.W. 1 refused to sell the match-box on credit, the accused gave out threatening and he also heard nullah in the night when the house of the informant was burning. P.Ws. 4 and 5 stated that they heard nullah is the night and after coming to the spot they saw that the house of the informant was on fire. P.Ws. 1 and 2 are the eye-witnesses P.W. 2 is the wife of P.W. 1. According to her the accused set fire to their house and when she raised nullah P.W. 1, her husband got up. P.W. 1 stated that after hearing nullah from his wife, he got up and saw that the accused was running away. The statements of P.Ws. 1 and 2 have been accepted by both the Courts below that it was the accused-petitioner who set fire to the house. The motive obviously being the refusal to give the match-box credit, annoyed the accused-petitioner in the evening. I cannot re-assess the evidence unless there is allegation of error of record and finding is perverse. Neither of the two grounds exists in this case. The learned Counsel for the petitioner does not raise any point either of error of record or the order is perverse. In such view of the matter, I cannot re-assess the evidence to find out if conviction could be maintained on this evidence. I do not want to interfere with the finding of facts. But the only consideration is to be taken into account that the petitioner was 69 years of age at the time of

occurrence i.e. on 8.12.86 and now he must be 75 years of age and the damage being not that excessive as there is no material in respect of that, I consider it proper to interfere with the order of sentence passed and maintain the order of conviction passed by the Courts below. I, therefore, in modification of the sentence, reduce the sentence to the period already undergone in jail custody and maintain the fine of Rs. 500/-, in default, to undergo further R.I. for three months as was directed by Court below. However, I give further direction that the fine amount if realised, the same shall be paid to the informant to mitigate the damage cause to him. By the order dated 19.7.89 of this Court, the petitioner is already on bail and the realisation of fine was stayed. The order staying realisation of fine is vacated.

3. The Jail Criminal Revision is partly allowed.

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