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Ram Niwas Vs. State of Raj.

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Court : Rajasthan

Decided On : Mar-13-1991

Reported in : 1991WLN(UC)574

Judge : Mohini Kapur, J.

Appeal No. : S.B. Cr. Appeal No. 478 of 1983

Appellant : Ram Niwas

Respondent : State of Raj.

Judgement :

Mohini Kapur, J.

1. The appellant Ram Niwas was tried by the Additional Sessions Judge No. 7, Jaipur City, Jaipur for the offence under Section 436 IPC. After trial, the learned Additional Sessions Judge arrived at the conclusion that the hut which had been burnt was not used for human dwelling or for purposes of worship or for keeping property and was a water hut used as a plau and as such the appellant was acquitted of the offence under Section 435 IPC. It was also held that the Plau was not worth more than Rs. 100/-. He was sentenced to one years' simple imprisonment and a fine of Rs. 50/- and to undergo one months simple imprisonment in default of payment of fine. Against this conviction and sentence passed on 27.10.83, the appellant has preferred this appeal.

2. The FIR in this case was lodged by PW/4 Mahesh. In Ex. P/3, which is a written report, he wrots that he had three 'Thadies' which he let out to Prabhu Narain, Ashok and Praveen Kumar, Ram Niwas accused, lives behind these 'Thadies' and on the day of holi there was a quarrel between them in connection to the water tap. At that time the accused Ram Niwas gave a threat that he will burn the Thadies and Jhopdi'. Then on the date of incident i.e. 15.3.82 at about 8.30 p.m. when Ashok, Dhafal and Mahesh were having their dinner in the Thadi, they saw flames and they went outside and they saw Ram Niwas, who at once ran away after seeing them Fire Brigade was called and according to Mahesh all his Thadies were reduced to ashes.

3. The prosecution examined as many as 8 witnesses. Out of these witnesses, PW/1 Dhafal became hostile while Pw/2 Prabhunarain and PW/3 Bhanwar Singh were not believed so far the case of the prosecution is concerned. The learned Additional Sessions Judge relied upon the statements of PW/4 Mahesh and PW/5 Ashok and found the accused guilty as stated above. One more witness PW/7 Praveen Kumar turned hostile and the remaining witnesses are police witness.

4. Learned Counsel for the appellant has contended that the witnesses of the prosecution who have been believed by the learned Additional Sessions Judge are interested witnesses and actually no one saw the appellant lighting the hut and as such there is no evidence to hold that the appellant had committed the offence of putting fire. It has also been contended that there is no evidence on record to show that the value of the property burnt out was more than Rs. 100/-. In support of his contention the learned Counsel for the appellant has placed reliance on Ghanshyam v. The State of Rajasthanzd (1) According to him the learned Additional Sessions Judge has himself held that the Thadis was not burnt but a Chhapper' used as Piau had been burnt and this conclusion cannot be challenged now. By referring to the 4 defence witnesses examined in the case, it is contended that the fire was caused by a 'Chimney' which was being used by Mahesh when they were sitting in the 'Chapper' and taking liquor. In the alternative, it is contended that the occurrence took place about 9 years ago and the appellant should by give the benefit of probation.

5. Learned Public Prosecutor has contended that the witnesses in this case had to be believed as they are truthful witnesses and reference has also been made to show that the hut which was burned was used as dwelling place. However, as the State did not file any appeal in this matter cannot be opened.

6. I have considered the contentions raised on behalf of both the sides and perused the record including the statements of the witnesses, who have been examined. PW/1 Dhafal and PW/7 Praveen Kumar are hostile witnesses out of them Praveen was a tenant of the complainant Mahesh but he has not supported the complainant. PW/2 Prabhu Narain has referred to the earlier quarrel between the accused and Mahesh and he came on the site of the fire after people shouted that there was a fire. He has stated that the place which was burnt was a hut used as public 'piau' PW/3 Bhanwar Singh has also referred to the quarrel between the accused and Mahesh and according to him the Chapper and two thadies got burnt. He has not been in a condition to say that how the fire started. PW/4 Mahesh is the main witness. According to him the accused appellant lighted a match stick and ran away after burning the hut. From the but fire spread to the 'Thadies' PW/5 Ashok Kumar has also stated about the quarrel between Mahesh and the accused on the day of holi. At that time the accused appellant had threatened that he would burn and it was Ram Niwas who had caused fire to the hut.

7. The first information report in the case was lodged immediately after the incident and the accused was also got arrested after 10-15 minutes of the fire. Apart from the statement of witnesses who have deposed that the appellant had put fire it can be said that there was not time in which the story could be concocted to implicate the accused. The defence story may also be considered hers. If this story is believed then the complainant Mahesh and Ors. were sitting in the hut used as Piau and the fire was caused by a chimney. There has been no suggestion any where that the Piau was used for purposes of living so as to say that the fire was caused accidentally. Accidental fire can occurred in the houses where small open flame lamps are used and not in a piau where people do not live. The prosecution evidence cannot be said to be unbelievable because of the evidence given by the defence witnesses. In may opinion it has been proved that it was the appellant

who caused fire to the hut. None of the witnesses have deposed as to what was the value of the Chapper which had been burnt. As already seen above in the case of Ghanshyam v. State (supra) in absence of proof about the value of the property destroyed the offence under Section 435 IPC cannot be made out and the only offence which would be made out is under Section 426 IPC. In the present case also, this view can be taken. The offence Under Section 426 IPC is punishable with imprisonment up to three months or with fine or both. Considering this, the appellant can be given the benefit of probation, under Section 360 I.P.C.

8. The appeal of the appellant is partly allowed., The conviction and sentence of the appellant under Section 435 IPC is set aside and the conviction is altered to Section 426 IPC and for the offence under this section, he is given the benefit of probation.

9. Therefore, it is directed that the appellant shall be released on probation provided he enters into a bond in the sum of Rs. 2.000/- (Rupees Two Thousand) with one surety in the like amount to the satisfaction of the trial court to appear and receive sentence when called upon during the period of two years and in the meantime to keep peace and to be of a good behaviour. The appellant shall furnish the bond and surety within the period of six weaks.

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