

**(2003) 06 JH CK 0001**

**Jharkhand High Court**

**Case No:** Criminal Appeal No. 58 of 1996 (R)

Umesh Mahto and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

---

**Date of Decision:** June 24, 2003

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 34, 436

**Citation:** (2003) 3 JCR 310

**Hon'ble Judges:** Amareshwar Sahay, J

**Bench:** Single Bench

**Advocate:** Jai Prakash, for the Appellant; I.N. Gupta, APP, for the Respondent

**Final Decision:** Dismissed

---

**Judgement**

Amareshwar Sahay, J.

The present appeal arises against the judgment dated 24.7.1996 passed by the Additional Sessions Judge, Bokaro in Sessions Trial No. 201 of 1986 whereby the learned trial Court convicted the appellants u/s 436/34, IPC and sentenced them to undergo R.I. for 7 years.

2. The prosecution case is that in the night of 15/16.1.1984 at about 12 O'clock in the night, the informant was sleeping in his house alongwith his family members and at about 12 O'clock in the night he woke up from sleep due to barking of dogs. He peeped through a hole in the door of his room and saw in the light of fire that the accused-appellants were standing in his courtyard and he identified them. He saw fire and flames on the western side of his house. The appellant, Umesh Mahto, Govind Mahto were having farsa in their hands. The appellants Ramlal Mahto, Dasrath Mahto, Nakul Mahto and Gokhul Mahto were having tangi in their hands whereas the appellant Shibu Mahto was having lathi in his hand and the appellant Santosh Mahto was having sword in his hand. The informant cried for help and then the appellants said to have fled away towards Eastern side. The informant's father

came and saw the accused persons and identified them. On halla Gope Sarai Gope, Nil Kamal Mahto, Gora Hazra, Abu Hazra came and extinguished the fire.

3. The motive for the occurrence is said to be the previous enmity. According to the informant the accused persons had committed murder of his uncle in the year 1983 and were convicted in that case. After their release on bail on 14.1.1984 they abused the informant in the morning and were celebrating their release and then in the night set fire in the house of the informant.

4. The defence is of false implication due to previous enmity.

5. Altogether 7 witnesses were examined on behalf of the prosecution to establish the charge. PW 1 is the informant, PW 2 is his father, PW 3 is Nil Kamal Mahto, who is named in the FIR as witness, PW 4 Manohar Mahto is the uncle of the informant. PW 5 Lakhu Mahto is the brother of the informant, PW 6 Nakul Mahto is an independent witness and PW 7 is the Investigating Officer of the case.

6. It is admitted that out of the 8 appellants, the 5 accused were convicted for committing murder of Hari Pado Mahto. Certified copy of the judgment of Sessions Trial No. 163 of 1985 has been marked as Exhibit 5.

7. The informant PW 1 has stated that he saw the appellants through hole in the door of his house in the light of fire. He further stated that electric light was also burning and it was a moonlit night. The I.O. of the case in his evidence has given the size of the hole from which the Informant saw the appellants from which it appears that it is of 3" x 3" size. Therefore, it is clear that it was a big hole and it was not impossible for the informant to see and to identify the appellants.

8. The vivid description of the occurrence has been given by the prosecution witnesses.

9. Mr. Jai Prakash, learned counsel appearing for the appellants has tried to assail the conviction and sentence of the appellants and has argued that none of the prosecution witnesses have stated that they actually saw the appellants setting the fire. He also submitted that it has not been proved that the place which was set on fire was actually a dwelling house. He further submitted that the manner of occurrence as alleged by the prosecution was not believable and the identification of the appellants at the place of occurrence was also not possible.

10. I am unable to agree with the submissions made by the learned counsel for the appellants. It is apparent from the evidence of the prosecution witnesses that they in clear terms have stated that they saw the appellants at the place of occurrence with weapons in their hands and the dwelling house of the informant was set ablaze. The I.O. who visited the spot, next morning also found the dwelling house of the informant burnt and the fire was still there. Due to the said fire the grains (Paddy, Rice and Maize) kept in the house of the informant got burnt causing damage to the informant. PW 2, the father of the informant has stated that he

awoke on hearing of call of his son and came out and he saw the appellants standing near North Western corner of Southern room. He also saw fire on the North Western corner, He further stated that the accused persons fled away when they saw him. PW 3 Nil Kamal Mahto also saw the appellant from the hole in his door. PW 4 Manohar Mahto stated that he hear calls of the informant and came out of his house. He saw fire in the house of the informant and he helped him i,n extinguish ing fire.

11. I find no reason to disbelieve the statement of the prosecution witnesses and hold that the prosecution has been able to establish the charge against the appellant. The learned trial court has rightly convicted the appellants u/s 436/34, IPC. However, so far the sentence is concerned, I find that it is some what excessive. The appellants have remained in jail for a considerable period. In that view of the matter, I reduce the sentence to the period already undergone by the appellants and they are also sentenced to pay a fine of Rs. 3,000/-each, in default to undergo R.I. for further 2 years each. If the fine is realised from the appellants, the same shall be paid to the informant who has sustained loss due to the damage of his grains because of the fire.

12. In the result, this appeal is dismissed with modification in the sentence as aforesaid.