

CRIMINAL APPEAL No.168 OF 1993

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Against the judgment of conviction and sentence dated 7.6.1993 passed by Sri S.S.Sharma, 8<sup>th</sup> Addl. Sessions Judge, Purnia in Sessions Trial No.293 of 1985.

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Ganesh Marandi ..... Appellant

Versus

The State of Bihar ..... Respondent

For the appellant : Mr.Arun Kr.Tripathi, Advocate  
(Amicus Curiae)

For the State : Mr.A.H.M.Rahman, Addl.P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

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S.K.Sharma,J.

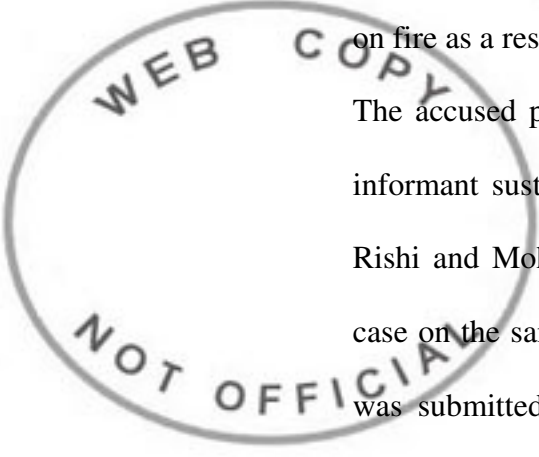
Since no body is appearing on behalf of the appellant on repeated calls, Mr.Arun Kumar Tripathi, Advocate, who is present in court, seeks permission to assist the court though he is not impaneled in the list of Amicus Curiae.

The prayer is allowed and Mr.Arun Kumar Tripathi, Advocate is appointed as Amicus Curiae to argue on behalf of the appellant.

Heard learned counsel for the parties.

This appeal has been filed on behalf of the appellant against the judgment dated 7.6.1993 passed by 8<sup>th</sup> Additional Sessions Judge, Purnia in Sessions Trial No. 293 of 1085 by which he has been convicted under Section 436 of the Indian Penal Code and has been sentenced thereunder to undergo rigorous imprisonment for three years. Though he was also found guilty under Sections 147 and 323 of the Indian Penal Code, no separate sentence was awarded.

The prosecution case is that the informant Bishun Rishi (P.W.4) was allotted 2 acres of land by the State of Bihar. On 4.5.1983 at 6.00 A.M. the appellant along with others went to the said land of the informant and tried to plough it. It was protested by the informant saying that the land belongs to him and no other person had any right to plough it. Thereupon, at the behest of Matru



Santhal, other accused persons fisted and slapped the informant and put his house on fire as a result of which his house and his neighbour's house were burnt to ashes. The accused persons also ploughed the land and thereafter they went away. The informant sustained loss of Rs.1200/- by fire. The informant along with Manilal Rishi and Mohan Bhagat (P.W.1) went K. Nagar Police Station and lodged the case on the same day. The matter was investigated by the police and charge sheet was submitted under Section 436 and other sections of the Indian Penal Code against eight accused persons. Cognizance was taken and the case was committed to the court of sessions. One accused Matru Santhal died during trial. So his name was deleted and trial proceeded against 7 persons.

The defence of the accused persons was that there was no such occurrence and their implication is only with a view to harass them.

In order to prove its case, the prosecution examined altogether 7 witnesses. P.W.1 Mohan Bhagat is a witness of the fardbeyan but has not supported the prosecution case at all. So he has been declared hostile. P.W.2 Musharu Yadav and P.W.3 Buttu Rishi were tendered for cross-examination only and they have stated nothing about the occurrence. Other witnesses of the prosecution are informant Bishun Rishi ( P.W. 4), Rajendra Rishideo alias Nazira. (P.W.5), Basmati Devi (P.W.6) and Fani Lal Rishi (P.W.7). These four witnesses have been examined as eye witnesses.

The informant in his evidence has stated that in the morning of 4.5.1983, he was at his house and at that time , he saw that Matru, Ganesh Marandi (appellant), Girja,Pradhan, Lakhana,Bisho , Talo and 16-17 other went towards his land which was given to him by the State of Bihar. The informant went there and protested. Thereafter, accused of Matru ordered to assault and also to burn the

house. At his behest, appellant Ganesh Marandi set fire on his house as a result of which his house as well as the house of Bhutwa, Naziran and Mandalia were burnt. Besides this, the accused persons assaulted the informant by fist and slap. This witness was cross-examined by the defence. In his cross-examination, he stated that the land was 2 acre and his house was at a distance of one lugga from the field. He stated about the specific role of the appellant and he is the person who set the houses on fire. Through corss-examination, the defence wanted to make out a case that he is not an eye witness and he has been falsely implicated in this case but the defence has not succeeded in taking out any other material favouring the accused persons.. His entire cross-examination has remained intact.

The entire evidence of informant has been supported by P.Ws. 5,6 and 7.. All these three witnesses have stated that the accused persons came over the land and at the behest of one of them, the appellant set the house of the informant on fire. All these witnesses have been examined as eye witnesses. No contradiction has been brought by the defence.

In view of the evidence of the eye witnesses, it stands proved that on the date of occurrence, the informant was assaulted and two houses were set on fire.

Learned counsel for the appellant who is appearing as Amicus Curiae submits that the Investigating Officer has not been examined and thus his non-examination caused prejudice to the case of the appellant.

P.Ws. 4 to 7 are consistent and they have stated nothing wrong from which they could be discredited. No such prejudice has been shown. No doubt, non-examination of the Investigating Officer sometimes helps the defence. As no prejudice is shown in this case, the appellant is not entitled to benefit of that..

The trial court taking into consideration all the evidences has rightly come to the conclusion that the prosecution has been able to prove the charges beyond shadow all reasonable doubts and has convicted the appellant, as stated above. I find nothing wrong in the conviction of the appellant. So the conviction of the appellant is maintained.

On the question of sentence, learned counsel for the appellant has submitted that as the occurrence is of the year 1983 i.e. of more than 25 years and the appellant has remained in custody during trial period, his sentence may be modified to the period already undergone by him which may be sufficient for the ends of justice. Learned A.P.P. does not oppose the prayer of the counsel for the appellant..

Taking into the entire fact into consideration, I am also in agreement with the submission of the learned counsel for the appellant. Accordingly, the sentence of the appellant is modified to the extent that the period already undergone by him will be sufficient for the ends of justice.

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

**( Shyam Kishore Sharma, J. )**

Patna High Court, Patna  
The 22<sup>nd</sup> January, 2008  
Tahir/-(NAFR)