

Cr. Revision No. 831 of 2005

Against the judgment dated 25.07.2005 passed by the learned Additional Sessions Judge, Fast Track Court-IV, Garhwa in Cr. Appeal No. 75 of 1997, affirming the judgment and order of conviction and sentence dated 23.05.1997 (sentence passed on 26.05.1997) passed by the learned 2nd Assistant Sessions Judge, Garhwa in S.T. No. 530 of 1993.

1. Ajay Sao, S/o Sugriv Sao.
2. Sugriv Sao, S/o Late Seshman Sao.
3. Raj Kishore Sao, S/o Late Ram Chandra Sao.
4. Madan Sao, S/o Late Ram Chandra Sao.
5. Naresh Sao, S/o Late Ram Chandra Sao.
6. Sri Sao, S/o Late Lakhan Sao.

All residents of Village- Kharsota, P.S.- Manjhiaon, District-Garhwa. **Petitioners**

Versus

The State of Jharkhand **Opposite Party**

For the Petitioners	: Ms. Amrita Banerjee, Advocate
For the State	: Mrs. Vandana Bharti, A.P.P.

Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

By Court: Heard Ms. Amrita Banerjee, learned counsel for the petitioners and Mrs. Vandana Bharti, learned A.P.P. for the State.

This application is directed against the judgment dated 25.07.2005 passed by the learned Additional Sessions Judge, Fast Track Court-IV, Garhwa in Cr. Appeal No. 75 of 1997, whereby and whereunder the judgment and order of conviction and sentence dated 23.05.1997 (sentence passed on 26.05.1997) passed by the learned 2nd Assistant Sessions Judge, Garhwa in S.T. No. 530 of 1993, by which the petitioners have been convicted for the offences punishable u/s 147, 436, 429 and 427 of the Indian Penal Code and sentenced to various terms have been affirmed.

The allegations made in the First Information Report is that on 06.05.1993 at about 1:30 P.M. the informant had found the petitioners standing in front of his house and on the instigation of others the petitioner no. 1 had set fire on the house of the informant.

Based on the aforesaid allegation Manjhgaon P.S. Case No. 45 of 1993 was instituted. Investigation resulted in submission of charge sheet and after cognizance was taken the case was committed to the Court of Sessions where charge was framed and trial proceeded.

In course of trial six witnesses were examined on behalf of the prosecution. P.W.1 Suraj Prasad had stated that on alarm he went to the house of the informant and saw that the house has been set ablaze. This witness has stated that he has also seen the accused persons were fleeing away. P.W.2 Ram Dulari Devi is the mother of the informant who had stated that on alarm she had come out from her house and saw the accused persons standing outside her house. She had further disclosed that the petitioner no. 1 had set fire at the instigation of the other accused persons in her house. She has also stated that wheat, rice, wood, bamboo along with other articles and the calf was also burnt. P.W.3 Nand Lal Prasad is the informant of the case who has stated that on 06.05.1993 he was in his house and when he came out from his house for the purpose of urinating he saw the accused persons standing near his house. He has also disclosed that the petitioner no. 1 had set fire in his house at the instigation of the other accused persons which resulted in several articles having been burnt. This witness had identified petitioner no. 2 and 3 in the dock. He has further stated that petitioner no. 3 had filed a case against him and he was directed to execute a bond. He has further stated that petitioner no. 5 had also filed a case against the father of this witness. P.W.4 Hemant Kr. Verma is a veterinary doctor who had conducted the post-mortem on the calf. P.W.5 Dinesh Kumar Pandey is a formal witness who had proved the seizure list which has been marked as exhibit-4. P.W.6 Saraswati Devi had supported what has been stated by P.Ws. 1, 2 and 3. This witness had identified the accused persons present in the Court. Since the prosecution had been able to prove its case beyond all reasonable doubt vide judgment and order of conviction and sentence dated 23.05.1997 (sentence passed on 26.05.1997) the learned 2nd Assistant Sessions Judge, Garhwa

convicted the petitioners for the offences punishable u/s 147, 436, 429 and 427 of the Indian Penal Code and sentenced them to various terms. The petitioners had preferred an appeal being Cr. Appeal No. 75 of 1997 which was dismissed on 25.07.2005 by the learned Additional Sessions Judge, Fast Track Court-IV, Garhwa.

It has been submitted by the learned counsel for the petitioners that the evidence of the witnesses should not have been believed by the learned trial court as all the witnesses are related to each other and are interested witnesses. It has also been submitted that admittedly there was previous enmity between both the sides and therefore the false implication of the petitioners cannot be ruled out. Learned counsel for the petitioners further submits that the Investigating Officer of the case has not been examined and in absence of the place of occurrence having been established the defence has greatly been prejudiced and therefore the petitioners deserves acquittal in the present case. An alternative argument has been put forward by the learned counsel for the petitioners that if this Court is not inclined to interfere in the judgment of conviction the period of sentence be suitably modified considering the fact that the petitioners are facing the rigors of the prosecution case since the year 1993 and have also remained for sometime in custody.

The version of the informant in the *fardbeyan* has been supported by his mother P.W.2 as well as P.W.1 and P.W.6. It is the specific case of the prosecution that petitioner no. 1 had set ablaze the house of the informant on the instigation of the other petitioners. P.W.3 the informant has categorically stated about the participation of the petitioners in setting his house ablaze. P.W.2 is the mother of the informant who had also stated that when she came out from her house she had seen the petitioner no. 1 on the instigation of the other petitioners putting fire on the house of the informant. P.W.6 is also an eye witness who has supported the version of P.Ws.1, 2 and 3. The evidences of P.Ws. 1, 2, 3 and 6 thus have been consistent and categorical and have also proved the place of occurrence. Since there does

not appear to be any discrepancy in the statement of P.Ws. 1, 2, 3 and 6, the non-examination of the Investigating Officer does not prove fatal to the prosecution. So far as the argument advanced by the learned counsel for the petitioners with respect to false implication of the petitioners on account of previous enmity the same by itself cannot demolish the prosecution case as enmity cuts both ways.

Thus the evidence of witnesses notably P.Ws. 1, 2, 3 and 6 although are related to each other but in view of the consistency of the evidences merely because they are related the same cannot be disbelieved. Thus the evidence of the prosecution witnesses are trustworthy and believable and taking into consideration the said fact the learned trial court had rightly convicted the petitioners for the offences punishable u/s 147, 436, 429 and 427 of the Indian Penal Code which was affirmed in appeal. There being no reason to conclude otherwise the judgment of conviction passed by the learned trial court and affirmed by the learned appellate court is, hereby, sustained.

However, with respect to the sentence which has been imposed upon the petitioners it appears that the petitioners are facing the rigors of the prosecution case since the year 1993. The petitioners have also remained for sometime in custody. Considering the aforesaid fact the period of sentence imposed upon the petitioners is modified to the period already undergone.

This application stands dismissed with the aforesaid modification in sentence.

Pending I.A. also stands disposed of.

(R. Mukhopadhyay, J.)