

## Hari Ram vs The State on 3 May, 1953

**Equivalent citations: AIR1953ALL754, AIR 1953 ALLAHABAD 754**

### JUDGMENT

Asthana, J.

1. Hari Ram appellant was tried separately for two distinct offences under Section 436, Penal Code, for setting fire to the houses of Niroti and Mawasi on 13-1-1950, at about 4 A.M. in village Lakhanpur, police station Hari Parbat, district Agra. He was sentenced for these offences by the learned Additional Sessions Judge of Agra to five years' rigorous imprisonment and a fine of Rs. 500/- and, in default of payment of fine, to one year's further rigorous imprisonment. The sentences of imprisonment in both the cases were made concurrent.

2. Before dealing with these two appeals, I would like to point out that the observation of the learned Sessions Judge that the two offences, which appeared to have been committed during the same course of transaction according to the prosecution case, could not be tried together is not correct. According to Section 234, Criminal P. C., when a person was accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences he could be charged with and tried at one trial for any number of such offences not exceeding three in number. There can be no doubt that, in this case, the two offences of arson were committed shortly one after the other and, in view of the above provision, both of them could be tried at one trial. Section 235, Criminal P. C. provides:

"235(1) -- If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence."

Even, according to this provision, the appellant could have been tried for both the offences at one trial and two separate trials were not necessary.

3. As the evidence in both these cases is common, I propose to decide both the appeals together by one judgment.

4. It appears that Hari Ram appellant and one Bhanwar Singh had joint cultivation in village Lakhanpur and there was some dispute between them on 12-1-1950, at about sunset over the division of 'gur', but this dispute was settled at that time on the intervention of some people. At about 9 P.M. the same day, the appellant went to the house of Niroti who is the uncle of Bhanwar Singh and beat him, his wife and Bhanwar Singh with lathis. Ram Chandra and Mawasi intervened in this fight and thereupon the appellant threatened Mawasi and Niroti with setting fire to their houses. Next morning at about 4 the appellant first went to the house of Niroti and set fire to his

'Chappar' with a match stick. Niroti was, at that time, sleeping in the room behind the Chhappar, He woke and saw the appellant setting fire to his chappar with a match stick. He raised an alarm and several persons reached there and extinguished the fire. The appellant ran away but was given a chase and was ultimately caught. It is further alleged that while he was running away, he set fire to the chappar of Mawasi. After being arrested, he was taken to the police station Hari Parbat which is at a distance of seven miles from the place of occurrence & there he was handed over to the police & a report was made by Niroti about the occurrence. After the report, the police went to the place of occurrence and saw that the 'chhappars' of Niroti and Mawasi were burnt.

5. The defence of the accused was that he had been falsely implicated in the case on account of a dispute between him and Bhanwar Singh over the payment of the price of his share of the produce. He denied that he set fire to the 'chappars' of Niroti and Mawasi, as alleged by the prosecution.

6. It was contended on behalf of the appellant that there was great delay in making the First Information Report and this fact indicated that it had been made after deliberation and consultation. As already stated above, the report was made at 2 P.M. on 13-1-1950 about ten hours after the occurrence. It was suggested on behalf of the prosecution that this delay was due to the fact that the appellant made resistance while he was being taken to the 'thana'. Considering the fact that the 'thana' was only seven miles from the place of occurrence and that the occurrence took place at 4 in the morning, there can be no doubt that there has been great delay in making the First Information Report. I am not satisfied that the explanation offered for the delay is reasonable. It is somewhat improbable that when the accused was being taken to the 'thana' by 3 or 4 persons, he was in a position to offer resistance to them.

7. It was next contended that the prosecution case was somewhat improbable. (After discussion of the entire evidence his Lordship concluded as follows:)

8. Considering the entire evidence on the record, it appears that the prosecution have not been able to make out any motive for the appellant to set fire to the 'chhappars' of Niroti and Mawasi. The prosecution evidence is full of irregularities and the prosecution witnesses, who have deposed to about the burning of the chhappars, are only chance witnesses. In my opinion, the prosecution case has not been satisfactorily proved against the appellant.

9. AS a result, I allow these appeals and set aside the conviction and sentence of Hari Ram appellant. He need not surrender to his bail. His baid bonds are discharged.