

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.13 of 2002

(Against the judgment of conviction and order of sentence dated 20th of December, 2001 and 21st of December, 2001, respectively, passed by the learned 2nd Additional Sessions Judge, Aurangabad in Sessions Trial No. 55 of 1997/ 49 of 2000 arising out of Obra P. S. Case no.201 of 1983.)

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1. Sita Ram Singh
 2. **Raja Ram Singh**, both sons of late Gopichand Singh, resident of Village-Bharub, P. S. Obra, District-Aurangabad.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. B. M. Prasad Sinha—Advocate
 Mr. Pratik Kr. Sinha—Advocate
 Mr. Ram Swarup Prasad--Advocate
 For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 03-08-2015

At an initial stage, Sita Ram Singh and Raja Ram Singh were the appellants, out of whom, Sita Ram Singh died which found corroborated with the report submitted by the Superintendent of Police, Aurangabad. However, as the sentence of fine also found inflicted. Therefore, in terms of Section 394(2) of the Cr.P.C., substitution was expected at the end of heirs of late Sita Ram Singh. However, none came up on that very score and in the aforesaid background, a legal deformity on account of lapses on the part of the heirs of Sita Ram Singh still survives.

2. Appellant Sita Ram Singh (deceased) and Raja Ram Singh have been found guilty for an offence punishable under



Sections 436/34 and 429/34 of the I.P.C. vide judgment of conviction dated 20.12.2001 and each of them was sentenced to undergo R.I. for five years as well as also inflicted fine of Rs.500/- without having default clause, under Section 436/34 of the I.P.C. and R.I. for two years under Section 429/34 of the I.P.C. and further, to run the sentences concurrently vide order dated 21.12.2001 by the Additional Sessions Judge-2nd, Aurangabad in Sessions Trial No.55 of 1997/ 49 of 2000, whereupon instant appeal has been filed.

3. Briefly stated the case of the prosecution as comes out from the written report (Exhibit-2) filed by Janeshwar Singh (PW-6) on 17.12.1983 divulging the fact that fire had broken out in his Dalan at about 2.00 a.m. on account of which Manjar Ahmad and Paltan Sao raised alarm and had seen Sita Ram Singh and Raja Ram Singh, both sons of late Gopi Chand Singh fleeing after lit fire. Two oxen, one she-buffalo, paddy ten mounts, flour four mounts burnt. Furthermore, Jagnarain Singh, Bishun Dayal Singh and Gopal Singh have seen the accused persons while fleeing.

4. On the basis of the aforesaid written report, Obra P. S. Case no.201 of 1983 was registered under Sections 429, 436 of the I.P.C. and investigation was taken up. After completing the same, charge sheet was submitted under the aforesaid Sections whereunder cognizance was also taken. Because of the fact that offences happen to

be exclusively triable by the Court of Sessions. As such, commitment was held followed with trial, meeting with ultimate result, the subject matter of instant appeal.

5. The defence as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial as well as false implication on account of pendency of long standing animosity amongst the parties. However, neither any D.W. nor any kind of document has been exhibited by defence.

6. In order to substantiate its case, the prosecution had examined altogether eight PWs, out of whom, PW-1 Jagat Narain Singh, PW-2 Paltan Sao, PW-3 Manjar Ahmad, PW-4 Raghubansh Singh, PW-5 Fauzdar Singh, PW-6 Janeshwar Singh, PW-7 Gopal Singh and PW-8 Indrajit Kumar Singh. Side by side also exhibited the documents as Exhibit-1 series signature of witnesses over seizure list, Exhibit-2 written report, Exhibit-2/1 formal F.I.R., Exhibit-3 injury report and Exhibit-4 report issued by Mukhiya.

7. learned counsel for appellant questioned the propriety of the judgment impugned and on that very score, it has been submitted that there happens to be severe lacuna persisting in the prosecution case on account of non-examination of I.O. which has caused serious prejudice to the appellant in the background of the fact



that appellant has been deprived of, to cross-examine the I.O. in order to surface the anomaly persisting in the prosecution case and further, that could have suggested the F.I.R. to be ante-timed. Further highlighting the issue, it has been submitted that written report was filed on 17.12.1983 and it was received at the office of the Chief Judicial Magistrate on 29.12.1983, after expiry of five days, in utter violation of mandate of law. The aforesaid eventualities should be seen in the background of the fact that the informant (PW-6) had admitted during course of cross-examination that both the parties are close agnate, but are litigating since long and even on the date of deposition of PW-6, one Title Suit was going on. Therefore, false implication of appellant could not be ruled out.

8. It has next been submitted that informant (PW-6) during course of his evidence had made material development. At an initial stage as is evident from the written report (Exhibit-2), he was not an eye witness rather he had based the allegation as disclosed by Manjar Ahmad and Paltan Sao over which his attention was drawn up. In likewise manner, his attention had further been drawn up towards his further statement and again, unfortunately on account of non-examination of the I.O., the important piece of evidence could not been brought up on record legally.

9. Then, it has been submitted that doctor has not been



examined and the injury report (Exhibit-3) relating to animals has been brought up on record through PW-8, a formal witness. That being so, save and except writing of the injury report, its contents should not have been taken into consideration in the background of the fact that it all happens to be an opinion of an expert in terms of Section 45 of the Evidence Act, which cannot be read in his absence.

10. It has further been submitted that save and except PW-6 and PW-7, none had supported the prosecution case in a manner as propounded by the informant. PW-7 had stated that in the same night at about 2.00 a.m., he was at the mill of PW-6 and the timing did not permit inspiration over his version. With regard to PW-6, it has been submitted that he materially developed his evidence. Hence, his evidence is fit to be out rightly rejected.

11. Therefore, conviction and sentence of the appellants is not at all found to be duly substantiated from the materials available on the record. Side by side also suggests the mechanical approach of the learned lower appellate court while convicting and sentencing the appellants. Therefore, judgment impugned is fit to be set aside.

12. On the other hand, learned Additional Public Prosecutor while supported the finding submitted that in terms of Section 134 of the Evidence Act, it happens to be quality and not the quantity which commands the ultimate fate of the prosecution case,

evidence of single witness if inspires confidence is found sufficient to inflict conviction and sentence.

13. So far present case is concerned, it has been submitted that there happens to be no embellishment in the evidence of PW-6, the informant and further, he happens to be a natural witness whose presence at the place of occurrence on account of his stay at a Dalan is found duly substantiated. Even during course of cross-examination, defence could not be able to demolish that part. Therefore, PW-6 happens to be a natural witness and that being so, the version regarding occurrence is found intact and justify the conviction and sentence recorded by the learned lower Court.

14. After going through the lower court record in consonance with Exhibit-2, 2/1, it is crystal clear that F.I.R. was lodged on 17.12.1983. The first order sheet of the learned lower Court happens to be dated 23.12.1983 and the gap in between certainly happens to be in contravention of Section 157 of the Cr.P.C., whereunder F.I.R. has to be transmitted to the cognizance taking Court without any delay. On account of non-examination of I.O. that part is found unexplained. Because of the fact that there happens to be violation of mandatory part of the law on account thereof, appellant happens to be justified in being susceptible on that very score.

15. Now, coming to other aspect, the doctor has not been



examined nor there happens to be an explanation with regard to his non-examination. Therefore, the contents of injury report neither could be looked into nor, in the aforesaid background, could give any sort of additional help to the prosecution as PW-8 had simply exhibited the writing of the doctor.

16. Now, coming to the remaining oral evidence adduced on behalf of prosecution, it is apparent that PW-1 became volte-face to the prosecution and on account thereof, has been declared hostile. PW-2, PW-3, PW-4 and PW-5 have not supported the prosecution case in a manner as raised by PW-6 rather they have stated that on account of defect, there was short circuit and fire broken. Furthermore, there also happens to be discrepancy relating to time of occurrence.

17. PW-7 is Gopal Singh, who shown some sort of solidarity with PW-6, the informant, but his presence at 2.00 a.m. in the night at the mill of informant for grinding flour and further, instead of claiming himself to be an eye witness to occurrence had stated that informant had raised an alarm that Sita Ram Singh lit fire, is another circumstance which put question mark out genuineness of his version. Furthermore, while the mill was running at least suggest presence of one operator which had not been disclosed by this witness. Moreover, from his cross-examination, it is apparent that he

had admitted his presence on behalf of informant as a witness in another case also. So, his collusiveness and interestedness with the informant is itself there.

18. Now, coming to the testimony of Jaleshwar Singh, informant, the initial version Exhibit-2 is to be taken note of wherein he had specifically stated that on an alarm raised by Manjar Ahmad and Paltan Sao at about 2.00 a.m. who had seen his co-villagers Sita Ram Singh and Raja Ram Singh fleeing there from after lighting fire he awoken. During course of evidence, he had wiped out the aforesaid material and substituted it by his own assertion claiming himself to be an eye witness and further, also stated that younger brother Kameshwar had also sustained burn injury. Kameshwar has not been examined nor any explanation is there. He had not even corroborated the evidence of PW-7 that at that very time, Mill was in operation. From Paragraph-19 of the cross-examination, it is apparent that grand father of accused as well as his grand father were full brother. There happens to be animosity prevailing amongst them since a year before the occurrence. Proceeding under Sections 144 and 145 Cr.P.C. was going on. For the present, one Title Suit is pending. He had further stated that both the accused are a Government Servant. Sita Ram Singh was posted at Aurangabad while Raja Ram Singh was posted at Dhanbad. He also happens to be a Teacher. His conduct is to be

perceived from Paragraph-23 of his cross-examination wherein he had shown ignorance with regard to specific question whether in the written report, he had mentioned the fact that these accused persons had lit fire.

19. Giving deep consideration as well as considerable thought over the materials available on the record in consonance with the finding recorded by the learned trial Court, it is found and held that prosecution has not been able to substantiate its case. That being so, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Appellant no.2 Raja Ram Singh is on bail, hence he is discharged from its liability.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-03.08.2015
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