

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.4 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- DARBHANGA

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Dinesh Singh son of Late Kailu Singh, resident of village - Kakodha - P.S- Sakatpur, District - Darbhanga.

..... petitioner/s

Versus

1. The State of Bihar
2. Ganesh Singh son of Late Kailu Singh
3. Ranjit Singh son of Ganesh Singh

Both are resident of village - Kakodh, P.S- Sakatpur, District - Darbhanga.

..... opposite party/s

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Appearance :

For the Appellant/ : Mr. Ajay Kumar, Advocate
For the Respondent/s : Mr. A. Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 24-03-2015

Heard learned counsel for the petitioner and learned counsel
for the State.

2. Learned counsel for the petitioner is permitted to make
necessary correction in the cause title in course of the day.

3. This application has been filed under section 378(4) of
the Code of Criminal Procedure, 1973 (hereinafter referred to as “the
Code”) seeking leave to appeal against the judgment of acquittal dated
20.9.2014 passed by the learned 1st Additional Sessions Judge,
Darbhanga in Criminal Appeal No.32 of 2014 arising out of
Complaint Case No.49 of 2004 corresponding to Trial No.41 of 2014

whereby the appellate court set aside the judgment of conviction and order of sentence dated 30.10.2014 passed in Complaint Case No.49 of 2004 by the learned Chief Judicial Magistrate, Darbhanga.

4. The petitioner Dinesh Singh filed a written report to the officer-in-charge of Sakatpur police station on 25.12.2012 on the basis of which Sakatpur P.S. Case No.65 of 2002 was registered under section 435 of the Indian Penal Code against opposite party nos.2 and 3 and investigation was taken up. On conclusion of investigation, the police submitted final report before the learned Chief Judicial Magistrate, Darbhanga. While the police case was still under investigation, the petitioner had filed a protest petition in the court of Chief Judicial Magistrate, Darbhanga. The learned Chief Judicial Magistrate, Darbhanga accepted the final report submitted by the police and directed the protest petition to be registered as complaint. Accordingly, Complaint Case No.49 of 2014 was registered.

5. After examining the complainant on solemn affirmation under section 200 of the Code and after examining the witnesses under section 202 of the Code, the learned Chief Judicial Magistrate, Darbhanga summoned both the accused persons (opposite party nos. 2 and 3) in order to proceed with the trial. The accused were charged under section 435 of the Indian Penal Code. They pleaded not guilty and, hence, the trial commenced.



6. In course of trial, altogether six witnesses including the complainant (petitioner) were examined. On conclusion of trial, the learned Chief Judicial Magistrate, Darbhanga convicted both the accused under section 435 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment of five years and to pay a fine of Rs.3,000/- each and in default of fine to undergo simple imprisonment for one month each vide judgment and order dated 30th May, 2004. The convicted accused (opposite party nos.2 and 3) preferred Criminal Appeal No.32 of 2014 against the aforesaid judgment of conviction passed by the learned Chief Judicial Magistrate, Darbhanga.

7. After hearing the parties, the learned 1st Additional Sessions Judge, Darbhanga allowed the appeal and set aside the judgment passed by the learned Chief Judicial Magistrate, Darbhanga vide judgment dated 20.9.2014. The said judgment dated 20.9.2014 is under challenge before this Court.

8. Learned counsel appearing for the petitioner has submitted that the appellate court has erred in law as well as on facts in recording the judgment of acquittal as all the witnesses examined on behalf of the prosecution had fully supported and corroborated the case of the complainant. He has submitted that the findings of the appellate court are contrary to the evidence on record. He, therefore,

seeks leave to file an appeal against the impugned judgment of the appellate court.

9. With the assistance of learned counsel for the petitioner, I have perused the evidences led by the complainant in course of trial.

10. According to the complaint, the accused Ganesh Singh is his brother whereas the accused Ranjeet Singh is nephew of the complainant. A land dispute existed between the parties since long and the same was resolved by the *Panches* through *Panchayti*. After partition, through Panchayti, the complainant had got five Dhurs of land which was being used for the purpose of residence as well as cattle shed. The accused persons always used to threaten the complainant with dire consequences. On 24th December, 2002 at about 2 p.m. the accused persons came with a container filled with Kerosene oil. They sprinkled Kerosene oil over the house of the complainant and the accused Ranjeet Singh set the house on fire. The complainant has alleged that after instituting the police case, as the matter was not being investigated properly by the police and the police had not even inspected the place of occurrence, he has filed the complaint petition.

11. In course of trial, the complainant was examined as C.W.5. He has testified that the alleged occurrence took place at 9 a.m. on 24.12.2002 whereas the other witnesses, namely, C.W.1

Sattan Mukhiya, C.W.2 Ganesh Singh, C.W.3 Rameshwar Mukhiya and C.W.4 Bipin Singh have stated that the alleged occurrence took place at 2 p.m. The appellate court has considered this aspect of the matter and recorded that there is vital contradiction in the statement of the witnesses relating to time at which the occurrence took place.

12. It has further recorded that C.Ws.1, 2 and 3 are chance witnesses. C.W.1 has stated that he noticed the occurrence while he was selling fish at the place of occurrence whereas C.Ws, 2 and 3 have stated that they noticed the occurrence while they were going to their respective shops. It has recorded that C.W.2 Ganesh Singh is brother-in-law (Sarhu) of the complainant and C.W.4 Bipin Singh is son of the complainant. They have admitted about the long standing dispute relating to land between the parties.

13. The appellate court has taken note of this fact and has held that they are interested witnesses. It has scrutinized their evidence carefully. It has recorded that the story propounded by the witnesses is not only contrary to what the complainant has stated but seems to be improbable too because the witnesses have stated that nearly two hundred people had gathered at the time of occurrence and when the accused persons were pouring Kerosene oil or setting the hutment on fire none of them either tried to stop them from doing so or even tried to extinguish the fire whereas the complainant has stated



in his deposition that when the hutment was set on fire the local people tried to extinguish the same. It has further recorded that despite presence of so many witnesses of the locality, independent witnesses were not examined. The *Panches* who effected partition of the homestead land were also not examined by the complainant. The witnesses examined on behalf of the complainant have admitted that it was a thatched hutment which was set on fire and there were several other thatched hutments in the vicinity.

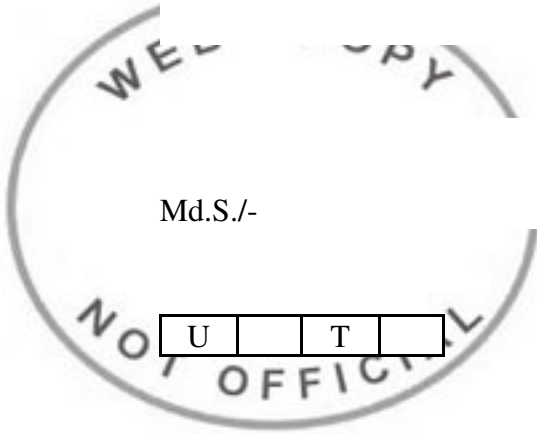
14. Considering all these aspects of the matter, the appellate court set aside the judgment of conviction recorded by the learned Chief Judicial Magistrate, Darbhanga.

15. In my view, the reasonings given by the appellate court for recording the judgment of acquittal are neither perverse nor erroneous. In case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent till he is found guilty by a competent court of law. Secondly, the accused having squarely pleaded the presumption of his innocence is further reinforced and strengthened.

16. In that view of the matter, I do not find it a fit case to grant leave to appeal against the impugned judgment of acquittal of

the appellate court.

17. Accordingly, the leave application is refused.



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(Ashwani Kumar Singh, J)