

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.268 of 2016

Arising Out of PS.Case No. -292 Year- 2010 Thana -BIHPUR District- BHAGALPUR

1. Sheela Devi Wife of Shri Mani Kant Sah Resident of Village-Hario, P.S.-Bihpur, District-Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar
2. Jaleshwar Sah @ Jalo Sah Son of Late Sukh Deo Sah
3. Manoj Kumar Sah @ Manoj Sah
4. Anuj Kumar Sah @ Anuj Sah
5. Sanoj Sah
6. Pawan Sah
7. Hawan Sah
8. Deepak Kumar Sah Respondent Nos.2 to 8 Sons of Jaleshwar Sah @ Jalo Sah
All Residents of Village-Hario, P.S.-Bihpur, District-Bhagalpur.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 28-07-2016

This is an appeal, preferred under proviso to Section 372 of the Code of Criminal Procedure, 1973, against the judgment and order, dated 18.02.2016, passed by the learned 3rd Additional District and Sessions Judge, Naugachia, District-Bhagalpur in Session Trial No. 634 of 2011, arising out of Bihpur P.S. Case No. 292 of 2010, whereby and whereunder the learned Additional Sessions Judge, has recorded acquittal

of respondents No. 2 to 8.

2. The informant is the appellant, who, as per the First Information Report, had sustained burn injuries, allegedly caused by the respondents No. 2 to 8, in the manner described in the First Information Report.

3. The respondents No. 2 to 8 were put on trial for commission of the offences punishable under Sections 341,326,307 read with 34 of the Indian Penal Code and Sections 427 and 435 read with Section 120B of the Indian Penal Code.

4. *Fardbeyan* of informant/appellant, Sheela Devi (P.W.1), is the basis for institution of the First Information Report, according to which on the alleged date of occurrence, i.e., 26.08.2010, she had opened her shop in the morning at 6 A.M. when her co-villagers, viz, wife of one Jangli Muni (Mela Devi, P.W.7), and wife of Bhudeo Mani (Sheela Devi, P. W.9) had come to her shop to purchase certain items. Suddenly, Respondent Nos. 6 and 7 (Hawan Sah and Pawan Sah respectively) came in a motorcycle and respondents No.2,3,4,5 and 8 came from the southern side, all of whom were armed. Hawan Sah is said to have sprinkled petrol on the body of the informant. Thereafter, Pawan Sah lighted a match-



stick and set her on fire. She received burn injuries. Wives of Bhudeo Mani and Jangli Muni (P.Ws. 9 and 7 respectively), who were present at the place of occurrence also received burn injuries. The people present there had also seen the occurrence taking place, who immediately rushed and saved their lives. Several articles of the Shop also got damaged because of the fire caused by the respondents.

5. Upon completion of investigation, the police submitted charge-sheet. Thereafter, cognizance was taken by the learned A.C.J.M., Naugachia. The case was committed to the Court of Sessions for trial. The accused persons were charged for commission of offences under Sections 341,326,307 read with Section 34 of the Indian Penal Code and Sections 427 and 435 read with Section 120B of the Indian Penal Code. Since the accused persons denied the charges, trial against them commenced. After closure of the evidence led on behalf of the prosecution, evidence so adduced was put to the accused persons for their answer to which pleaded innocence.

6. Learned trial Court, upon analysis of the evidence on record, recorded acquittal of respondents No. 2 to 8 giving them benefit of doubt by the impugned judgment and order,

dated 18.02.2016.

7. Learned counsel, appearing on behalf of the appellant, has contended that the learned trial Court failed to appreciate the evidence of the eye-witnesses adduced at the trial and erroneously gave the respondents benefit of doubt, while acquitting them. According to him, there were adequate evidence on record to hold the respondents No. 2 to 8 guilty of the offences, beyond all reasonable doubt, for which they were charged.

8. The sole question, which requires consideration in the present appeal, is as to whether the finding of the trial Court, as recorded in the impugned judgment and order to the effect that the prosecution had failed to prove the charges against the respondents No. 2 to 8 beyond all reasonable doubt, is absurd, perverse and the view taken by the learned trial Court recording, acquittal of the said respondents, is not a reasonably possible view on basis of evidence on record. Put differently, whether it can be said that on the basis of the evidence on record, conviction of the respondents would have been the only possible view.

9. At the trial, altogether 12 witnesses were examined including Mela Devi, wife of Jangli Muni as P. W. 7

and Sheela Devi, wife of Bhudeo Mani as P. W.9. It is note worthy that according to the *fardbeyan*, these two ladies had gone to the informant's shop and were not only present at the time of occurrence, rather, they had sustained burn injuries in course of the occurrence. P.W.7 Mela Devi, in her evidence, denied that she was present at the time and place of occurrence; rather, she claims to have learnt later on, that the informant was set on fire. Similar evidence has been adduced by Sheela Devi, wife of Bhudeo Mani, P. W.9 that she had learnt that the informant had received burn injuries and she had gone their to save her. In her cross-examination, she clearly deposed that she had not seen the occurrence taking place and she had reached the shop after the occurrence had already taken place. The evidence of these two witnesses does not support the case of the prosecution; rather, they contradict the allegation, made in the *fardbeyan* as also the evidence of the informant, P. W. 1. P. W.1, in her evidence has deposed that respondent No.6 (Pawan Sah) had sprinkled petrol on her body and respondent No. 7 (Hawan Sah) had set her on fire by lighting a match-stick. Her statement is not consistent with the statement made by her in her *fardbeyan*, wherein she had alleged that Pawan had lighted the match-stick causing fire

and burn injuries.

10. P.W.2, Mukho Devi is mother-in-law of the injured, who has supported the case of the prosecution as narrated in the evidence of P. W. 1 and claimed that she was also at the place of occurrence and had seen the occurrence; but it was not even the case of the prosecution in the *fardbeyan* nor P. W.1 deposed, at the trial, that P. W. 2 was also present at the place of occurrence.

11. From the reading of the evidence of the prosecution witnesses, it transpires that the son of the informant was an accused in the case of kidnapping of the daughter of the respondent No.1. The said occurrence of kidnapping is said to have taken place on the previous night of the date of the occurrence of the present case.

12. One Kailash Sah, at the trial as P.W.3, has claimed to be an eye-witness and supported the case of the prosecution. He claimed to have seen the occurrence from a distance of 10 steps from the place of occurrence. In his evidence, he has reiterated the case of the persecution that all the three ladies (including the informant) were present at the shop, where the informant had received burn injuries. As has been noticed above, P. W. 7 and P. W.9 have not supported

the case of the prosecution that they had received any injury.

13. Husband of the Informant (P.W.2) has also claimed to be an eye-witness; but he has not been described as eye-witness in the *fardbeyan*. P.W. 5 has been declared hostile at the instance of the prosecution. P. W. 6 is, admittedly, not an eye-witness and he is merely a hearsay witness. The Jangli Muni (P.W.8), husband of (P.W.7), who was present at the shop at the time of the occurrence, according to *fardbeyan*, has also not supported the specific case of the prosecution that his wife had received burn injuries. P.Ws. 10 and 11 are the police Officers, who had submitted charge-sheet and investigated the case, whereas P. W. 12 is the doctor, who proved the injury report.

14. What transpires from the evidence on record is that the son of the informant was taken into custody in connection with kidnapping of the daughter of respondent No.2. The manner of the occurrence, as narrated in the *Fardbeyan*, could not be said to be proved beyond all reasonable doubt since the persons, who were present at the place of occurrence and received injuries, have not supported the case of the prosecution. The witnesses, who have supported the case of the prosecution, appear to be interested witnesses. If

the evidence of P. W. 1 adduced at the trial and her *fardbeyan* is taken into account, there was no eye-witness of the occurrence other than the two ladies (P.Ws. 7 and 9). Subsequently, husband and other in-laws of the informant also claimed to be an eye-witness, while adducing their evidence at the trial.

15. We have also noticed that the Investigating Officer (P.W.11), in his evidence, deposed that in course of investigation, P. W.7 had said that the informant had sustained burn injuries, while cooking food.

16. In the backdrop of the facts and circumstances as noted above, material contradictions, in the evidence of witnesses and inconsistencies in the statement of the informant at the trial and her statement in the *fardbeyan*, are palpable and it, therefore, cannot be said that the charges against the respondent nos. 2 to 8 stood proved beyond all reasonable doubt. The view taken by the learned trial Court cannot be said to be not a reasonably possible view, recording acquittal of respondent Nos. 2 to 8, while giving them benefit of doubt.

17. It is settled that a finding of acquittal by the trial Court reinforces presumption of innocence of an accused. In an appeal against acquittal, the appellate Court is not required

to interfere unless it is shown that conviction of the persons put on trial, would have been only possible view and there were clinching material and evidence produced/adduced at the trial which were sufficient to prove the guilt of such persons beyond all reasonable doubt.

18. We do not find any such case made out in the present appeal. The trial Court's judgment and order cannot be said to be suffering from perversity. There was sufficient scope of reasonable doubt over prove of guilt of the Respondents 2 to 8, on the basis of evidence adduced by the prosecution at the trial and they were, thus, entitled for benefit, arising out of the same.

19. We do not find any reason to interfere with the order under appeal which does not suffer from any legal and factual infirmity.

20. The appeal does not merit admission and is dismissed, accordingly.

(I. A. Ansari, CJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	