

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.352 of 2016

Arising Out of PS.Case No. -241 Year- 1999 Thana -SAMASTIPUR COMPLAINT CASE District- SAMASTIPUR

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1. Ram Babu Mishra son of Late Harikant Mishra Resident of village- Musapur,
P.s.- Sarairanjan (Ghataho), District- Samastipur

.... Appellant/s

Versus

1. The State of Bihar
2. Bhuwan Mishra s/o Jaikant Mishra
3. Dharmendra Kumar Mishra S/o Bhuwan Mishra
4. Arun Kumar Mishra S/o Jaikant Mishra All resident of village- Musapur, P.S.-
Sarairanjan (Ghataho), District- Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Praveen

For the Respondent/s : Mr. A.Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 05-09-2016

The present appeal has been filed under proviso to Section 372 of the Code of Criminal Procedure, 1973, whereby learned 3rd Additional Sessions Judge, Samastipur has recorded acquittal of Respondent Nos. 2,3 and 4 by judgment and order, dated 03.02.2016, passed in Sessions Trial No. 57 of 2002, wherein the said respondents were put on trial on the charge of commission of offences punishable under Section 436 read with Section 143 of the Indian Penal Code.

2. Briefly narrated, the case of the prosecution, as unfolded in the complaint petition filed by the appellant, in the



Court of learned Chief Judicial Magistrate, Samastipur, giving rise to Complaint Case No. 241 of 1999, is that on the alleged date of occurrence, i.e., on 19.03.1999, respondent No.2 was boiling turmeric on a piece of land, which belonged to him (respondent No.2). The said piece of land of respondent No.2 was adjacent to the complainant's sitting-cum-threshing place (*Baithkha-cum- Kalihan*). Since westerly wind was blowing fast on that date, the complainant asked him not to boil turmeric, there being chance of his crops catching fire. The father of respondent No.2 is said to have retorted sharply and declined to relent. The complainant, thereafter, went to his house and after sometime, he heard the uproar from his co-villagers about the fire. When he came out, he found that his "*Baitakha*" and "*Kalihan*" had caught fire resulting into substantial damage of his households and crops. The complainant asserted that he learnt that under the orders of co-accused, Jai Kant Mishra, other co-accused persons of the same family, having hatched up a conspiracy, took out a blaze of fire and placed it near his *bhusghar* (place where straw is stored) and because of rapid wind, it caught fire and damaged the complainant's *Baithka* and various agricultural produce kept in the *Kalihan*.

3. For an occurrence, which is said to have taken place on 19.03.1999, the complaint came to be filed five days after, i.e., on 24.03.1999. According to the complainant, since

the police did not register First Information Report despite efforts, delay of five days took place in lodging of the complaint petition.

4. After taking of cognizance, commitment of case to the Court of Sessions took place and since the concerned respondents pleaded not guilty, trial commenced.

5. At the trial, altogether five witnesses were examined including the complainant as P.W.5. During the pendency of the trial, accused persons, Brij Kishore Mishra and Jai Kant Mishra, died and the trial against them stood abated.

6. After closure of evidence of the prosecution witnesses, response from the persons facing trial was taken, who, in their statements, denied the charges. On perusal of the materials on record, we have noticed that there is no witness, who has deposed that the Respondent Nos. 2 to 4 or the accused persons, who died during the pendency of the trial, were seen putting fire near the *bhusghar* of the appellant. The witnesses have said that they had seen that smoke was coming out of the complainant's *Baithkha* and *Kalihan* and several articles including two bags of wheat, potatoes, wooden bed, etc, were damaged in fire. Though the P.W. 1 has supported the allegation that Respondent No.1 had put the blaze of fire from *earthen oven* on which turmeric was being boiled close to the *bhusghar* belonging to the appellant, because of which



occurrence of fire took place, it is evident from the evidence on record that he is not an eye-witness of the alleged act of Respondent No.1 of putting fire. From his evidence at the maximum, it can be said that he had seen that the appellant's *Kalihan* and *Baithkha* had caught fire. P.W. 2, in his deposition, has deposed that there was some altercation between the appellant and the accused persons. He appears to be a chance witness to the said occurrence of altercation. He has further deposed that he had gone merely 22-25 few yards from the said place, when he felt smoke coming out and people were making uproar. P.W. 3 also is a witness to the altercation between the complainant and the accused persons over boiling of turmeric near the complainant's *Baithkha* and *Kalihan*. P.W. 4 also gave similar evidence.

7. P.W. 5, in his deposition, reiterated what he had said in the complaint petition to the effect that after the accused persons had declined to stop boiling turmeric despite objection having been raised by the complainant, the complainant had gone to his house, whereafter he heard noise upon which he came out and found that his *Baithkha* and *Kalihan* had caught fire.

8. Learned trial Court, upon appreciation of evidence on record, noticed materials contradictions in deposition of the witnesses and, taking into account delay of five days in lodging



of the complaint petition/First Information Report, recorded acquittal of the respondents. It also appears from the records that the defence exhibited "*Sanha*" registered on 19.03.1999 in the Police Station by Rupan Paswan, wherein the *incidence* had been described as accidental in nature and the damage was caused not only to the house of the complainant, but other houses also, because of the said fire.

9. Learned trial Court has, noticing the contradictions, as pointed out, in the impugned judgment and order, that in the complaint, the complainant asserted that Pankaj Kumar Mishra had come running to inform the complainant that the *Baithkha* and *Kalihan* had caught fire, whereas in examination-in-chief, the said Pankaj Kumar Mishra (P.W.1) has deposed that appellant No. 1 had put the fire on the *garbage* close to the complainant's *bhusghar* because of which his *Baithkha*, *Kalihan* and *Bushghar* had caught fire.

10. In our considered view, on the basis of materials on record, it cannot be said that the prosecution could prove beyond all reasonable doubt that accused persons including respondent Nos. 2 to 4 committed an act intending to cause, or knowing that they were likely to cause loss or damage to any public or any person, which is an essential ingredient for constituting an offence under Section 436 of the Indian Penal Code. The evidence of P.W.1 to the effect that respondent No.2 had put fire

near the place of occurrence does not appear to be trustworthy and is contradicted by the other evidence on record according to which he had just seen that *Baithkha* and *Kalihan* of the complainant had caught fire.

11. It is well accepted principle that acquittal of an accused strengthens presumption of his innocence for commission of an offence. With that legal principle in the background, a judgment and order recording acquittal can be interfered in appeal only if the findings of the trial Court are found to be perverse and contrary to evidence on record. If one view is possible on the basis of the materials on record, which has been taken by the learned trial Court, the same should be, ordinarily, not disturbed in an appeal against acquittal.

12. We do not find any such infirmity warranting our interference with the judgment and order under appeal.

13. We, accordingly, do not find any merit in this appeal. This appeal does not deserve admission and is, therefore, dismissed.

(I. A. Ansari, CJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-c

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29.09.2016
Transmission Date	29.09.2016