

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.290 of 2009

(Against the judgment of conviction and order of sentence dated 19.11.2008 in Sessions Case No. 73/08/30/08 passed by the Additional District and Sessions Judge, Fast Track Court-3, Buxar).

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Jhukku Ram, son of late Sukhnandan Ram, resident of Mathia Mohalla, P.S. Buxar Nagar, District- Buxar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae

For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 16-09-2017

Heard Mr Ranbir Singh, Amicus Curiae and Mr. Binod Bihari Singh for the State.

2. This jail appeal has been preferred against the judgment of conviction dated 19.11.2008 in Sessions Case No. 73/08/30/08 whereby the Additional District and Sessions Judge, Fast Track Court-3, Buxar has convicted the appellant for an offence punishable under sections 452 and 434 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years and five years respectively. Both the sentences are directed to be run concurrently.

3. Counsel for the appellant submits that in this case I.O. was not examined and in the absence of I.O. even case diary was not exhibited and as such the appellant has suffered further prejudice on account of non-examination of the I.O. and non-exhibit of the case diary as there are many contradictions in the case of the prosecution. Admittedly the appellant and husband of informant were in



enimical terms as criminal case was pending in between husband of the informant and the accused from before and as such the appellant has suffered prejudiced on account of non-examination of the I.O. in this case as he could not cross-examined the I.O. on the point of material collected during the course of investigation which was used against the appellant. The prosecution on its face value suggests that the appellant was instrumental in setting the household of the informant on fire and in the fire Plung, Tosak and T.V. etc. were gutted.

4. Counsel for the appellant submitted that in the instant case not a single witness was examined to corroborate the allegation levelled by the informant that appellant has put ablaze the house hold of the informant. In view of the fact that the informant and the appellant are in enimical terms and no independent witness has deposed about the manner of the informant as alleged occurrence took place the prosecution case is difficult to digest.

5. Learned counsel appearing on behalf of the appellant further submitted that appellant is innocent and has falsely been implicated in this case. No reason has been shown as to why the appellant entered the house of the informants set the household goods of the informant on fire but not made any attempt to cause any harm to the informant when he was allegedly equipped with sword.

6. Since the I.O. who investigated the case was no more at the time or it was incumbent upon the prosecution to exhibit the case diary for the purpose of examining the entire materials collected during the course of investigation to bring home the charges. There is admitted previous enmity with husband of the informant and the appellant and as such there is likelihood of false implication of the appellant in the absence of any corroborative materials or independent witness to the incident.



7. In this case the alleged gutted materials were not seized moreover the enmity with the husband of the informant appears to be do remote a ground for putting the household of the informant on fire.

8. The counsel for the appellant has drawn my attention to the contradictory version of the informant in her deposition in the trial in one go she said that both doors were closed but she resiled from that statement realizing the impossibility of entry of the appellant in her house turned around and stated that southern door was opened.

9. After analyzing the materials on record and the deposition of the witnesses and considering the totality of facts situation, the court is inclined to accept the submission of the appellant that there is no evidence to the extent that the appellant has put the household materials of the informant on fire.

10. Under the aforesaid circumstances, the court is inclined to accept the submission of the appellant that the prosecution has not been able to bring home the charges beyond all reasonable doubts.

11. In the result, the appeal is allowed. The judgment of conviction dated 19.11.2008 in Sessions Case No. 73/08/30/08 passed by the Additional District and Sessions Judge, Fast Track Court-3, Buxar is set aside. The appellant who is already on bail, is discharged from the liability of the bail bond.

(Anil Kumar Upadhyay, J)

Ravi/-

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