

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.354 of 2017

Arising Out of PS.Case No. -61 Year- 2004 Thana -KEOTI District- DARBHANGA

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Ram Vinay Yadav Son of Upendra Yadav, Resident of Village-
Kayamchak, P.S.-Kewati, District -Darbhanga.

.... Appellant

Versus

1. The State of Bihar
2. Santosh Kumar Yadav Son of Shobhalal Yadav,
3. Arvind Kumar Yadav Son of Shobhalal Yadav,
4. Smt. Lalwati Devi Wife of Shobhalala Yadav,
5. Smt. Tara Devi Wife of Late Vansh Lal Yadav,
6. Smt. Phul Kumari Devi Wife of Nand Kishore Yadav
7. Smt, Gujari Devi wife of Naval Yadav
8. Ram Narayan Yadav, son of Late Nand Lal Yadav,

All are resident of village- Kayamchak, P.S. Kewati, District-
Darbhanga

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar Jha, Adv.

For the Respondent/s : Mr. Sri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6 30-06-2017

I.A.No.612 of 2017

The present appeal has been filed after lapse of about two months five days, for which a petition vide I.A. No. 612 of 2017 has been filed for condoning delay in filing the appeal. In the limitation petition, detailed reason has been assigned.

Accordingly, Interlocutory Application i.e. I.A. No.612 of 2007 is allowed and delay in filing the appeal stands condoned.



Heard Sri Sanjeev Kumar Jha, learned counsel for the appellant/informant and Sri Ajay Mishra, learned Addl. Public Prosecutor.

2. The present appeal has been filed against the Judgment of acquittal dated 28.10.2016 passed by the learned Additional Sessions Judge-IV, Darbhanga in Sessions Trial No.392 of 2006 arising out of Kewati P.S. Case No.61 of 2004. By the said Judgment, respondent nos. 2 to 8 have been acquitted from the charges under Sections 447/337/504/436/34 of the Indian Penal Code.

3. Short fact of the case is that initially on 29.07.2004 the appellant filed a complaint petition in the court of learned Chief Judicial Magistrate, Darbhanga disclosing therein that his land measuring an area of 5 decimals appertaining to Khata No.115 Plot No.102 was settled in his favour, however the said land was in occupation of accused persons unauthorisedly and, thereafter, the informant initiated proceeding to get the land vacated by way of filing Settlement Case No.6/2002-2003, in which order was passed for removal of encroachment. He disclosed that against the said order, Shobhalal Yadav (father of respondent nos. 2 to 4) filed an appeal vide Land Settlement



Appeal No.76/2003-2004, which was dismissed by the learned Collector. Thereafter, as alleged, it was ordered to get the encroachment vacated. It was alleged that the learned Magistrate had arrived for vacating encroachment, which was done. Thereafter, accused persons sprinkled kerosene oil on the western side of residential house of the informant, whereby his house, which was constructed by *fush*, was burnt. The said occurrence was committed by accused persons. It was alleged that the informant gave such information to the officer, who was present there. However, since no action was taken, on 29.07.2004 the informant filed a complaint before the court of learned Chief Judicial Magistrate. It was alleged that occurrence had taken place on 02.07.2004. The said complaint was referred to the police for its registration and investigation under Section 156(3) of the Code of Criminal Procedure and, as such, Kewati P.S. Case No. 61/2004 was registered for the offence under Sections 448, 436 and 504/34 of the Indian Penal Code. After investigation, chargesheet was submitted against above nine accused persons. However, two accused persons died and, as such, respondent nos. 2 to 8 were put on trial. On 22.11.2005 cognizance order was passed and finally charges were framed for the offence under Sections 447, 337, 504 and 436/34 of the Indian Penal Code. Since accused persons



denied the charges, they were tried.

4. During trial to prove the charges, the prosecution examined altogether nine witnesses. Surprisingly, in the case, the Investigating Officer was not examined nor any material was brought on record to suggest as to whether at the place of occurrence, any sign of fire was found or not.

5. The learned trial judge has discussed the evidence of the prosecution in detail and has also opined that once the alleged encroachment was got removed by the concerned Magistrate, there was no occasion for the accused persons to take steps for putting any material on fire. The learned trial judge has mentioned that it was a case of land dispute in between the parties, which is also evident from the prosecution case.

6. Considering the fact that no plausible evidence was brought on record, the learned trial judge has passed the Judgment of acquittal on 28.10.2016. Learned counsel for the appellant tried to persuade the court that witnesses were consistent on the allegation and there was no reason to create doubt on the evidence of witnesses. However, he was not in a position to suggest that at the place of occurrence any sign of fire was found suggesting that the house was burnt or not save and except oral evidence. In the case, in absence of examination of the



Investigating Officer, it was difficult for the prosecution to prove regarding the occurrence under Section 436 of the Indian Penal Code. In such cases, examination of the place of occurrence is necessary, rather in absence of any report regarding place of occurrence, it would be difficult for the prosecution to prove its case.

7. Considering the fact that the learned trial judge has discussed the evidence in detail, we do not find any ground to pass order in favour of the informant/appellant for grant of leave to appeal, which has been prayed vide I.A No.1118 of 2017 under Section 378(3) of the Code of Criminal Procedure.

Accordingly, leave petition i.e. I.A. No.1118 of 2017 is rejected and simultaneously appeal stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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