

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.611 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

- =====
1. Bindeshwar Das, Son of Late Dukhi Paswan, R/o Village – Dhobi Bigha, P.S. Asthawan, District – Nalanda.
 2. Ramlagan Paswan, Son of Late Dukhi Paswan, R/o Kutti Tola, (Kodaiya Bigha) P.S – Asthawan, District - Nalanda
- Appellant/s
- Versus
- State of Bihar
- Respondent/s
- =====

Appearance :

For the Appellant/s : Mr. Rabindra Prasad Singh, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 05-01-2018

By way of present appeal, appellants seek to challenge the Judgment of conviction and order of sentence dated 28.08.2002, passed by Shri Awadhesh Kishor Pd. Singh, learned Presiding Officer, Additional Court No. 1, Nalanda in Sessions Trial No. 299 of 1987/24 of 2001, by which the appellant – Ram Lagan Paswan was held guilty under Sections 435 and 147 of the Indian Penal Code (hereinafter referred to as “the IPC”) and appellant – Bindeshwar Das was held guilty under Section 435/149 and 147 of the IPC and appellant Ram Lagan Paswan was sentenced to pay a fine of Rs. 2,000/- under Section 435 of the IPC, having default clause. No separate sentence was passed under Section 147 of the IPC. Appellant Bindeshwar Das was also sentenced to pay a fine of Rs. 2,000/- under Section 435/149 with default clause and no separate sentence was passed under Section 147 of the IPC. By the said judgment of



conviction, the trial court all other accused were given the benefit of Section 360 Cr.P.C. and instead of sentencing them trial court released them on execution of bond of Rs. 4,000/- each with two sureties and were directed to appear and received sentence when called upon during the period of two years.

2. It appears that appellants, namely, Ram Lagan Paswan and Bindeshwar Das has already deposited the amount of fine. It further appears that originally the appeal was preferred by four appellants including Bhushan Paswan and Shiv Kumar Paswan, however, their appeal were dismissed by this Court vide order dated 03.01.2003 passed in the present appeal.

3. Prosecution case in short is that on 05.12.1986 at about 6. P.M. appellants along with other accused of this case came to the house of Chamari Beldara armed with *lathi* and appellant Bindeshwar Das ordered to set his house on fire, upon which, appellant Ram Lagan Paswan set his house on fire due to which cot-bed sheets and other articles valued at Rs. 1,000/- got burned, thereafter, said Chamari Beldar reported the matter to the police and lodged the F.I.R against the accused persons. On the basis of which Ashtawan P.S. Case No. 202/86 was registered against the accused persons.

4. Upon charge-sheet being submitted, cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Awadhesh Kishor Pd. Singh, learned Presiding Officer, Additional Court No. 1, Nalanda, for trial



and disposal.

5. Thereafter, the charge was framed under Section 448 and 376/511 of the IPC, cognizance of the offence was taken and case was committed to the court of sessions, which ultimately traveled to the file of Shri Awadhesh Kishor Pd. Singh, learned Presiding Officer, Additional Court No. 1, Nalanda, for trial and disposal.

6. To bring home the charge, prosecution examined six witnesses. They are ; P.W. 1 – Mangal Beldar, P.W. 2 – Saudi Beldar, P.W. – 3, Krishna Das, P.W. 4 – Jashiya Devi, P.W. 5 – Chano Devi and P.W. 6 – Chamari Beldar (informant),

7. Apart from that fardbeyan of Chamari Beldar has been brought on record and marked as Ext. 1.

8. When examined under Section 313 Cr.P.C., appellants denied the occurrence and claimed themselves to be innocent.

9. After conclusion of trial, appellant Ram Lagan Paswan was convicted under Section 435 and 147 of the IPC and appellant Bindeshwar Das was convicted under Section 435/149 and 147 of the IPC and were sentenced in the manner as stated above.

10. Contention of the appellant is that they have falsely been implicated in this. The house, which was allegedly set on fire, belonged to Parsuram Paswan, brother of appellant No. 3, and *parcha* of the said land was given to him and the said Parsuram Paswan had filed a case against the informant in Harizan police station. It has also been submitted that in this case I.O. has not been examined, which has



caused serious prejudice to the appellant as had he been examined he would have thrown light with regard to manner of occurrence and place of occurrence as it has been alleged in F.I.R that the occurrence took place on a *Gair Majarua Aam* land and further there is contradiction in the evidence of prosecution witnesses and the Trial Court without considering all these facts has held the appellant guilty, which is not sustainable in the eye of law.

11. On the other hand, learned counsel appearing on behalf of respondent – State, supported the finding of guilt recorded by the learned Trial Court and has argued that there are consistent evidence of witnesses on the point of setting the house on fire, which was used for keeping the cattle feed and there is absolutely nothing available on record to discard the prosecution story, except the claim that house belonged to one Parsuram Paswan and, therefore, there is no illegality in the conviction of the appellant.

12. P.W. 6 is the informant in this case and he has supported the case of prosecution and stated that appellants and others accused armed with *lathi* came and on the order of appellant Bindeshwar Das, co-accused Siya Sharan Paswan assaulted Saudi Beldar and Ram Lagan Paswan set the house on fire causing damage to articles worth Rs. 1,000/- He has also stated that in the police station, his statement was recorded and he identified his signature. This witness has been cross-examined on the point that Parsuram Paswan had lodged a case against him on the same day in the Harizan police station. He also



denied a suggestion that the land on which the alleged house was constructed belonged to Parsuram Paswan, for which he had got a *parcha*.

13. Aforesaid evidence of P.W. 6, found support from the evidence of other witnesses and it appears that they have also been cross – examined on the point that a case has been lodged by accused Parsuram Paswan with respect to the alleged house, which was set on fire. It further appears from cross-examination that suggestion was given to witnesses that nothing was kept in the said house and the house belonged to co-accused – Parsuram Paswan, however, the said suggestion was denied by the witnesses.

14. From perusal of the evidence, it appears that both appellants as well as informant claimed title and possession over the alleged house, which was set on fire as according to the prosecution the said house belonged to informant (P.W. 6), whereas according to the defence, the house belonged to one of the accused. It is apparent that all the witnesses viz. P.W. 1 to P.W. 5 has stated in their evidence that the house belonged to the informant. On the other hand, the defence has not been able to prove that the house in question belonged to one of the accused – Parsuram Paswan. Though a suggestion was given to all the witnesses that the house belonged to one of the accused – Parsuram Paswan, however, the said suggestion was flatly denied by the witnesses.

15. Considering the entire discussions made above, it appears that



the prosecution has succeeded in establishing that on the alleged date of occurrence, appellant- Ram Lagan Paswan on the order of Bindeshwar Das, set the house of informant on F.I.R.

16. From perusal of the record, it also appears that the amount of fine has already been deposited by the Appellants.

17. Accordingly, I do not find any infirmity in the conviction of appellant - Ram Lagan Paswan, under Sections 435 and 147 of the IPC and conviction of appellant Bindeshar Das, under Section 435/149 and 147 of the IPC. Judgment of conviction and order of sentence dated 28.08.2002, passed by Shri Awadhesh Kishor Pd. Singh, learned Presiding Officer, Additional Court No. 1, Nalanda in Sessions Trial No. 299 of 1987/24 of 2001, is affirmed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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