

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.11 of 2004

Arising Out of PS.Case No. -null Year- null Thana -null District- MUNGER

- =====
1. Binod Ram son of Late Sita Ram
 2. Dinesh Ram son of Late Fafu Ram @ Raghunandan Ram, Both residents of village Mansari Tola, Puraniganj, P.S. Kasim Bazar (Kotwali) District- Munger.

.... Appellants

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 40 of 2004

Arising Out of PS.Case No. -null Year- null Thana -null District- MUNGER

- =====
1. Raju Ram son of Mahadev Ram
 2. Gopal Ram son of Late Shiv Ram
- Both residents of village Mansari Tola, Puraniganj, P.S. Kashim Bazar (Kotwali) District- Munger.

.... Appellants

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.11 of 2004)

For the Appellant/s : Mr. Rakesh Kumar Sinha, Advocate

For the Respondent/s : Mrs. Abha Sinha, APP

(In CR. APP (SJ) No.40 of 2004)

For the Appellant/s : Mr. Rakesh Kumar Sinha, Advocate

For the Respondent/s : Mrs. Abha Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 13-01-2018

Criminal Appeal No. 11 of 2004 has been filed by
appellant No. 1 Binod Ram and appellant No. 2 Dinesh Ram against
the judgment and order of conviction dated 22.12.2003 passed by Sri



Brahma Nand Prasad, Additional Sessions Judge (Fast Track Court), Munger in Sessions Case No. 122 of 1992 by which appellants have been convicted under Section 147 of IPC and sentenced to undergo rigorous imprisonment for two years, whereas Criminal Appeal No. 40 of 2004 has been filed by appellant No. 1 Raju Ram and appellant No. 2 Gopal Ram against the judgment and order of conviction dated 22.12.2003 passed by Sri Brahma Nand Prasad, Additional Sessions Judge (Fast Track Court), Munger in Sessions Case No. 122 of 1992 by which appellants have been convicted under Section 436 and 147 of IPC and sentenced to undergo rigorous imprisonment for ten years under Section 436 of IPC and two years rigorous imprisonment for offence under Section 147 of IPC. Both the sentences shall run concurrently.

Briefly, the prosecution case is that one Bhubneshwari Devi W/o Late Ganesh Bhagat of village- Mansari Tola, Puraniganj, P.S. Kashim Bazar, District- Munger gave her fardbeyan recorded by H.L. Mehra, A.S.I. P.S. Kashim Bazar, Munger on 17.11.1991 at 7.30 P.M. that while she was sitting outside her house near the road, the accused persons Gopal Ram armed with Lathi, Raju Ram carrying a Tin of Kerosene Oil, Dinesh Ram armed with pistol and Binod Ram armed with Bhalla and Bobi ordered to set fire the house of Bhubneshwari Devi, pursuant to which accused Raju



Ram sprinkled and poured kerosene oil on the house of the informant. Accused Dinesh Ram who was armed with Pistol and Binod Ram armed with Bhalla started to threaten the informant and accused Gopal Ram assaulted the son of informant Ashok Ram by means of Lathi causing injury on his body. Accused Binod Ram also assaulted with iron rod causing injury. House of the informant was set on fire then informant called neighbours and in the meanwhile fire brigade vehicle reached there and fire was extinguished.

On the basis of said fardbeyan FIR was instituted under Sections 147, 323 and 436 of IPC vide Kotwali P.S. Case No. 483 of 1991. Police after investigation submitted charge sheet and the case was committed to the court of Sessions and Session Trial No. 122 of 1992 was registered. Charges were framed under Sections 147 and 436 of IPC. The appellants pleaded not guilty and claimed to be tried.

The prosecution has examined altogether seven witnesses in this case they are PW-1 Chinta Devi, PW-2 Neelam Devi, PW-3 Minter Devi, PW-4 Chotu Basfore, PW-5 Ashok Basfore, PW-6 Bhubneshwari Devi and PW-7 Jagdish Sharma. The defence has produced the certified copy of the charge sheet of Kotwali P.S. Case No. 482 of 1991 and same was marked as Exhibit –A as a public document.

PW-1 Chinta Devi (informant) who is the wife of



injured Ashok Basfore stated in her evidence that on the date of occurrence at 7:00 PM she was sitting outside her house and talking with her husband and mother-in-law, in the meantime the accused persons, namely, Dinesh, Binod, Raju, Bobi and Gopal came there and started assaulting her husband with lathi which caused injury on his body. Binod and Dinesh assaulted him with fists and slaps, Gopal assaulted with Lathi and Bobi ordered to set fire the house then Raju Sprinkled and poured Kerosene Oil on the house of informant and Gopal set fire the house by matchstick. Her husband wanted to extinguish the fire but the accused persons again assaulted him, in the meanwhile, fire brigade vehicle came and extinguished the fire. She has stated that the articles of the house worth Rs. 6000/- was burnt in the fire. She has also stated that women of the locality used to come at Bishahari Asthan for worship and the accused persons used to tease those women and she along with other family members raised objection for the same, so the accused persons came there to assault her husband. She has denied of having knowledge about the G.R. Case No. 1813 of 1992.

PW-2 Neelam Devi in her examination has stated that at 7:00 PM on the date of occurrence she was sitting outside of her house on the road and her mother-in-law, her Gotani, her husband and her Bhaisur were also there. Accused persons Gopal Ram, Dinesh



Ram, Dinesh, Raju, Binod and Bobi came there. Accused Gopal Ram armed with Lathi, Raju armed with Pistol and carrying Kerosene oil, Bobi ordered accused persons to set fire the house, upon which Raju sprinkled and poured kerosene oil and Gopal Ram set fire the house by matchstick. She has further stated that Gopal assaulted her Bhaisur with Lathi and Dinesh and Binod assaulted with fists and slaps subsequently fire brigade vehicle came there and extinguished the fire and articles worth Rs. 6000/- were burnt. The reasons for said incident was because her mother-in-law is the Priest of Bishahari Asthan and many people came to see her and accused persons teased the women which was objected by the informant along with her family members which annoyed the accused. She has denied the fact that her Bhaisur assaulted Gopal by means of rod and she has further stated that Binod was armed with Pistol in her cross-examination while in her examination-in-chief she has stated that Raju was carrying the Pistol. She has further stated that due to fire loss caused of articles were of Rs. 6000/-

PW-3 Minter Devi has stated that on the day of occurrence at 7:00 PM she was cooking her food on Verandah. In the meantime Gopal, Binod, Bobi, Dinesh and Raju came there. Raju was carrying Kerosene oil and there was matchstick in the hand of Gopal. Binod was armed with Bhala, Dinesh was armed with Pistol, Bobi



ordered to set fire the house. Her brother Ashok raised objection and Gopal started to assault her brother. Raju sprinkled and poured kerosene oil and Gopal set the house on fire. The people of locality tried to extinguish the fire in the meantime the accused persons fled away. Fire brigade vehicle came there and extinguished the fire. She has stated the reasons for such incident was that her mother was the priest of Bishahari Asthan and women of the locality came there to worship and accused persons used to tease them, which was objected by her family members which annoyed the accused and they came there to assault the family members.

PW-4 is Chhotu Basfore who has stated that on the day of occurrence at 7:00 PM he was in his house and talking with his mother and brother the accused persons Gopal Ram, Dinesh Ram, Raju Ram, Binod Ram and Bobi Kumar came there. They assaulted Ashok Basfore by means of fists and slaps, he fled away from the place of occurrence and watched the offence from some distance. He has further stated that Bobi Kumar ordered to set the house on fire, upon which Raju poured kerosene oil and Gopal Ram set the house on fire. In the meantime fire brigade vehicle came there and extinguished the fire. He has also stated that women from outside used to come there for Puja and accused persons teased them and same was objected by her family and that was the reason for said incident. He



has stated in his cross-examination that Gopal Ram filed a case against him which is pending in the court of B.N. Tiwary, Judicial Magistrate, Munger. He has also stated that he had gone to hospital for his treatment but did not see any injury upon the body of Gopal Ram. He was arrested in the case which was filed by Gopal Ram. He has also stated that there is no other witness of the occurrence except his family members. He has further stated that his brother Ashok was not treated in the hospital.

PW-5 is Ashok Basfore who is said to have been assaulted by the accused persons and sustained injuries has stated that on the day of occurrence at about 7:30 PM he was talking with his family members just beside the road when Bobi Kumar, Dinesh , Raju, Binod and Gopal came there and assaulted him with fists and slaps. Binod assaulted him with Lathi, Dinesh was armed with pistol, Bobi ordered to set fire the house then Raju Ram sprinkled kerosene oil and Gopal Ram set fire the house with matchstick. Whole house was burnt and people of locality did not come for help, fire brigade came there and extinguished the fire. He has further stated that next day he went to hospital for his treatment and regarding cause of incident he said that accused persons used to tease the women coming to worship in Bishahari Asthan and his family members raised objection which annoyed the accused persons. His mother is the priest



of Bishahari Asthan. He has accepted that the accused Gopal had filed a case against him and the police arrested him in that case. He has also stated that when he alongwith his brother went to police station he was arrested by the police alongwith his brother. The police took his statement in the police station. He has further stated that the wall of his house is made of brick and roof is of Khapra. The door was burnt by fire which was kept in the house. He has further stated that Bishahari Asthan was made up of Pakka building which was situated 1-2 laggi from his house. He has also stated that except him no one was injured. The police came after one hour of the incident after fire was extinguished.

PW-6 is the informant Bhubneshwari Devi she has stated that on the day of occurrence at 7.30 PM she was talking with his family members then Gopal, Dinesh, Binod, Bobi and Raju came there and started assaulting her son Ashok and Ashok fled away. Raju was carrying kerosene oil in his hand, Bobi ordered, upon which Raju sprinkled and poured kerosene oil in the house and Gopal set fire the house. The house was burnt and in the meantime fire brigade vehicle came there and extinguished the fire. He further stated that patrolling party and police station reached there and she made her statement before the police and she put her LTI over her statement. She worshiped at Bishahari Asthan where women used to come and accused



persons used to tease women, upon which she raised objection and that was the cause for this incident. She further stated that police came next day and she showed the place of occurrence, they took away the ashes of burnt articles. She has also stated that her son Chhotu live with her in the said house and has admitted that Gopal had filed a case against her son but could not say that it was filed prior to or subsequent to the offence. She has admitted that no pistol firing was made. She had no knowledge whether police has prepared any seizure list or not. She has also stated that there is no other witness of the village except her family members. She has also stated that police has seized a Tin of Kerosene oil from the place of occurrence. She has stated that her house is made up of Bamboos and Khapra.

PW-7 is a formal witness who has proved the FIR.

After going through the evidence adduced on behalf of prosecution, I find that all witnesses examined on behalf of prosecution are interested witnesses and belongs to same family. No independent witness has been examined on behalf of prosecution to lend support to the prosecution case. The evidence of witnesses are also not consistent. The PW 4 and PW 5 have stated in their evidence that after occurrence when they went to police station they saw one of the accused Gopal Ram sitting there and on his FIR both of them were arrested by the police and kept in the lock. It has also been stated that



police has seized the burnt articles and Tin of kerosene oil from the place of occurrence but same was not exhibited during the trial. No independent witness has come forward to support the case of prosecution regarding setting fire of the informant's house. The accusation of assault by accused persons on the son of informant has also been not found true by the trial court. The presence of Gopal Ram at the place of occurrence is very doubtful when he himself had sustained grievous injury at the hands of prosecution witness. According to PW-5 and PW-6 he was in the police station when they arrived and they were arrested by the police on the FIR lodged by Gopal Ram, as such, his presence at the place of occurrence becomes very doubtful. The prosecution has also failed to adduce any evidence with respect to allegation made by the prosecution that accused persons used to tease the women coming at Bisheshwar Asthan and informant objected to it which led to present incident. There is vital contradiction with respect to construction of house as some of the PWs have stated that it was a brick wall with Khaprail roof where others have stated that it was made of thatched roof. P.W.4 Chhotu Basfore has stated in his deposition that no seizure of burnt article was made by police however, PW-6 has stated that burnt articles as well as Kerosene oil Tin from place of occurrence were seized by police but same has not been exhibited by prosecution. The non-examination of



I.O has also been fatal to prosecution as far as same relates to charge under Section 436 is concerned. All witnesses are family witnesses and no independent witnesses have been examined by prosecution in support of setting house on fire and to establish reason for the incident that accused used to tease women coming for worship. No burnt articles or any witnesses supporting the prosecution case of setting ablaze the house of informant has come forward to support prosecution case which makes the case very doubtful. Prosecution has miserably failed to prove its case beyond all reasonable doubt in respect of charge framed under Section 436 of IPC as such, they are given benefit of doubt. Conviction of appellants Gopal Ram and Dinesh Ram under Section 436 cannot be sustained and as such are set aside. The conviction of appellants Dinesh Ram, Binod Ram, Raju Ram and Gopal Ram under Section 147 of IPC is set aside.

In the result conviction and sentence of appellants Gopal Ram and Dinesh Ram under Section 436 of IPC is set aside and conviction and sentence of appellants Gopal Ram, Dinesh Ram, Binod Ram and Raju Ram under Section 147 of IPC are set aside.

They shall stand discharged from their bail bonds.

Both the Criminal Appeals are allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

