

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.91 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHOJPUR

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1. Chandeshwar Chaudhary, s/o late Bengal Chaudhary
2. Keshwar Chaudhary, s/o late Ramdhary Chaudhary
Both r/v- Mansagar Bagauti Tola, P.S. Charpokhari, District-Bhojpur
.... Appellant/s

Versus

State of Bihar
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae
For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-09-2018

By judgment dated 24.01.2009 passed by learned Additional District & Sessions Judge, F.T.C. II, Ara in S. Tr. No. 153/2000, arising out of Charpokhari P.S. Case No. 100/1998, appellants, Chandeshwar Chaudhary and Keshwar Chaudhary have been convicted for offence under Section 436/34 of the Indian Penal Code and by order dated 27.01.2009, they have been sentenced to undergo R.I. for five years with fine of Rs. 2000/-. In default of payment of fine, to further undergo S.I. for two months.

2. Heard the learned counsel for the appellants as well as the State.

3. The prosecution case, in brief, is that on 20.12.1998 in the morning at 6 A.M., appellant Chandeshwar Chaudhary came to his uncle and directed him to leave the land otherwise he will set fire



to his house. In the meantime Uma Chaudhary, Vinod Chaudhary, Keshwar Chaudhary, Bhikhari Chaudhary all of same village arrived armed with *Lathi* and *Bhala* and started searching the informant and his younger brother Ajay Nat. Seeing the accused persons, informant and his younger brother Ajay Nat fled away and hide himself in the house of neighbour. He saw that appellant Chandeshwar Chaudhary set fire in his house. He also saw smoke and flame in the house and raised alarm. Then accused persons fled away.

4. On the basis of aforesaid written report, Charpokhari P.S. Case No. 100 of 1998 was instituted for offences under Sections 436/34 of the Indian Penal Code.

5. During trial, altogether four witnesses have been examined on behalf of prosecution.

6. Abhay Nut (P.W. 3) is the informant of the case. He has stated in his examination-in-chief that in the morning at about 6 A.M., he was at his door along with his brother Ajay Nut, Rajendra Nut, Upendra Nut, Ishwar Dayal and his wife. Chandeshwar Chaudhary, Uma Chaudhary, Bhikhari Chaudhary and Vinod Chaudhary came there armed with *Lathi* and *Bhala* and directed him to leave the house and threatened to set fire in the house. The land of the house was allotted to him by government. They abused the informant. Appellant Chandeshwar Chaudhary spread kerosene oil on



the house and lighted the same.

During cross-examination, this witness has stated that there was darkness at the time of occurrence and the accused persons had covered their face. He had identified the accused persons only on surmises. He has also stated that he had signed compromise petition in this case on 28.03.2006. He had voluntarily compromised the case because good sense had prevailed between the parties. Later on, he learnt that the accused persons are innocent.

7. Upendra Nut (P.W. 2) has stated that he was near the place of occurrence on the date of occurrence. He has stated that some altercation were going on between the informant and accused persons. Chandeshwar Bind set the house on fire.

During cross-examination, this witness has stated in para 3 that he was not present at the place of occurrence at the time of occurrence.

8. Ajay Nut (P.W. 1) has stated in his evidence that on the date of occurrence he was at his door along with his brother Abhay Nut. Some altercation had taken place between his brother and accused persons. Chandeshwar Chaudhary set the house on fire after pouring kerosene oil.

In his cross-examination, this witness has stated that he had not stated before police that appellant Chandeshwar Chaudhary



had set the house on fire.

9. P.W. 4, Brajesh Nut has turned hostile.

10. I.O. has not been examined in this Case.

11. In this manner, from the evidence of witnesses, it appears that although the informant has supported this case, but in his cross-examination, he has stated that all the accused had covered their face. He had taken name of accused persons merely on surmises and guess. The other witnesses, namely, P.Ws. 1 and 2 have stated that they have not given statement before police that appellant Chandeshwar Chaudhary had set the house on fire. I.O. has not been examined in this case which caused prejudice to the defence case. The prosecution has therefore failed to substantiate with cogent evidence that any damage was caused on account of setting the house on fire by accused persons.

12. In such circumstances, this Court finds that prosecution has failed to substantiate the charge levelled against appellants beyond all reasonable doubt.

13. The appellants are accordingly acquitted from the charge levelled against them.

14. The judgment of conviction dated 24.01.2009 and order of sentence dated 27.01.2009 passed by learned Additional District & Sessions Judge, FTC IInd, Ara is set aside.



15. This Criminal Appeal is allowed.

16. The appellants are on bail. They are discharged from liability of their bail bonds.

17. Let the first and last page of the judgment be given to learned Amicus Curiae.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
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