

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.107 of 2009**

Arising out of P. S. Case No. -128 Year-2001 Thana -Chainpur District- BHABHUA (KAIMUR)

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1. Shankar Singh, son of Late Ramsakhi Singh,
 2. Jagropan Singh, son of Loda Singh,
 3. Prabhu Singh, son of Hari Singh,
 4. Mahendra Singh, son Karamu Singh,
 5. Bhorik Singh, son of Ram Shakhi Singh,
 6. Lorik Singh, son of Ram Sakhi Singh,
 7. Hari Singh, son Late Karamu Singh,
 8. Shiv Parsan Singh @ Shiv Prasan Singh, son of Loda Singh,
 9. Jamuna Singh, son of Ram Sakhi Singh,
 10. Ram Bilas Singh, son of Loda Singh, all are resident of village-Semara, P.S.-Chainpur, District-Kaimur (Bhabua).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Baban Ray-Amicus Curiae

For the State : Mr. Parmeshwar Mehta-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 10-10-2018

None appears on behalf of appellants, on account thereof, Sri Baban Ray, learned counsel has been requested to assist the Court as an Amicus Curiae.

2. Appellants Shankar Singh, Jagropan Singh, Prabhu Singh, Mahendra Singh, Bhorik Singh, Lorik Singh, Hari Singh, Shiv Parsan Singh @ Shiv Prasan Singh, Jamuna Singh and Ram Bilas Singh have been found guilty for an offence punishable under Section 379 of the I.P.C. and each one has been sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo R.I. for six months, additionally, under



Section 504 of the I.P.C. and sentenced to undergo R.I. for six months with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 21.01.2009 passed by the Additional Sessions Judge, Fast Track Court No.1st, Kaimur at Bhabua in Sessions Trial No.156 of 2005.

3. Somaru Singh (PW-5) filed written report on 19.11.2001, divulging the fact that his land lies half kilometer away from his village-Semara, which has been settled by the D.C.L.R., Bhabua bearing Khata No.143, Khesra No.769, area four acre and Plot No.1294 area 01 acre. Then had disclosed that aforesaid land happens to be his Khatiyani land. Then had narrated that he had planted paddy in the aforesaid plot, which was ready for harvesting. On 05.11.2001, his co-villagers, Hari Singh, Prabhu Singh, Mahendra Singh, Shankar Singh, Jamuna Singh, Bhorik Singh, Lorik Singh, Ram Bilas Singh, Shiv Parsan Singh @ Shiv Prasan Singh, Jagropan Singh began to harvest, whereupon he along with co-villagers Ramdahin Yadav, Dina Singh, Ram Lal Singh, Sardar Singh, have gone and protested over the illegal activities of the accused, who were engaged in carrying the bundles of harvested paddy to their house. Accused persons abused and further, threatened of dire consequences. Out of fear, he returned back to his house. In the night, while they were asleep, Hari Singh came at 2.00 A.M. at his house, abused and then thereafter, Hari Singh took out match box and set ablaze kitchen



as a result of which, paddy one quintal, one cot along with other articles turned to ashes. On the next day, while he was in a way to police station, accused persons threatened of dire consequence. Accordingly, delay has been caused in filing of the written report.

4. On the basis of the aforesaid written report, Chainpur P. S. Case No.128 of 2001 has been registered followed with an investigation as well as submission of chargesheet facilitating the trial, wherein the appellants/ accused persons were acquitted for other offences, but convicted and sentenced for the offences punishable under Section 379 as well as 504 of the I.P.C., respectively and the same happens to be the subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that the land under dispute happens to be under their exclusive possession since long, but the prosecution party in order to coerce the appellants/ accused to give up their possession is in habit of filing of case after case putting false and frivolous allegation and for that, also placed Exhibit-A on the record.

6. In order to substantiate its case, prosecution has examined altogether six PWs, who are PW-1, Sardar Singh, PW-2, Ramdahin Yadav, PW-3, Dina Singh, PW-4, Ram Lal Ram, PW-5, Somaru Singh and PW-6, Om Prakash Srivastava as well as has also



exhibited, red card as Exhibit-1, an order dated 19.09.2001 passed under Section 144 of the Cr.P.C. as Exhibit-2, formal F.I.R. as Exhibit-3. In likewise manner, defence had also exhibited certified copy of judgment of Complaint Case No.110 of 2001 as Exhibit-A.

7. From the record, it is evident that I.O. has not been examined. Non-examination of I.O. has been dealt with by the learned lower Court under Paragraph-17 of the judgment whereunder, it has been observed that on account of absence of any kind of infirmity, development in the evidence of PWs, the non-examination of the I.O. has not caused prejudice. In likewise manner, the disclosure at the end of the prosecution witnesses, more particularly PW-3 at Para-2 and PW-4 at Para-2, whereunder they have admitted the land under dispute to be under possession of the appellants on the basis of mortgage has been explained by the learned lower Court, as might have been a slip of tongue in the background of illiteracy of the respective witnesses, who might have not knew the actual meaning of the word 'Rehan'. In the aforesaid background, now the evidences are to be considered whether the same substantiate the finding recorded by the learned lower Court. Because of the fact that for other offences, appellants have already been acquitted by the learned lower Court, which is not under challenge and so, those parts of evidence of the respective witnesses are not at all discussed.

8. PW-1 has stated that on the alleged date and time of



occurrence, he was at his house. After hearing sound of uproar, he came to the house of Somaru Singh and then, he along with Dina Singh, Ram Lal Ram, Ramdahin Yadav, Somaru Singh gone over the plot where they have seen accused persons (named) engaged in carrying bundles of harvested paddy crop from the field of Somaru Singh. They have harvested the paddy crop over an area of 05 acre costing Rs.50,000/-. During cross-examination at Para-2, he had stated that paddy belonged to his uncle. It has been planted over the land settled by the State of Bihar in favour of uncle. Land was settled by the S.D.O., but he is unable to disclose the Khata, Khesra number. He is unable to disclose the land having been bifurcated in how many sub-plot. He is unable to disclose in which year land was settled. In Para-3, he has stated that accused persons have not indulged in such kind of activity at an earlier occasion. For the first time, it was cut away by the accused persons on the date of occurrence. Then has stated that both the parties were litigating with regard to the land under dispute. He has further stated that his father has also got settlement in the said plot. In Para-4, he has stated that he is unable to say, who has harvested the paddy crop and who was carrying the same. In Para-5, he has stated that they have not gone to the police station on the date of occurrence. They have gone to the police station after 7-8 days and 2-4 day thereafter, police came to the place of occurrence. In Para-6, he has stated that nothing was recovered. Then



has denied the suggestion that they have not possessed the disputed land.

9. PW-2 has stated that on the alleged date and time of occurrence, he was engaged in grazing cow near the place of occurrence. He has seen accused persons (named) engaged in harvesting paddy crop. They took away paddy appertaining to an area of one acre. During cross-examination at Para-2, he has stated that he is unable to disclose Khata, Khesra number of the land under dispute. Then has stated that he has seen only harvesting and then thereafter, he gone there from. He has seen harvesting from a distance of 30 yards while he was passing through the P.O. He has not seen Somaru Singh nor any of the co-villager. He has not seen from which side harvesting was done. Then has denied the suggestion that no such type of occurrence had ever taken place.

10. PW-3 has stated that on the alleged date and time of occurrence, he was at his field. At that very moment, he has seen all the accused persons (named) engaged in harvesting the paddy crop belonging to Somaru Singh. They have had lathi, garasa. When Somaru Singh protested, they began to abuse. They have also threatened of dire consequence. They have cut away paddy crop from an area of five Bigha and carried it up to the evening hours. During cross-examination, he has stated that on the same day, two occurrence took place. Accused and informant are litigating over the land.



Accused persons have taken the land on 'Rehan'. Para-3 of the cross-examination relating to second occurrence.

11. PW-4 has stated that on the alleged date and time of occurrence, he was just loitering near about field of Somaru Singh. He has seen his paddy crop being harvested by the accused persons (named). Somaru Singh was forbidding them, but the accused persons did not pay heed to his words and took away the paddy after having been harvested. During cross-examination at Para-2, he has stated that accused persons were over the land since before on account of getting it on 'Rehan'. He has further disclosed that paddy crop was grown up by the accused persons.

12. PW-5 is the informant himself. He has stated that on the alleged date and time of occurrence, when he reached at his field. He has seen the accused persons (named) armed variously present, who were engaged in harvesting his paddy crop. On his protest, they became violent and said that he will be assaulted, if not moved there from. Then has stated that they have harvested paddy from an area of two acre, out of total area of four acre of Survey Plot No.769 corresponding to R.S. Khata No.143. Then has stated that this plot has been settled to him by the State of Bihar. They took away paddy approximately of Rs.15,000/-. In Para-2, he has deposed regarding subsequent occurrence. In Para-3, he has stated that on the following day, he has gone to police station for institution of the case. Police has



recorded his statement, read over to him and finding it correct, he had put his L.T.I. During cross-examination at Para-4, he has stated that both the parties are on strained relationship relating to the aforesaid land since before. In Para-5, he has stated that he has three brothers. Dasa Kharwar, Sumer and he himself. Land has been settled separately in favour of three. They all are separate. Dasa Kharwar had instituted a case against the accused persons with regard to the aforesaid land. He has come to know that accused persons won the case. In Survey Plot No.769, two acres have been settled to him while two acres to his brother Dasa Kharwar. In Para-6, he has stated that accused persons cut away the paddy from the land allotted to his brother Dasa Kharwar also. Some portion was left away by the accused persons, which was approximately of five kattha and the same has been harvested by him. At Paras-8, 9, there happen to be cross-examination relating to second occurrence. In Para-10, he has stated that he has gone to police on the following day. He is not remembering how many days thereafter, police came. Accused persons after harvesting, kept the paddy at his Khaliyan, but he had not shown the same to the police. Again at Paras-11 and 12, there happens to be cross-examination regarding 2nd occurrence.

13. PW-6 is formal, who has been examined only to exhibit the relevant documents on account of non-examination of the I.O.



14. Exhibit-1 is the alleged settlement parcha. After going through the same, it is evident that two acre of Khesra No.769, without having disclosure of boundary has been shown to be settled in favour of informant vide Case No.37/ 75-76. Neither the certified copy of the order is on the record in order to support the same nor it bears seal of any of the authority as signature of so many persons are there without designation, save and except one Samaharta (Collector) while the prosecution witnesses have disclosed contrary statement on this score that it was settled by the D.C.L.R. and further, changed it during trial from S.D.M. Exhibit-B is the certified copy of an order dated 19.09.2001 passed with regard to a proceeding initiated under Section 144 of the Cr.P.C. having its legal life only to the extent of 60 days.

15. During course of argument, the learned Amicus Curiae has submitted that in the background of inconsistency having amongst the evidence of witnesses, it is apparent that prosecution has failed to substantiate its case beyond all reasonable doubt, more particularly over exclusive possession. Furthermore, it has also been pleaded that informant had himself admitted that for the same land, there was litigation amongst his brother Daso with the accused persons wherein accused persons won. In the facts and circumstances of the case, the finding so recorded by the learned lower Court is not at all justifiable. Contrary to it, the learned Additional Public



Prosecutor while supporting the finding arrived at by the learned lower Court has submitted that after perusal of the judgment impugned, it is apparent that before arriving to the conclusion, the learned lower Court had made proper analytical approach to the evidences adduced on behalf of prosecution as well as also weighed repercussion on account of non-examination of the I.O.

16. Giving minute observation to the evidences available on the record, it is apparent that from the written report, it is crystal clear that same was filed after so many days while during course of evidence, informant (PW-5) had disclosed that case was filed on the following day. Informant had also disclosed that after harvesting the paddy crop, the accused persons have kept it at his Khaliyan while the paddy crop harvested by him with regard to remaining area was kept by him, but during course of inspection of the Investigating Officer at the place of occurrence, the informant neither had shown the Khaliyan of accused to the I.O. nor shown the remaining part of harvested paddy crop by him to the I.O. So far evidence of PW-3 and PW-4 are concerned, the learned lower Court had shown his reservation over the word 'Rehan', but the learned lower Court had failed to construe the further disclosure that land was under possession of the accused and they have grown the paddy crop. PW-1 is the son of Daso with whom, the accused persons were on litigating term since before and as per evidence of PW-5, himself, accused persons won. PW-2 had also



disclosed with regard to dispute amongst the parties relating to the possession. In the aforesaid background, the examination of the I.O. was very much essential in order to have his objective finding relating to the place, at least prima facie in whose possession the land under dispute was. In the background of conflicting evidence over possession, it looks unsafe to concur with the finding arrived at by the learned lower Court.

17. Consequent thereupon, the same is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liability. The first and list page of the judgment be handed over to the learned Amicus Curiae for needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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