

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.442 of 2003

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

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(1) Wakil Singh Son of Harihar Singh,
(2) Harihar Singh Son of Munar Singh,
(3) Babu Lal Singh, Son of Harihar Singh,
(4) Dhaneshwar Singh Son of Ram Lagan Singh,
(5) Bachchu Lal Singh Son of Budhan Singh, All residents of Village- Sagauni,
P.S.- Parsa, District- Saran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mahesh Narain Parbat, Sr. Adv.
Mr. Abhay Kumar Singh, Adv.

For the Respondent/s : Mr. Abhay Kumar, APP
Mr. Pawan Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 02-08-2018

All the five appellants stood convicted under Sections 147, 323, and 436/149 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo R.I. for four years under Section 436/149 of the IPC and R.I. for six months under Section 147 and further R.I. for six months under Section 323 of the IPC, by the judgment of conviction dated 02.08.2003 and order of sentence dated 04.08.2003 passed by Shri Prabhat Kumar Jha, 6th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 1874/1994..

2. Prosecution case as per the complaint lodged by the PW1 Yogendra Singh in short is that the complainant was living after constructing a *Palani* and there was *bhusa* house by the side of the *Palani*. It is alleged that a day before the occurrence, she buffalo of Wakil Singh and Harihar Singh was grazing the crop of complainant and for that the



complainant made a complaint to Babu Lal Singh. The appellants in retaliation came variously armed near the hut and set the *Pilana* and *bhusha ghar* on fire and also assaulted the informant by fists and slaps and it has specifically been stated that accused Harihar Singh sprinkled the kerosene oil and set the hut on fire and, thereafter, the accused persons fled away to their houses.

3. On the basis of aforesaid complaint, complaint case bearing C-1260/92 was registered. Summons were issued against the appellants and the case was committed to the court of sessions, which ultimately traveled to the file of Shri Prabhat Kumar Jha, 6th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 1874/1994.

4. During trial altogether five witnesses have been examined. They are; P.W. 1 – Yogendra Singh (complainant), P.W. 2 – Lallan Bhagat, P.W. 3 – Madan Mahto, P.W. 4 – Ramprit Singh and P.W. 5 – Vidyarthi Krishna Prasad. Apart from that some documents have also been brought on record.

5. Accused Harihar Singh has been examined as defence witness in this case in order to show that the land in question belonged to the appellants and Yogendra Singh came to construct the *Palani*, which was protested by the complainant and it is the complainant, who set the hut on fire and falsely lodged a case against the appellants. In cross-examination, this witness has accepted that he is accused in this case and the complainant is his maternal grandson (*Nati*) in relation.

6. From perusal of the evidence, it appears that PW1 is the complainant in this case and he has supported the allegation made in the complaint in his evidence in court and stated about assault by Wakil Singh and other appellants and Harihar Singh sprinkled Kerosene Oil and set the *Palani* on



fire causing damage to wooden cots, beds, blankets woolen wrapper and ten bags of wheat worth Rs. 4500/- and, thereafter, villagers assembled and extinguished the fire. He has also stated that he has gone to the police station for lodging the case but the case was not lodged. He has denied a suggestion that the land in question belonged to the appellants and he wanted to grab the said land.

7. PW 2 has been declared hostile in this case and evidence of PW3 Madan Mahto shows that he had not seen as to who set the hut on fire but two wooden cots, bed-sheet, blankets were in burnt condition. It has also been stated that there was dispute between the parties with respect the said land from before. His evidence in cross-examination disclosed that he could not say as to what articles were kept in the hut from before.

8. PW 4 Ranjit Singh has stated that appellant Wakil Singh set the hut on fire causing damage to blankets, wooden cots and other articles. It further appears from his evidence in para -2 of his cross-examination that he was not the eye witness of the occurrence.

9. PW5 has stated in his evidence that buffalo of the appellants, had grazed the field of Yogendra Singh and for that he went to make complaint, thereafter, the appellants came variously armed and assaulted Yogendra Singh and Harihar Singh set the *Palani* on fire. This witness has also admitted that he is brother in law (*Bahnoi*) of Yogendra Singh.

10. Learned Trial Court after conclusion of trial convicted the appellants under Section 436/149, 147 and 323 of the IPC and sentenced them in the manner aforesaid. Being aggrieved the appellants preferred the present appeal.

11. Contention of learned counsel for the appellants is that there is contradiction in the evidence of witnesses as PW 4 in his evidence has



stated that it is appellant Wakil Singh, who set the *Palani* on fire, whereas in the complaint petition as well as the evidence of PW 5 shows that the said *Palani* was set on fire by the appellant Harihar Singh. Furthermore, no material exhibits were brought on record to show as to what were the articles which were burnt in fire. Though PW 1 has stated that wooden cots, blankets and other articles were burnt in the fire and it appears that PW 1 is the only eye-witness of the occurrence and other witnesses are not the eye-witness of setting the house on fire. It has further been submitted that PW 2 has been declared hostile and PW3 is not the eye witness of the occurrence and apart from that PW 4 and PW 5 appears to be close relative of the complainant. On the other hand, defence has tried to show that the land in question belonged to the appellants and the complainant only in order to grab the land of appellants, came with false case but the learned Trial Court has not considered these aspects and convicted the appellants under Section 436/149, 147 and 323 of the IPC, which is not sustainable in the eye of law.

12. On the other hand, learned counsel appearing on behalf of the respondent – State has supported the impugned judgment and submitted that the witnesses have consistently stated about setting the hut on fire by the appellants and also of assault to the complainant by fists and slaps and, therefore, there is no infirmity in the impugned judgment and conviction of appellants in this case is just and proper does not require interference.

13. Having heard both sides and from perusal of the evidence of witnesses as discussed above, it appears that PW1 is the sole eye-witness of the occurrence as the other witnesses does not appear to be eye witness of the occurrence. Furthermore, no material exhibits have been brought on record to show that there was any damage to the articles. It appears that the defence of the appellants is that the land in question belonged to them and



PW1 & 2 are not eye witnesses of the occurrence and PW 4 & 5 are own relative of PW3 and they appear to be interested witness, hence in absence of production of any material exhibit, it is not safe to rely on their evidence for conviction under Section 436/149 I.P.C. However, so far evidence of assault to the complainant is concerned, there are sufficient materials to show that the appellants assaulted the complainant on the alleged day of occurrence.

14. In such view of the matter, so far conviction and sentence of appellants under Section 436/149 of the IPC is concerned, the same does not inspire confidence and the same is hereby set aside. However, so far conviction of appellants under Section 147 and 323 of the IPC is concerned, evidence shows that the prosecution has been able to establish its case with regard to assault by the appellants to the complainant and accordingly, I do not find any infirmity in the impugned judgment so far conviction of appellants under Section 147 and 323 of the IPC is concerned and the same is hereby upheld.

15. So far sentence of the appellant is concerned, it has been submitted by learned counsel for the appellants that they have remained in custody for one and half months and sentence is only of six months under each section and occurrence is of the year 1992 and they have faced the pain and trauma for 26 long years, therefore, a lenient view may be taken and the period of sentence may be modified to the sentence already undergone by the appellants in the judicial custody.

16. I find force in the submission of learned counsel for the appellants and considering the case being quite old and also considering the appellants have faced the trauma and anguish for 26 long years age of the case, instead of confirming the sentence, this Court deems it appropriate to



reduce the sentence of the appellants to the period already undergone by them in judicial custody under Section 147 and 323 I.P.C.

17. With the above modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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