

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.187 of 2009

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Madan Chaudhary son of Bindeshwar Chaudhary, Resident of village-
Vishanpur, PS-Katra, Distt-Muzaffarpur

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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with
Criminal Appeal (SJ) No. 708 of 2008

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Bindeshwar Chaudhary, son of Late Nathuni Chaudhary, Resident of village-
Vishanpur, PS-Katra, Distt-Muzaffarpur.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

(In Criminal Appeal (SJ) No. 187 of 2009+ 708 of 2008)

For the Appellant/s	:	Mr. AjayThakur, Mr. Nilesh Kumar, Mr. Amir Alam, Mrs. Swati Sinha, Advocates.
For the Respondent/s	:	Mr. S. A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

21-12-2018

Before coming to main track, the ancillary event visualizing from the lower court record should be recorded first in order to properly appreciate as to why these two appeals are being disposed of by a common judgment.

2. From the record, it transpires that Katra PS Case No. 115/95 has been registered on account of recording of Fardbeyan of Jagtaran Devi, the informant wherein she alleged that in the morning of 11.12.1995, her house was set ablazed by



both the appellants, namely, Bindeshwar Chaudhary (Cr. Appeal No. 708/2008) and Madan Chaudhary (Cr. Appeal No. 187/2009) who were father and son.

3. Investigation commenced and concluded by way of submission of charge-sheet. The case was committed whereupon, Sessions Trial No. 285/2001 was registered. During course of sailing of Sessions Trial No. 285/2001, accused Madan Chaudhary used to be represented under Section 317 CrPC in spite of repeated direction by the court to be physically present. During midst thereof, it is evident that altogether six PWs, namely, PW-1, Daulat Sah, PW-2, Ram Prasad Sah, PW-3, Renu Devi, PW-4, Jagtaran Devi, PW-5, Sinod Kumar Chaudhary and PW-6, Munni Kumari have already been examined, cross-examined and discharged on behalf of both the accused. Lastly, as the Court found activity of Madan Chaudhary to be defiant one, vide order dated 03.06.2008 cancelled his representation petition purported to be under Section 317 IPC, whereupon, bail bond has been cancelled, warrant of arrest nonailable was directed to be issued and further, also directed to separate the trial. That means to say, against Bindeshwar Chaudhary, original Sessions Trial No. 285/2001 continued to proceed while against Madan Chaudhary



a new Sessions Trial has been registered bearing Sessions Trial No. 465/2008, wherein lastly, as is evident from the order dated 11.09.2008, appellant/accused, Madan Chaudhary surrendered. Fortunately, in both the Sessions Trial No after examination of PW-6, not even a single witness has been examined, that means to say, whatever materials brought up against the accused persons/appellants, collected in presence of both the accused who were facing Session Trial No. 285/2008 conjointly. That means to say, evidences whatever, was in accordance with Section 273 of the CrPC.

4. Although Sessions Trial No. 285/2001, has been disposed of vide judgment of conviction dated 25.07.2008 and order of sentence dated 28.07.2008 passed by 9th Additional Sessions Judge, Muzaffarpur before appearance of appellant/accused, Madan Chaudhary whereby and whereunder, appellant, Bindeshwar Chaudhary (Cr Appeal No. 708/2008) has been found guilty for an offence punishable under Section 436 IPC and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 5000/- in default thereof, to undergo imprisonment of one year while appellant Madan Chaudhary (Cr. Appeal No. 187/2009) vide judgment of conviction dated 19.02.2009 and order of sentence dated 21.02.2009 passed by 9th



Additional Sessions Judge, Muzaffarpur, has been found guilty punishable under Section 436 IPC and sentenced to undergo RI for 10 years as well as to pay fine of Rs. 5000/- in default thereof, to undergo one year RI additionally relating to Sessions Trial No. 465/2008. That being so, both the appeals have been heard conjointly and are being disposed of by a common judgment.

5. Jagtaran Devi filed written report on 11.12.1995 stating therein that on 10.12.1995 at about 4:00 PM, her co-villagers, Bindeshwar Chaudhary and Madan Chaudhary indulged in an altercation on account of land dispute whereupon, they both abused as well as also assaulted with fists and slaps. On hue and cry, villagers came and got the matter pacified. Today, on 11.12.95 at about 6:00 AM, Bindeshwar came and said that you have constructed house over his land whereupon, they both lit fire. She raised alarm whereupon, they both brick-batted and then fled away.

6. As disclosed hereinafter, Katra PS Case No. 115/95 was registered followed with an investigation as well as submission of charge-sheet. The mode of sailing of trial has fully been discussed and so, in order to avoid repetition, the same is forbidden.



7. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that the house of both the parties lies contiguous to each other and further, as the prosecution party illegally tried to encroach upon the land of accused persons which has been resisted by them, on account thereof, got this case filed after creating and manufacturing the evidence. Also exhibited the original sale deed having in name of appellant/accused, Bindeshwar Chaudhary dated 19.04.1988 (Exhibited).

8. In order to substantiate its case, prosecution has examined altogether six PWs who are PW-1, Daulat Sah, PW-2, Ram Prasad Sah, PW-3, Renu Devi, PW-4, Jagtaran Devi, PW-5, Sinod Kumar Chaudhary and PW-6, Munni Kumari as well as also exhibited Ext-1, Signature of PW-5 as an FIR attesting witness. Sale deed is marked as Ext-A on behalf of defence.

9. From the nature of evidence having been adduced on behalf of prosecution, it is evident that PWs-1 and 2 have not supported the case of the prosecution, on account thereof, they were declared hostile. PW-3, is the daughter-in-law of PW-4 while PW-5 is son of PW-4 and PW-6 is the daughter of PW-4, that means to say, they all consist of one family and in the



aforesaid background, they all could be identified to be the victim. Before considering their evidence, it is also to be noted down that I.O. has not been examined. However, its repercussion is to be seen at the relevant juncture of the judgment.

10. PW-3 has stated that about eleven years ago at about 7:00 AM while she was at her house, Bindeshwar and Madan lit fire in her house after lighting the match stick and then, gone towards their house after abusing. On account thereof, her house got completely gutted down as a result of which, they sustained huge loss. At that very time, no male member was present. Her mother-in-law had gone to police station and registered a case. Police had recorded her statement. During cross-examination at para-4, she has stated that one day prior to the occurrence, they have quarreled with Bindeshwar and Madan. In para-5, she has stated that accused persons were saying since before that they have constructed house over their land. In para-6, she has stated that in the boundary of the PO there happens to be agricultural land. In para-7, she has stated that both the parties happen to be on strained relationship relating to land dispute for the last five-seven years. In para-8, she has stated that Bhola Sah, Bindeshwar Chaudhary,



Parmeshwar Sah along with others are her neighbours. In para-9, she had stated that at the time of occurrence, she was sleeping inside her house. When she perceived heat of flame, she came out. At that very time, the house was under flame. She along with her mother-in-law raised alarm whereupon villagers came. Her belongings had completely got burnt. Thereafter, villagers extinguished the fire. Then has denied the suggestion that on account land dispute, this case has been instituted.

11. PW-4, (Informant) had stated that on the alleged date and time of occurrence, she was at her Darwaza. At that very moment, Bindeshwar and Madan came at her Darwaza, began to abuse. She forbade them whereupon, they stated that this land belonged to them, so remove the house. Then thereafter, they both lit fire which resulted her house to be completely burnt. They were residing in the same house. On account of fire, bed, mosquito net, clothes and other household articles got completely burnt. Then thereafter, she had gone to police station and registered the case. Then has stated that Binod Chaudhary, her son and Mouje Chaudhary had died. Identified the accused. During cross-examination, she had stated that it was winter season. Her house happens to be of thatched one. House of accused lies contiguous to her house at the northern



flank. Save and except, house of the accused, none others' house lies within vicinity of 2-4-5 Laggi. Then she has stated that the house of accused persons lies at a distance of 4-5 hands away from her house. In para-7, she has stated that she was sitting at her Darwaza. Her daughter-in-law was inside the house. All of a sudden, she raised cry. Fire was lit at eastern-northern corner. She rushed there and found the house burning. Whereupon, she also raised alarm. So many persons came and extinguished the fire. In para-8, she has stated that she had gone to the police station alone. She had disclosed the occurrence before Darogaji. Then thereafter, she returned back. After 2-3 days, police came. Police had not seized any article. Police had seen burnt articles and then left. In para-9, she has stated that the land over which her house stood happens to be purchased land. But, she is unable to disclose from whom it was purchased. At para-10, she has shown boundary of the PO as East- Field of Mukhia, West-Field, North-House and field of Bindeshwar Chaudhary, South-Field of Jai Mangal. In para-11, she has denied the suggestion that in order to implicate the accused persons, she had, herself, lit fire in her house and then instituted this case.

12. PW-5 is one of the sons of the informant, PW-4 who has stated that on the alleged date and time of occurrence



while he was returning after giving milk at a dairy and reached near the house of Bindeshwar, he had seen Bindeshwar and Madan running after lighting fire in his house after sprinkling K-oil. Till the time he reached at Darwaza, his house was completely gutted down. His Bhabhi resides in that house. Then he detailed the articles kept therein. Then his mother had gone to police station and registered the case. He has further stated that he stood as a witness over the aforesaid written report (exhibited). Identified the accused. During cross-examination, he has shown the boundary of the PO as East- field of Pappur Narayan Thakur, West-House of Ram Sakal Chaudhary, North-house of Bindeshwar Chaudhary and South- field of Jai Mangal. He further declined to divulge Khata, Khesra and area of the PO land. In para-5, he has stated that he has seen the accused persons lighting fire and then, fleeing therefrom from a distance of two Laggi. When he reached near his house, it was already under flame. At that very moment, none of the villagers was present. He had not raised alarm. He simply took his mother and gone to police station. He is not knowing who had come. Police had come on the same day at about 4-5 PM. In para-6, he has stated that they reside in a house lying west to the house which has been burnt at the distance of 3-4 laggi. In para-7, he has



stated that I.O. had visited the place of occurrence in his presence but, police had not seized any burnt article therefrom. In para-8, he has stated that about 6-7 months ago, they had quarreled with accused persons relating to aforesaid land. Accused persons had directed to remove the house as the land belongs to them. They have also threatened that if they fail to remove the house, then that will be burnt. Then has denied the suggestion that accused persons have falsely been implicated. He has further denied the suggestion that they themselves after setting their house on fire, got this case filed.

13. PW-6 has stated that on the alleged date and time of occurrence she was at her Naihar. At the relevant time, she was sleeping. After perceiving heat of flame, she woke up and found the fire at the back portion of her house. She had seen Bindeshwar along with gallon at some distance therefrom joined by Madan. She inquired from him as to why he has lit fire, whereupon, he answered that this land belongs to him, so he has lit fire. Identified the accused. In para-3, 4, there happens to be contradiction. In para-5, she has stated that there was no dispute amongst themselves with regard to the land. Then has stated at para-6, that when she woke up and found the accused persons, at that very time, none of the villagers was present. She had not



raised alarm rather, began to weep. After 2-4 minutes of her arrival at the PO, her mother arrived. She had not talked with her mother. In their presence, accused persons had gone inside their house. Then has denied the suggestion that at the instance of her family members, she has deposed falsely.

14. From the evidence as discussed hereinabove, it is evident that PW-4, informant had not shown presence of PW-6. So, really, PW-6 was present on the fateful day at her Maika is a circumstance and on that very score, PW-3, 5 are also silent. Apart from this, according to evidence of PW-6, she was sleeping inside the house. She had not stated that she came out from her house and then gone to backward of her house and had seen the accused persons, more particularly, Bindeshwar carrying gallon having presence of Madan and at an interval of 2-4 minutes, PW-4 came which is not the evidence of PW-4. When the evidence of PW-5 is taken, he has seen accused persons litting fire from a distance of two Laggi, even then, he had not rushed to the spot to extinguish the fire rather, came in usual way allowing the house under flame even not caring to raise alarm to attract the villagers and then, accompanying his mother to the police station where case was instituted. When the evidence of PW-4 is taken together with the narration of PW-5



and 6, it is evident that she had gone to the place where PW-3 was there. They have raised hue and cry, villagers came and extinguished the fire.

15. In the aforesaid background, whether the whole house has been gutted is a circumstance to be taken care of while PW-1, according to para-7 of her cross-examination could not be an eyewitness including that of other family members. The most surprising feature is that both the parties have got thatched house, both the parties have got their houses contiguous to each other, then in that event, was it possible for the accused to lit fire in the house of prosecution party taking risk that ultimately, he would also be a victim.

16. The worst thing is that in the background of evidence of PW-4, informant, the examination of I.O. was must, more particularly, in the background of the fact that (a) there happens to be clear-cut distinction with regard to presence of two independent establishment of the prosecution party as per PW 5, (b) inconsistency amongst the witnesses on material facts, (C) PW-4 has stated that when she reached, she raised alarm, villagers came and extinguished fire. So, really the house was burnt or not found creating suspicion over the discloser having made by PW-3 and further conduct of PW-4



suggests otherwise and cumulative effect did not justify irrespective of the fact that there happens to be admission by way of suggestion at the end of the appellants that after litting fire in their house, this case has been instituted. Furthermore, from the evidence of PW-5, it is evident that separate establishment has been shown west to the PO, their presence would have been, which they failed. Further, they ought to have disclosed whether both the houses were on same survey plot no., or were on two different plot no. Due to non examination of the I.O., the real picturization of the P.O. lacks, whereupon, the prosecution case is found suspicious one. Moreover, it also caused prejudice to the appellants as they have been deprived of an opportunity to bring on record the objective finding of the I.O. which could have bearing over the fact of the prosecution. Accordingly, judgment of conviction and sentence recorded by the learned lower court is set aside.

17. Appeals are allowed. Since both the appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

