

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.49 of 2009

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

[Against judgment of conviction and order of sentence dated 19.01.2009 and 21.01.2009 respectively passed by the Additional Sessions Judge (FTC No.6), Purnea, in S.T. No.157 of 1995/224 of 2006 arising out of Bhawanipur P.S. Case No.41 of 1993.]

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1. Seikh Sharif, son of late Seikh Anul,
 2. Seikh Sharafat,
 3. Abbas @ Seikh Abbas, both son of late Seikh Maula Bax, all resident of village-Shahidaganj, P.S.-Bhawanipur, District- Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae.

For the Respondent/s : Mr. Bal Mukund Pd. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-07-2018

By judgment of conviction and order of sentence dated 19.01.2009 and 21.01.2009 respectively passed by the Additional Sessions Judge (FTC No.6), Purnea, in S.T. No.157 of 1995/224 of 2006 arising out of Bhawanipur P.S. Case No.41 of 1993, all the appellants have been convicted for the offence under Section(s) 436/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for four years.

2. None appears on behalf of the Appellants on repeated calls.



3. Sri Arun Kumar Tripathi, Advocate is appointed as Amicus Curiae to assist the Court on behalf of the Appellants.

4. Heard learned Amicus Curiae and learned APP for the State.

5. Learned Amicus Curiae has submitted that the Court below without properly appreciating the evidence convicted the Appellants for the offence under Section(s) 436/34 Indian Penal Code. He has submitted that the Court below has acquitted the Appellants for the offence under Section(s) 447, 341 and 323 Indian Penal Code, but has convicted the Appellants for the offence under Section(s) 436/34 Indian Penal Code. Investigating Officer has not been examined in the case and, as such, place of occurrence is not established. Learned Trial Court has also observed in the judgment that in absence of examination of the Investigating Officer, observations made by the Investigating Officer in the Case Diary with regard to the place of occurrence cannot be used against the accused.

6. Learned APP has submitted that the Court below after properly appreciating the evidence of the witnesses has convicted the Appellants for the offence under Section(s) 436/34 Indian Penal Code.

7. Prosecution case, in short, as per written report of



the informant, is that in the year 1990 the government land as mentioned in the written report was settled under the scheme of Laal-Card and in the year 1993, one Amin and Karamchari came on the spot and told the informant that this land is settled to you and occupy the same. In that year, land was cultivated by Appellant No.3, who had harvested wheat crop in the land. It is alleged that on 03.04.1993, while the informant was making AAL in that land, accused persons armed with *lathi* came and raised objection that the land belongs to them. When the informant told about the settlement, they caused injury to the informant. Brother-in-law of the informant, namely, Suresh Mochi came to rescue then he was also assaulted. Both the injured fled away from the place of occurrence. Thereafter, accused persons came to his house and set the house of the informant and *Machan* of Suresh Mochi on fire causing damage to them.

8. Defence of the accused is that land belonged to them. The informant has filed this false case just to grab the land. Further defence case is that informant himself set fire in the house and falsely implicated the Appellants due to enmity and old dispute.

9. Defence has examined Aatur Rahman (DW 1) and Md. Fakruddin (DW 2) and proved two sale deeds with respect to the disputed land, marked Ext.-A and Ext.-A/1 and Rent Receipt as



Ext.-B.

10. The prosecution has examined altogether seven witnesses. Md. Nayeem (PW 3), and Brahamdeo Singh (PW 7) have been declared hostile. The Court below after appreciation of the evidence acquitted the Appellants from the charges under Section(s) 447, 341 and 323 Indian Penal Code holding that accused persons cannot be held guilty for causing hurt to the informant and Suresh Mochi when it was admitted by the informant and other witnesses that accused persons were in possession of the disputed land and they claim the land through *Kewala*, which have been proved vide Ext.-A and Ext.-A/1.

11. The Trial Court has, however, convicted the Appellants for the offence under Section(s) 436/34 Indian Penal Code on the ground that witnesses have supported the case with regard to aforesaid occurrence during trial. The Trial Court has mentioned in the impugned judgment that PW 1 has said that accused persons came at the house of Luxman Mochi and set fire in his house in which Luxman Mochi was residing and due to fire household goods, clothes etc. were damaged. PW 2 has stated in his evidence that accused persons set fire in the house of the informant in which Luxman Mochi was residing. PW 4 has stated in his evidence that accused persons came at the house of Luxman Mochi



and set fire in the house of Luxman Mochi. PW 5 has said that accused persons set fire in the house of Luxman Mochi. The informant (PW 6) has stated that the accused persons set his house on fire and *Machan* of Suresh Mochi. The informant has further stated in his evidence that he had told the police that due to fire his household goods were damaged. The Trial Court has mentioned that evidence of all the witnesses except PW 3 and 7 have corroborated the fact that after occurrence of *Mar-pit* on the disputed land, the accused persons came to the house of the informant and set fire in his house and also in the *Machan* of Suresh Mochi due to which household goods were damaged.

12. But, it is admitted position that Investigating Officer of this case has not been examined. The Investigating Officer was the best person to prove the place of occurrence. The correct description of dwelling house of informant, which was set on fire could have been reliably established only by the evidence of the Investigating Officer, who had visited the place of occurrence and given description of place of occurrence in detail in case diary.

13. The Trial Court has mentioned in the impugned judgment that it is mentioned in the case diary in the description of place of occurrence by the Investigating Officer that at the time of inspection of place of occurrence, he found and saw the house of the



informant has been set on fire and burnt. It is told that household goods of the informant were damaged in the fire. But, at the same time the Court below has observed in the impugned judgment that this description cannot be used against accused since the Investigating Officer has not appeared to give evidence in the case.

14. This Court is of the view that above observation of the Trial Court is in accordance with law.

15. It is the defence of the Appellants that the disputed land belonged to them. They have purchased the land by sale deed marked as Ext.-A and Ext.-A/1. The informant claimed the disputed land belonging to him on the basis of *Laal-Card* holder. As such, there is admitted land dispute between the parties. Besides oral evidence of the witnesses, as discussed above, there was no material on record to show that any household articles were burnt due to fire in the house. There is also no reliable evidence that the house alleged to have been set on fire was used by the Informant as place of human dwelling or as a place for the custody of property.

16. The prosecution did not examine the Investigating Officer in the case. He was the most competent witness to prove the place of occurrence. The Investigating Officer would have been best person to describe and say whether he had found sign of burn on dwelling house of Informant and recovery of any burnt articles from



the house. The Trial Court has acquitted all the Appellants from the charge under Section(s) 447, 341 and 323 Indian Penal Code on the ground that they are interested witnesses.

17. Therefore, on the basis of such evidence of the prosecution witnesses, this Court is of the view that conviction of the Appellants under Section(s) 436/34 Indian Penal Code is not in accordance with law.

18. Accordingly, impugned judgment of conviction and order of sentence dated 19.01.2009 and 21.01.2009 respectively passed by the Additional Sessions Judge (FTC No.6), Purnea, in S.T. No.157 of 1995/224 of 2006 arising out of Bhawanipur P.S. Case No.41 of 1993, against the Appellants is hereby set aside. The Appellants are acquitted of the charge levelled against them. They are discharged from the liabilities of their respective bail bonds.

19. This appeal is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25-07-2018
Transmission Date	25-07-2018

