

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1396 of 2018**

Arising Out of PS. Case No.-111 Year-2011 Thana- DURAULI District- Siwan

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Lal Baboo Chauhan, S/o Late Badri Chauhan, R/o Village-Toka, P.S. Darauli,
Distt.-Siwan, Bihar

... .. Appellant/s

Versus

1. State Of Bihar
2. Nawal Kishore Chauchan, S/o Late Ram Lal Chauchan, R/o Village-Toka,
P.O. Darauli

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yashraj Bardhan
For the Respondent No.2:	:	Mr. Prashant Kumar
For the State	:	Mr. S.N. Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 02-04-2019

Re. I.A. No. 31 of 2019

Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State. Also, heard learned counsel appearing for respondent No. 2 on the point of admission as well as on I.A. No. 31 of 2019.

I.A. No. 31 of 2019 has been filed on behalf of the appellant under Section 378(3) of the Code of Criminal Procedure seeking leave to file and pursue this appeal.

The appellant-applicant of I.A. No. 31 of 2019 is



victim and informant and, therefore, he has right to challenge the judgment of acquittal and, accordingly, the appellant-applicant is permitted to pursue this criminal appeal.

In the aforesaid manner, I.A. No. 31 of 2019 stands disposed of.

Re. Criminal Appeal (DB) No. 1396 of 2018

1. This criminal appeal has been preferred against the impugned judgment of acquittal dated 6.8.2018 passed by learned Additional Sessions Judge, Fast Track Court-I, Siwan, in Sessions Trial No. 280 of 2012 (arising out of Darauli P.S. Case No. 111 of 2011), by which and whereunder the learned trial court acquitted the respondent No. 2 from the charges framed against him for the offences punishable under Section 436/34, 429/34, 427/34 and 504/34 of the Indian Penal Code.

2. The grievance of the appellant is that the learned trial court committed error in acquitting the respondent No. 2 because there was sufficient material available before the trial court to convict the aforesaid respondent No. 2.

3. Learned counsel of the appellant submits that the impugned judgment goes to show that the learned court below taken into consideration, the paragraphs of case diary



while writing the judgment of acquittal and, therefore, the learned trial court committed serious illegality in considering the paragraphs of case diary while passing the judgment of acquittal. Learned counsel for the appellant further submitted that informant as well as his wife were examined as P.W. 1 and P.W. 4 respectively and both the aforesaid witnesses supported that respondent No. 2 as well as some unknown persons had set the fire on their house but the learned trial court has acquitted the respondent No. 2 on the ground that no independent prosecution witnesses was examined by the prosecution.

4. On the other hand, learned counsel appearing for respondent No. 2 refuted the above stated submissions arguing that in course of trial, prosecution examined, altogether, five prosecution witnesses and out of them, P.W. 5 was Investigating Officer, who, admitted, at para 14 of his cross-examination that P.W. 2, Gaya Chauhan and P.W. 3 Chhote Lal Chauhan had not named any person in their respective statements recorded under Section 161 of the Cr.P.C.. He further submitted that so far as P.W. 1, the wife of informant as well as P.W. 4, the informant are concerned, the learned trial court noticed that there was serious enmity between the informant as well as respondent No. 2 and, moreover, P.W. 1 and P.W. 4 had



claimed, only to this extent, that they had seen the respondent No. 2 near the place of occurrence, when the occurrence took place and, therefore, in the aforesaid circumstances, the learned trial court rightly doubted about the genuineness of the prosecution story and passed the judgment of acquittal.

5. Having heard the rival contentions of both the parties, we went through the records along with photostat copy of the Lower Court Records and we are of the opinion that this criminal appeal can be disposed of at the admission stage itself.

6. Darauli P.S. Case No. 111 of 2011 under Section 436, 429 and 427/34 of the Indian Penal Code was registered on 14.10.2011 against respondent No. 2 as well as two unknown persons, on the basis of written report of P.W. 4, who claimed in his written report that in the night of 13.10.2011, while he was sleeping in his house, all of a sudden his house engulfed in fire and having noticed the aforesaid fire, he came out of his house and saw the respondent No. 2 and two others running towards east side. He raised alarm, which attracted the villagers, who came there but in the meantime, his house burnt. He gave descriptions of the articles, which had been kept in the house at the time of alleged occurrence. P.W. 4 claimed in his



written report that he was of firm belief that it was respondent No. 2, who had put his house on fire.

7. P.W. 5 took the charge of investigation and after completion of the investigation, he submitted charge sheet against respondent No. 2 for the offences punishable under Sections 436, 429, 427 and 504 of the Indian Penal Code.

8. The respondent No. 2 stood charged for the offences punishable under Sections 436/34, 429/34, 427/34 and 504/34 of the Indian Penal Code.

9. In course of trial, prosecution examined, altogether, five witnesses, out of them P.W. 1 is wife of informant whereas P.W. 4 is informant himself. P.W. 2, namely, Gaya Chauhan and P.W. 3, namely, Chhote Lal Chauhan are full brothers of P.W. 4, Lal Baboo Chauhan (informant) whereas P.W. 5 is Investigating Officer.

10. P.W. 5 has admitted at para 14 of his cross-examination that P.W. 2 and P.W. 3 had not named any person before him when he recorded the respective statements of aforesaid prosecution witnesses under Section 161 of the Cr.P.C.

11. P.W. 1, Bachchi Devi, claimed that at the time of alleged occurrence, three persons were talking in front of her house and they put her house on fire and in the light of



fire, she identified respondent No. 2 but could not identify the remaining two persons. However, at para 10 of her cross-examination, she admitted that she had not narrated the aforesaid occurrence either to her husband or any other person.

12. P.W. 4, the informant of this case, claimed that, at the time of alleged occurrence, he was talking with P.W. 1 inside the house and in the meantime, respondent No. 2 along with two unknown persons came there and put his house on fire. This witness claimed that he identified the respondent No. 2 in the light of fire. The attention of this witness was drawn towards the contents of written report and it was, specifically, asked from this witness that he had not claimed to be eye witness in his written report to which he, specifically, denied.

13. The perusal of impugned judgment goes to show that the learned trial court passed the judgment of acquittal on the ground of non-examination of independent witnesses, pendency of *lis* between the parties and the contradictions in testimonies of P.W. 1 and P.W. 4. No doubt, the learned trial court mentioned several paragraphs of the case diary in the impugned judgment to show that, in course of investigation, independent witnesses had stated before the Investigating Officer that they had not seen any person putting



the house of P.W. 4 on fire but, even if, the aforesaid portion is excluded from the impugned judgment, then also, it is obvious that P.W. 2 and P.W. 3 had not named any person before the Investigating Officer and except P.W. 1 and P.W. 4, there was no any other witness in support of the prosecution case and so far as P.W. 1 and P.W. 4 is concerned. The learned trial court doubted the veracity of their statements on the ground that they improved their statements in course of trial. No doubt, the learned trial court has passed a very sketchy judgment but it appears that the learned trial court has come on correct finding and there is no scope to differ with the findings of the learned trial court, accordingly, this criminal appeal stands dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.04.2019
Transmission Date	09.04.2019

