

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1011 of 2023

Arising Out of PS. Case No.-144 Year-2010 Thana- BABUBARHI District- Madhubani

Manoj Kumar Jha, Son of Radhubeer Jha, Resident of Village- Rahikpur
Misrauli, P.S.- Babubarhi, District- Madhubani

... .. Appellant

Versus

1. The State of Bihar
2. Devanand Jha, Son of Late Airav Jha, Resident of Village- Rahikpur P.S.-
Babubarhi, Dist- Madhubani
3. Bharat Jha, Son of Late Durganand Jha, Resident of Village- Rahikpur, P.S.-
Babubarhi, Dist- Madhubani
4. Phul Kumar, Son of Devanand Jha, Resident Village- Rahikpur, P.S.-
Babubarhi, Dist- Madhubani
5. Nathuni Jha, Son of Devanand Jha, Resident Village- Rahikpur, P.S.-
Babubarhi, Dist- Madhubani
6. Bhawan Jha, Son of Late Durganand Jha, Resident Village- Rahikpur, P.S.-
Babubarhi, Dist- Madhubani

... .. Respondents

Appearance :

For the Appellant/s : Mr. Sumit Kumar Jha, Advocate
For the Respondent/s : Mr. Bipin Kumar, Addl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

8 27-03-2024 Heard learned counsel for the appellant and Mr. Bipin
Kumar, learned Additional PP for the State.

2. We have also perused the learned trial court's
records.

3. The appellant in this case is the informant of
Babubarhi P.S. Case No. 144 of 2010 registered for the offences
punishable under Sections 341, 323, 448, 379, 436/34 of the



Indian Penal Code (in short 'IPC'). He is aggrieved by and dissatisfied with the judgment of the learned 3rd Additional Sessions Judge, Madhubani passed on 28.07.2023 in Sessions Trial No. 152 of 2012/CIS Registration No. 2060/2013 and order dated 28.07.2023 by which the learned trial court has acquitted the accused persons (Respondent Nos. 2 to 6) of the charges under Sections 436, 379, 448 IPC while convicting them under Section 323, 341/34 IPC and released them giving the benefit of Section 3 of the Probation of Offenders Act.

4. Learned counsel for the appellant submits that as per the prosecution story, on 22.12.2010 at 08:00 A.M., the accused persons, namely, Devanand Jha, Nathuni Jha, Bharat Jha, Bhawan Jha and Phul Jha having *lathi* and *farathi* in their hands assembled at the house of the informant (PW-2) and started to destroy his house and the boundary. According to PW-2 who has lodged the written report giving rise to the first information report, he objected to the said action of the accused persons whereupon he was assaulted. It is alleged that Nathuni Jha took out the matches and put the house of Manoj Kumar Jha on fire causing complete burning of the house and household articles. PW-2 claimed that in the said fire, household articles worth about Rs.10,000/- were lost. He further alleged that in the



meantime Bharat Jha and Bhawan Jha took away eight *bhar* gold and Rs.40,000/- in cash from his house and that the reason of the incident was a land dispute between them.

5. Learned counsel submits that in support of the prosecution case, altogether seven witnesses were examined. The learned trial court has found that PW-1 is an independent witness whereas PW-2 to PW-4 are the related witnesses. PW-5 has been declared hostile and PW-6 and PW-7 were though not declared hostile but they have stated completely against the case of the prosecution with a clear intention to demolish the prosecution case. The Investigating Officer (in short 'IO') and the doctor could not be examined in course of trial, therefore, the learned trial court concluded that the prosecution had failed to establish the charge under Sections 436, 379 and 448 IPC.

6. Learned counsel has given much emphasis on the evidence of PW-1. It is submitted that PW-1 is said to be an independent witness. He has stated in his examination-in-chief that Devanand Jha had ordered to put the house at fire and Nathuni Jha had burnt the house of Manoj Kumar Jha by a matches whereafter the accused persons had entered into the house of Manoj Kumar Jha and committed *lootpaat*.

7. It is submitted that although in the cross-



examination, PW-1 has stated that Manoj Kumar Jha had no permanent house but that cannot be a reason to discard the evidence of PW-1 that he had seen Nathuni Jha burning the house of Manoj Kumar Jha by a matches. It is submitted that non-examination of the I.O. and the doctor would not prove fatal to the prosecution case. It is submitted that the learned trial court could not appreciate the prosecution evidence and has wrongly acquitted the accused persons (respondent nos. 2 to 6) from the charges under Sections 436, 379 and 448 IPC and then committed further wrong by giving benefit of Section 3 of the Probation of Offenders Act to respondent nos. 2 to 6.

8. On the other hand, Mr. Bipin Kumar, learned Additional PP for the State submits that in the present case PW-1 has stated in his examination-in-chief that immediately after coming to the house of Manoj Kumar Jha, Devanand Jha had ordered to put the house at fire. This witness has stated that Nathuni Jha had put the house at fire by matches and thereafter the accused persons entered into the house. It is submitted that it is highly unbelievable that the accused persons would enter into the burning house. If the house itself was put to fire immediately after the accused persons came there, then the prosecution case that 'thereafter the accused persons entered into the house and



committed *lootpat*' is not believable.

9. Learned Additional PP further submits that PW-2 who is the informant of the case has stated in his written complaint (Exhibit '1') that the cause of occurrence is a land dispute which is going on between the parties but in his cross-examination, PW-2 has stated in paragraph '7' that there is no land dispute between the parties. He was contradicted by drawing his attention towards the written complaint (Exhibit '1') then he admitted that he had written the same as cause of occurrence. PW-2 could not say as to which land there is a dispute. It is pointed out that in paragraph '3' of his examination-in-chief, PW-2 has stated that accused persons had nothing to do with this house.

10. It is lastly submitted that in this case neither the place of occurrence has been proved by the prosecution nor any seizure list of the burnt house or material could be proved. The I.O. has not been examined and the prosecution witnesses including PW-2 have not provided clear description of the place of occurrence. In such circumstances, no perversity may be found with the findings of the learned trial court.

11. So far as the release of the accused persons under Section 3 of the Probation of Offenders Act for the offences



under Sections 323 and 341/34 IPC is concerned, learned Additional PP submits that the accused persons bear no criminal antecedents and the learned trial court has found that the alleged occurrence took place in a spur of moment, in the circumstances, if the learned trial court has granted benefit of Section 3 of the Probation of Offenders Act to the accused persons, no fault may be found with the same.

12. Having heard learned counsel for the parties and on perusal of the records, we agree with the submissions of learned Additional PP for the State.

13. In this case, the informant (PW-2) has himself stated in his examination-in-chief that the accused persons had nothing to do with the house. In his cross-examination, he has stated that there was no land dispute between the parties. In fact, his statement in the written report (Exhibit '1') that the cause of occurrence is a land dispute stands falsified from his own statements.

14. We further find that in his examination-in-chief, PW-1 has stated that immediately after arriving at the house of Manoj Kumar Jha, Devanand Jha had asked to put the house on fire and Nathuni Jha had put the house on fire by matches. PW-1 states that thereafter the accused persons entered into the



house. It is highly unbelievable that the accused persons would enter into the house after putting the same on fire.

15. We further find that in this case, the prosecution witnesses have not proved the place of occurrence, no seizure list of any burnt article or material has been proved and the learned trial court has rightly recorded that the prosecution witnesses such as PW-6 and PW-7 have rather destroyed the case of the prosecution.

16. We are, therefore, of the considered opinion that no fault may be found on the part of the learned trial court in appreciation of the evidences on the record.

17. This appeal has no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

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