

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.68 of 2006**

MANOJ SINGH Son of Ramadhar Singh, Resident of Village-Raypur
Chor, P.S. Baddy (Sheosagar), District- Rohtas.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 86 of 2006

1. SATYENDRA SINGH, Son of Late Lali Singh
2. BABAN SINGH, Son of late Sitaram Singh
3. Krishna Singh, son of late Daroga Singh
4. Kamu Singh @Ajay Kumar Singh, son of Badri Singh
5. Ranjan Singh, Son of Abhimanyu Singh
6. Chandrama Singh, Son of Late Mundrika Singh
7. Sudama Singh, Son of Late Munsi Singh
8. Dhirendar Kumar Singh, Son of Late Kedar Singh

All appellants are residents of Village-Raipur, Police Station-
Sheosagar, District- Rohtas.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 68 of 2006)

For the Appellant/s : Mr. Shashi Shekhar, Adv.

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

(In CRIMINAL APPEAL (SJ) No. 86 of 2006)

For the Appellant/s : Mr. Sashi Shekhar, Adv.

For the Respondent/s : Mr. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT**

Date : 20-03-2024

Heard Mr. Shashi Shekhar learned counsel appearing
for the appellants and Mr. Abhay Kumar and Ms. Anita Kumari
Singh, learned Additional Public Prosecutors for the State.



2. These appeals have been preferred by the appellants being aggrieved and dissatisfied with the judgment of conviction and order of sentence passed by learned Additional Sessions Judge, FTC No.II, Rohtas at Sasaram, dated 10.1.2006 in Sessions Trial No. 409/1988, whereby and whereunder all the appellants/convicts including Manoj Singh were convicted u/s 448, 342, 143 of the Indian Penal Code. Further the appellants Kamo Singh, Krishna Singh, Baban Singh and Chandrama Singh were found guilty u/s 323 of the I.P.C. and the accused-appellant Manoj Singh was found guilty also u/s 436 of the I.P.C. The appellant/convict Manoj Singh was sentenced to undergo rigorous imprisonment for six years u/s 436 of the IPC. Appellants/convicts appellants Kamo Singh, Krishna Singh, Baban Singh and Chandrama Singh were sentenced to undergo rigorous imprisonment for one year u/s 323 of the I.P.C. Further, all the appellants including Manoj Singh were sentenced to undergo rigorous imprisonment for one year u/s 448 of I.P.C. one year u/s 342 of the I.P.C. and also, they were sentenced for six months under section 143 of the I.P.C. All the sentences were directed to run concurrently.

3. The prosecution case, according to the F.I.R. is that on 6.11.1986 while the P.W.-5 (informant) was at his door, the



appellants Kameshwar Singh, Krishna Singh, Baban Singh and Chandrama Singh came at the house of informant and demanded cock but the informant denied to give the same upon which, the above-named accused/appellants assaulted him by leg, fists & slaps. When the brother of the informant tried to save him, the accused persons also assaulted him. Again at 5-6 P.M., the above named accused along with other accused Manoj Singh, Ranjan Singh, Chhotelal Singh, Satendra Singh, Dharendra Singh, Sudama Singh came and entered the house of the informant after breaking lock of door. The informant fled away but his brother Murari Ram and nephew Basishta were present. The appellant Manoj Singh lit fire by match due to which thatched of his brother Nandu Ram burnt at some extent. In the meantime, villagers came and extinguished the fire and all the accused persons fled away. In the alleged occurrence, the informant and his brother sustained injuries on their bodies.

4. On the basis of aforesaid written application of the informant, police registered a formal FIR on 6.11.1986 as Harijan Dehri P.S. Case No. 45 of 1986. After completion of investigation, investigating officer submitted charge sheet against the appellants/convicts. On the basis of charge sheet and materials available on record, cognizance for the offence



was taken and the case was committed to the court of Sessions for its disposal.

5. The defense of the appellants/convicts totally denied from the charges leveled against them and pleaded for their innocence.

6. The point to be considered in this appeal before this Court is whether the prosecution has been able to convict the appellants/accused persons beyond the shadow of reasonable doubt or not.

7. To establish its case before the learned trial court, altogether five witnesses had been examined on behalf of the prosecution, namely, PW-1 Manjharo Devi, PW-2 Nandu Ram, PW-3 Murari Ram, PW-4 Basisth Ram as well as PW-5 Sadhu Ram (informant).

8. P.W.-1, Manjharo Devi and P.W.-5 Sadhu Ram (informant) have not supported the prosecution case in their depositions and they were turned hostile by the prosecution.

9. P.W.-2, P.W.-3 & P.W. 4 have deposed in respect of manner of occurrence, time of occurrence and place of occurrence. P.W.-2 Nandu Ram deposed in his evidence regarding assault on the informant Sadhu Ram and setting of fire in the house by appellant Manoj Singh. P.W.-3



Murari Ram also deposed about the assault on the informant Sadhu Ram and setting of fire by accused persons. Both the witnesses further stated that the accused persons took away the nephew of the informant (P.W.-4). P.W.-4 Basisth Ram who is said to be injured, also deposed in his evidence that the accused persons took away and assaulted him.

10. Learned counsel appearing on behalf of the appellants has submitted that the judgment and order passed by the trial court is bad in law. He further submitted that P.W.-1 Manjharo Devi as well as P.W.-5 Sadhu Ram (informant) have not supported the case of prosecution in their depositions during trial. P.W. 3 and P.W.4 who are said to be injured in the alleged occurrence, have not named the appellant Manoj in respect of setting fire in the thatched of Nandu Ram. Although, P.W.-2 Nandu Ram specifically deposed in his evidence regarding setting fire in his house by appellant/convict Manoj Singh but during investigation, he had stated before police that he was not present at the house and he came to know about the occurrence by his brother/informant. It is also submitted that the FIR was seen by learned Special Judicial Magistrate on 14.11.1986 after a delay of seven days and this inordinate delay of seven days is



completely violative of the provision under section 157 of the Cr.P.C. The Investigating Officer has not been examined who could have explained the delay in sending the FIR to the Magistrate thus, this unexplained delay is fatal to the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but the failure to explain the delay would require the court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. It is also submitted that in this case, the Investigating Officer was not examined by the prosecution and due to his non-examination, the defense heavily caused prejudice to restrain to the defense to make question in respect of contradictions deposed by the Prosecution witnesses which were not sated before I.O. It is further submitted that the Doctor who had treated the injured, was not examined by the prosecution and there is also no any medical or injury report available on record to support the allegation of causing injury.

11. *In contra*, learned APP appearing for the state have opposed and submitted that the judgment of conviction and order of sentence passed by the trial court is based on consistent and cogent evidence which are produced during the



trial against the appellants and the same is fit and proper and is likely to be upheld. All witnesses proved the manner, time and place of occurrence in their evidence.

12. I have gone through the entire prosecution evidence and other materials available on record, it is evident the informant who lodged the FIR, has been examined as P.W.-5 but he has not supported the prosecution case. P.W.-1 Manjharo Devi has also turned hostile during trial. In this case, P.W.-2 Nandu Ram in para 13 & 14 of his deposition, he denied the suggestion that he was not present at the place of occurrence. Though the informant in the F.I.R. stated that P.W.-2 Nandu Ram was present at the place of occurrence but this witness denied his presence at first part of occurrence and clearly deposed in para-2 of his deposition that he returned from Siwan at 1:00-1:30 PM. He also stated that appellant Kamo Singh assaulted him with the handle of gun and he was treated by Dr. Bhuwadeshwar Lal of the village but no injury report or prescription of the doctor has been produced to support the said occurrence. He further deposed in respect of setting of fire by the appellant/convict Manoj Singh but there is no seizure of any burnt material or anything pertaining to burning. The allegation is completely based on oral evidence.



I.O. has not come to depose regarding any inspection of the place of occurrence, showing evidence of burning the roof of the house.

13. P.W.-3 Murari Ram, brother of the informant, who represents him as eye witness of the first & final part of occurrence. He claims to have suffered some injuries but he did not see which of the accused persons set the house on fire.

14. P.W.-4, Basisth Ram, nephew of the informant deposed in his evidence that the accused/appellants took him to their house and assaulted him after confining him in a room but anyhow he fled away. He did not refer to the incident regarding demand of cock and dispute. In para-5 of his deposition, he stated, while he was in confinement, he fled away just after ten minutes and thereafter returned to his village after more than a month but in para-6, he stated that he did not remember as to whether he said before police that he fled away out of fear and went to the house of his relative. The allegation of taking away or confining P.W.-4 Bashisht Ram is contradictory as P.W.3 Murari Ram stated that he made free the P.W.-2 & P.W.-5 from their house thus they were not in a position to see the occurrence of abduction or wrongful confinement of Bahisht Ram.



15. The entire allegations were in three parts. Firstly, there was a demand of cock which was denied by the informant but the P.W.2 Nandu Ram in para-2 of his deposition clearly stated that all the accused went away after taking the cock. Second part of the allegation is assault to the informant (P.W.-5) who alleged to sustain injury on his chest and left temple but there is no injury report is available on record to support the prosecution case and P.W.-5 Sadhu Ram (informant) also turned hostile. The P.W.-3 Murari Ram also claimed to sustain injury during course of assault and was treated by Dr. Bhuwadeshwar Lal of village but neither any prescription has been produced nor the doctor has been examined who supports the allegation of injury caused to P.W.3. It is established law that the proving of the injury report is necessitated to establish the prosecution case beyond the reasonable doubt and the medical evidence should be suffice and corroborative to prove the prosecution case in consonance with the oral evidence. Due to non-examination of doctor, the prosecution failed to prove the injury in respect of assault. The third or final part of case is causing mischief by fire. In respect of this, P.W.-2 Nandu Ram clearly stated in his examination-in-chief at para-2 that when the accused



persons came at his door, he along with Sadhu Ram (P.W.-5) and Murari Ram (P.W.-3) concealed themselves because of fear and later on *hulla*, he came to know about setting fire in the house. Thus, it clearly shows that at that time P.W.-2, P.W.5 (informant) and P.W.-3 have not seen the occurrence of setting fire. P.W.5 (informant) returned to his house and learnt about the occurrence from Murari Ram, P.W.3.

16. I found much force in the contention raised on the behalf of the appellants that there is material improvement. Whatever has been stated here by P.W. 2, 3 & 4 in their examination-in-chief, has not been stated in their statement before I.O. during investigation. They have materially improved their case in the course of trial. Attention of these witnesses has been drawn to their statement made before police u/s 161 of the Cr.P.C. Since the investigating officer was not available or examined in this case, no questions could be put to them during the trial to bring out contradictions in the statements of the witnesses. The testimony of witnesses has revealed contradictions to their earlier statements. According to depositions vide para-13 of P.W.2, Para-15 of P.W.-3 and Para-6 of the PW-4, none of the witnesses are eye witnesses to the occurrence. Thus, the same



prevented the defense to complete the process of impeaching the credit of witnesses in terms of section 155(3) of the Evidence Act and non-examination of I.O. has greatly prejudice to the case of prosecution and is fatal to the same. Non-examination of I.O. *ipso facto* does not discredit the prosecution version. The right of bringing the record of contradictions in the statement of witnesses made before I.O. is a very valuable right of the accused and by showing that the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the Court that the witnesses are not reliable witness.

15. Thus, in my view, non-examination of Investigation officer in the present case is a serious infirmity resulting prejudice being caused to the appellants, therefore, conviction of the appellants cannot be sustained on this score.

16. In light of the above discussions and considering the facts and circumstances of the case as well as evidence available on record, I am of the considered view that prosecution has failed to prove the charges leveled against the accused-appellants beyond reasonable doubts. The impugned judgment of conviction and order of sentence is hereby set aside.



17. The appellants are acquitted by giving benefits of doubt and they are discharged from the liabilities of the bail bonds.

18. Accordingly, these appeals are hereby allowed.

(Sunil Kumar Panwar, J)

Amandeep/-

AFR/NAFR	NAFR
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