

Tun Tun Sah and Other Vs. the State of Bihar

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Court : Patna

Decided On : Mar-07-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) Nos. 216 & 369 of 2002

Appellant : Tun Tun Sah and Other

Respondent : The State of Bihar

Judgement :

1. None appears on behalf of the appellants in Cr. Appeal (SJ) No. 216 of 2002. Heard Mr. S. S. P. Yadav, learned counsel appearing on behalf of the appellant in Cr. Appeal (SJ) No. 369 of 2002, and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State in both the appeals.

2. The two appeals arise out of a judgment dated 10.04.2002 by which the two appellants of Criminal Appeal No. 216 of 2002 and the solitary appellant of Criminal Appeal No. 369 of 2002 were held guilty of committing offence under Section 436 of the Indian Penal Code. Appellants Tun Tun Sah and Shivji Mishra, after being heard on sentence, were directed to suffer rigorous imprisonment for seven years while appellant Rohit Sah was directed to suffer rigorous imprisonment for five years. The appellants have questioned the judgment of conviction and order of sentence passed against them by preferring the two appeals.

3. Informant Ram Bahadur Sharma, P.W. 16 lodged a written report stating that while he was sleeping in his house, the accused persons carrying a can of kerosene in their hands were seen moving towards the stock of fodder and were further seen to sprinkle kerosene oil, and to set the same at fire. The informant stated that when the flames were up and illuminating, he and others raising alarm, chased the accused who ran away. Allegation was that on account of arson indulged into by the appellants, the informant had incurred a loss of Rs. 10,000/- as his flour mill and other articles stored therein were completely gutted.

4. On the basis of the written report, the First Information Report was drawn up and the case was ultimately submitted for trial by sending up the appellants.

5. The defence of the appellants appears to a piece of land on which the structures were standing for which the parties had been litigating since very long and probably some proceedings also ended in some orders and, as may appear from the evidence of P.W. 3 Surji Devi, the informant was claiming the land by virtue of a purcha issued under the Bihar Privileged Persons Homestead Tenancy Act, 1947 (hereinafter referred to as the BPPHT Act). The accused persons claimed that the land was theirs and the structures were also theirs and it was set at fire by the informant and others for which they had lodged a case.

6. As many as eighteen were witnesses examined, but what I find is that P.W. 1, Bilat Mahto was not an eye witness and he said that he had heard that the accused persons had set the Jhopri of the informant at fire and initially there was a Halla that the flour mill of the informant caught fire and he rushed with a bucket to douse the flames. P.W. 2 Basudev Poddar did not support the prosecution story and stated that he did not know anything about the facts of the case and as such, was declared hostile.

7. P.W. 3, Surji Devi happens to be one of the family members of the informant and has admitted in paragraph 9 that the prohibitory under Section 144 had been passed in favour of the accused persons and thereafter the act of arson had been committed. But in the next line the witness said that it were the accused persons who had set the Jhopri and other structures belonging to the informant at fire. The curious aspect of the evidence of P.W. 3 was that she stated having identified the

accused persons while they were moving with the can of kerosene in the electric light coming from the railway station. In paragraph 12, P.W. 3 admitted that the station was at a distance of two miles from her house and further that she had retired to sleep and was sitting inside her house when she heard a Halla and came out to find that the flames were leaping into air from the place of occurrence.

8. P.W. 4, Damodar Mahto very clearly stated that he did not see anyone setting fire to the house or to any structure, and had merely learnt about the act being committed by the accused. Likewise, P.W. 5, Rameshwar Mahto stated that he was sleeping when he heard the Halla that the house of the informant had caught fire and he came out and started dousing the flames during which course he did not know the names of any person who should have committed the offence. In paragraph 6, the witness stated that the Jhopri which was set at fire indeed belonged to the accused persons.

9. P.W. 6, Ram Sogarath Singh was tendered while P.W. 7, Arhulia Devi had given her evidence in support of the prosecution, but in paragraph 5 of her evidence, she had given the reasons as to why she had deposed falsely in the case. She stated in the Court that since last ten years, the accused persons had lodged 10 to 20 cases against her son and had harassed them thoroughly and the litigation rendered the family pauper and on account of the litigation which was thrust on the family her husband also died. On account of this enmity she had come out to support the prosecution case, as appears, stated by her in last line of paragraph 5. If this was the reason for deposing in Court as was admitted by P.W. 7, it seems that her evidence ceases to be of any importance. Moreover, the lady stated that she was easing by sitting inside a ditch which was 12 feet deep from the normal surface of the land and when she had seen the flames going up into the air, she could learn that some arson had taken place. This lady, thus, is not an eye witness.

10. P.W. 8, Kari Mahto stated that he found the house at fire and rushed out to douse the flames but could not see as to who had set the same at fire. P.W. 9, Rajendra Sharma was declared hostile while P.W. 10 Bishundeo Pandit stated that when he came at the scene of occurrence, the house was already half burnt

and he doused the fire and did not see anyone committing the arson. P.W. 11, Tarkeshwar Singh was a formal witness and P.W. 12, Pachu Ram a Chowkidar also did not see anyone setting fire to the house rather stated that many persons were seen by him dousing the flames. P.W.13, Ramswarup Jha was a mere formal witness and P.W. 14, Ramchandar Singh had only tendered the rent receipts in evidence. P.W. 15 is Ram Balak Sharma who has also not seen the occurrence, as appears from his evidence, and appears inimically deposed towards the accused persons.

11. P.W. 16, Sri Bahadur Mistri was the informant of the case and he has admitted all sorts of enmity as appears from paragraph 10 onwards of his deposition. In spite of having supported the allegation in examination-in-chief, what appears from paragraph 39 of his evidence was that he could not have seen as to who had set the house or other structures at fire because he had seen anything only after the flames had erupted and had merely said that he had seen the accused persons. P.W. 17, Sri Rajdeo Singh was also a formal witness and P.W. 18, Yognath Jha was also a witness of formal character who had tendered the purcha issued to Ram Bahadur Singh, the informant under the BPPHT Act.

12. Thus, on a reappraisal of the evidence of eighteen witnesses what this Court finds is that there was a land dispute and there was a probability that the land might be in possession of the accused persons as was admitted by P.W. 5 Rameshwar Mahto. Witnesses were seriously inimical and their honesty was also crude, as may appear from evidence of P.W. 7, Arhulia Devi that they had landed up in the Court below to depose only because they had been harassed by the accused persons in not less than about twenty litigations. P.W. 7 has admitted that the enmity was the reason for her to come into the witness box to depose falsely. If this could be the nature of evidence and none appears having seen the occurrence, in the background of enmity and dispute for the land, it could not be a case in which the accused persons would have been convicted.

13. In the result, the appeals are allowed. The judgment of conviction and the order of sentence passed upon the three appellants are hereby set aside. They are on bail. They shall stand discharged from the liabilities of their respective

bonds.

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