

Chamari Yadav Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Aug-27-2015

Appellant : Chamari Yadav

Respondent : The State of Jharkhand and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI. Cr. Appl. (DB) No. 211 of 2014 Chamari Yadav, S/o Late Anhach Yadav, resident of village Paradih, PO & PS Sadar, District- Chatra Appellant -V e r s u s- 1. The State of Jharkhand.

2. Saheb Rana @ Shyamdeo Rana, S/o Biru Rana.

3. Chetlal Rana, S/o Late Bishun Rana.

4. Santosh Rana, S/o Chetlal Rana.

5. Umesh Kumar Rana, S/o Biru Rana.

6. Ghanshyam @ Pintu Rana, S/o Khirodhar Rana.

7. Bholi @ Mukesh Rana, S/o Gandrauri Rana.

8. Biru Rana, S/o Late Bisni Rana 9. Gandrauri Rana, S/o Late Bisni Rana. All residents of village Paradih, PO & PS Sadar, District Chatra. . . . Respondents
CORAM: - HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE
HONBLE MR. JUSTICE P.P. BHATT. For the Appellant : - Mr. Anil Kumar Ganjhu,

Advocate For the State : - Mr. Hardeo Pd. Singh, A.P.P. For the Respondent Nos. 2 to 9 :- Ms. Nehala Sharmin, Advocate ... Order No.15/Dated:

27. h August, 2015 Per Virender Singh, C.J.

1. Vide impugned judgment dated 24.01.2014 of the learned Additional Sessions Judge-II, Chatra, respondent Nos. 2 to 9 earned acquittal for the charge of Sections 148, 436 and 427, IPC for setting dwelling house of the appellant-complainant Chamari Yadav (PW-3) ablaze and committed mischief by damaging household articles along with clothes, bed sheet etc. on 10.03.2004 at village Paradih falling within the jurisdiction of police station Sadar (District Chatra).

2. During pendency of the instant appeal, acquitted accused, namely, Khiru Rana died, as such his name was deleted from the array of respondents. Instant appeal, thus, survives qua remaining eight acquitted accused- respondents, who after being put to notice, have put appearance through Ms. Nehala Sharmin, who has chosen not to come today to assist the Court. 2 However, trial court record is available to the Court and with the assistance rendered by learned counsel for the appellant-complainant, we have gone through the same. Some material evidence has been read over to the Court also.

3. Admittedly, State has not preferred any appeal against the acquittal earned by the private respondents.

4. We do not feel the necessity of entering into the details of the prosecution case as in our considered view, the evidence of appellant- Chamari Yadav is not at all convincing. The learned trial court while disbelieving his evidence in para-15, impugned judgment, has entered into the detailed discussion. The evidence of Yugal Kishore Singh, S.I. and the Investigating Officer of the present case has also been discussed in detail. It would be apt to reproduce para-16 in this regard. It reads:

16. Considering the trend of the deposition of the witnesses in my opinion the deposition of I.O is very important in this case. Yugal Kishore Singh P.W.8 is S.I and posted in special branch. He has inspected the place of occurrence. Before

the court he has stated that the place of occurrence is under khata No.70 plot No. 734 area 1.6 acres. It is one room house constructed by brick and earth. The room is about 25 fit long in North south and 10 fit wide in East west. The frame and doors of the house were found in place. This aspect of the evidence of the I.O P.W. 8 contradicts the version of Chamari Yadav P.W.3 in which he has stated that the accused have broke upon the door and entered in his house. The I.O. P.W-8 has found one earthen pitcher and one newly constructed earthen oven. He found both these things as fresh kept in a corner. One half burnt small cot was kept. There was no sign of keeping of utensils, hen, cock or any other things. It appears from inspection of place of occurrence that only to prove the possession this house was constructed. He found one bag, which was burnt and kept towards western side of the house and many broken Nariya. The 3 wall towards north, south was about ten fits high, whereas towards east west it was five fit high. In north there is house of Mahadeo in south house of Balmiki, in west house of Mahabir and in east open land. He did not find any sign of keeping cattle there. In presence of the witnesses the partly burnt cot and bag were seized and brought to police station. Seizure list was prepared. He has filed the charge sheet u/s. 144, 448, 435, 427 of the I.P.C. He categorically states that the place of occurrence was not residential house, rather only to possess the land this house was constructed. After going through the evidence of this witness, I find that in clear terms he has stated that it was not residential house. Moreover, on the point of setting even this house on fire the material witnesses have contradicted each other.

5. Defence evidence brought by the respondents-acquitted accused is also worth consideration. DW-1 Ashok Yadav when stepped into witness box categorically stated that the appellant-complainant has no house and land near Paradih bridge and that the accused were possessing the disputed land. In para-17 of the impugned judgment, the learned trial court has disbelieved the case of the appellant-complainant in the flashback of the previous events and it reads:

17. In defence D.W.1 Ashok Yadav is examined who is resident of same village and has stated that Chamari Yadav is a fraud and he has no house and land near Paradih bridge. Accused are possessing the disputed land. Kedar Mishra D.W.2 is

the typist, who has proved the complaint petition filed by Sri Aditya Yadav learned advocate which was typed by him. D.W.-3 Kapildeo Yadav has proved signature of Chamari Yadav P.W.-3 on the F.I.R of Sadar P.S. Case No. 62/04. After going through the certified copy of the order sheet dated 21.06.05 passed by the then learned 1st A.D.J.

Chatra in Criminal revision NO. 67/2003 filed by Ganduari Rana and others against Chamari Yadav and others against the order passed on 22.11.03 by the then learned Executive 4 Magistrate Chatra in Misc. Case NO. 67.2003 u/s.144 Cr.PC. I find that the said order was set aside and the revision was allowed. In *Lalu Mahto @ Lalu Yadav* case reported in 2000 East. Cr.C. 1174 Patna the Hon'ble Court has been pleased to hold that setting of house of informant on fire-article kept in room burnt to ashes- motive being land dispute- all the four eye witnesses belonging to same family and enmical to accused-non examination of I.O causing prejudice to accused. Discrepancy as to lodging of F.I.R. and as to preparation of seizure list. Non sustainability of conviction. In this case also I find that this case was instituted on the basis of complaint petition. The material witnesses as discussed above have contradicted each other on the point of manner of occurrence and also on other vital facts. The I.O. P.W.8 has not produced any seizure list before the court of the burnt articles and in clear terms he has stated that the house in question was not residential house. In a criminal case on the basis of these type of shaky evidences, in my opinion it is not safe to record the conviction of accused. On the basis of above discusses, I find that the prosecution failed to prove the case against the accused persons beyond reasonable doubt. So I order that the accused are found not guilty and the accused named in cause title of this Judgment are acquitted by giving them benefit of doubt. Santosh Rana is in custody, so he is ordered to be set at liberty at once, if not required in any other case. Other accused are on bail. So they are discharged from the liabilities of their respective bail bonds.

6. After rescanning the entire evidence once again on the settled yardsticks of appreciating an appeal against acquittal, we are of the considered view that the case of the complainant is shrouded under thick clouds of doubts and that the learned trial court has rightly disbelieved the same. Reasons recorded by the trial

court for acquitting the accused are absolutely justified, as such, no interference is warranted. 5 7. It is well-settled that appellate Court would interfere with the order of acquittal only when the court-below ignores or overlooks important circumstances and proved facts and misapplies the principles of criminal jurisprudence. Here is a case in which the learned trial court has not overlooked any material circumstances put forth by the prosecution in support of its case. In our considered view, it is a well reasoned judgment based on appreciation of entire prosecution case in its right prospective.

8. As a sequel to the aforesaid discussion, net result is that the appeal on hand filed by the complainant-appellant merits dismissal.

9. Ordered accordingly. (Virender Singh, C.J.) (P.P. Bhatt, J.) APK/SB/LAK

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