

(2009) 04 PAT CK 0067
In the Patna High Court
Case No : Criminal Appeal No. 2 of 1998

Chandrama Pandey and Others APPELLANT
Vs
The State of Bihar RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 149, 323, 324, 436

Citation : (2009) 4 PLJR 921

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : R.S. Pradhan, Amrendra Narayan Rai and Rajeev Lochan, for the Appellant; R.N. Jha, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The five appellants have been convicted under Sections 323, 324, 436/149 of the Indian Penal Code by the 5th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 370 of 1986. The appellants have been convicted to undergo rigorous imprisonment for ten years and also a fine of Rs. 5000/- u/s 436/149 of the Indian Penal Code, to undergo rigorous imprisonment for two years u/s 324/149 of the Indian Penal Code and further to undergo rigorous imprisonment for six months u/s 323/149 of the Indian Penal Code. All the sentences are to run concurrently.

2. The prosecution case is based on the fardbayan of Chhotan Ram. According to the informant, there is a plot of land 709/716 having an area of 13 decimals situated at village Jagdishpur which was in the possession of the informant and other harijans of the village. It is said that there were dwelling houses over that plot which were allocated to them by the Block Development Officer by distributing them purchas sometime in the year 1974-75. The occurrence is said to have taken place on 02.03.1983 where it has been alleged that the accused persons came over the plot where the informant and others had their residential houses and Chandrama Pandey is said to have fired on Sampi Devi and it is also

alleged that all the other persons set fire to the huts belonging to the informant Chhotan Ram, Ram Lal Ram, Sant Lal Ram and Dudh Nath Ram.

3. On the basis of the fardbayan, the investigation was made and the trial commenced. Five witnesses have been examined in this case. PW 1 Sampi Devi is the wife of Dudh Nath Ram whose house was allegedly burnt. According to her, Chandrama Pandey had fired causing injury on her hand. The other accused are said to be variously armed. This witness denies that the land belonged to Chandrama Pandey and also denies the suggestion that infact her husband and she were not in possession over the said land.

4. PW 2 Raj Muni Devi is the wife of the informant. She supports the case made out in the First Information Report and also alleges that she received fire arm injuries At paragraph 5, this witness has stated that the plot of land on which her hut was constructed is her khatiyani land and that there is no dispute with Chandrama Pandey regarding the said lands. She goes a step further and claims that she is still living on the said plot of land seven years after the alleged occurrence. This witness has further stated that at the time when the firing was taking place, her husband was not in the house. She has further stated that even when the accused persons set fire to the huts of the informant and others, her husband was not present at the spot. At paragraph 8, she further states that she did not meet her husband at all on the alleged date of occurrence. A suggestion has been given to her that she had not stated before the Investigating Officer that the appellant No. 2 was earning a gun and others were also armed with lathi and bhala or that they did not set fire to their houses.

5. On perusal of the evidence of this witness, it appears that she is not speaking the truth which will be apparent when this Court will discuss the exhibits brought on record by the defence with respect to the plot of land in question. Raj Muni Devi is not truthful when she says that the lands are her khatiyani lands. Second aspect of her evidence which is notable is that she denies that her husband was present in the house or that she even met him on the date of occurrence which would virtually give a fatal blow to the prosecution case as it is based on the statement of the husband of this witness.

6. PW 3 Anupi Devi has also deposed before the Trial Court wherein she has supported the fact that the appellants had set fire to the houses of four persons. This witness claims that all the accused persons were armed with guns and pistol which is contrary to the case made out in the First Information Report or by PWs 1 and 2. This witness has tried to improve the prosecution case by aggravating the entire allegations which does not inspire confidence. She claims to be the witness of the second part of the allegation i.e. setting fire to her house along with the houses of other three persons At paragraph 5, she states that she went to call Chhotan Ram, the informant, whereas his wife claims that she did not meet Chhotan Ram on the date on which the occurrence had taken place. Another aspect worth mentioning is that according to this witness, nobody tried to douse the fire and no one else came to the place of occurrence even after the

huts had allegedly caught fire. She does not remember the articles in her house that were burnt. She has tried to make specific allegations against Ramashray and Ramadhar by alleging that they were responsible for setting fire to the houses of PW 5, the informant.

7. PW 4 Chote Lal Ram has supported the case as made out in the First Information Report. He has denied the suggestion that no occurrence had taken place as described in the First Information Report with respect to either the injury alleged to have been inflicted on PWs 1 and 2 or with respect to the offences u/s 436 of the Indian Penal Code.

8. PW 5 Chhotan Ram, the informant, claims that he had climbed on the roof of Sukhdeo Ram and he saw the occurrence from the roof of Sukhdeo Ram. With respect to the land in question, it has been stated by him that he along with others are in possession by virtue of being granted basgit purchas in the year 1974-75 and the occurrence has been engineered by the appellants in order to show that the informant and others should vacate the lands in question. This witness admits that Chandrama Pandey had filed a writ petition in the High Court and this Court had cancelled the basgit purchas granted to the informant and others, however, he denies that by virtue of the order of the Court, Chandrama Pandey came into possession over the lands. This witness denies that any case with respect to contempt of the Court's order was instituted in the High Court and also denies that he had filed CWJC No. 513 of 1983 after Chandrama Pandey had been given possession by the Anchal Adhikari. In other words, this witness admits that the lands in question belong to Chandrama Pandey and that the informant and others were trespassers on the land.

9. Two questions have to be considered by this Court in this case. The first aspect of this case is that whether the occurrence took place in the manner described by the prosecution. The allegations made by the witnesses in the First Information Report indicate that the occurrence took place in which Chandrama Pandey is said to have fired from his gun, causing injury to Sampi Devi and Raj Muni Devi. There is no injury report to support this part of the allegation and as such this Court finds that only on the basis of oral evidence without corresponding injury report, the Trial Court has wrongly convicted the appellants u/s 324/149 and 323/149 of the Indian Penal Code. As such, the conviction under the aforesaid sections is set aside.

10. The second aspect of this case is with respect to the allegation that the appellants have set fire to the houses of Chhotan Ram, Ram Lal Ram, Sant Lal and Dudh Nath Ram. Regarding this aspect, attention has been drawn on Exhibits A, B, C and D. Exhibit A is the judgment and order of this Court passed in CWJC No. 651 of 1975 in which Chandrama Pandey was the petitioner and informant along with others were the respondents. The writ application has been filed for quashing the order of the Anchal Adhikari by which the Anchal Adhikari had granted basgit purchas in favour of the informant and some others. Therefore, from this document, it would be clear that the basis of the claim of

the informant was set aside by the High Court. After the order of the High Court, the problem arose with respect to the possession of plot No. 716. The petitioner moved before the High Court praying that the order of the High Court should be implemented and the petitioner should be put in possession over the plot No. 716. It appears from Exhibit-B and specifically on perusal of the order dated 01.12.1982 that the Anchal Adhikari had filed the affidavit in CWJC No. 3740 of 1982 stating that the possession of the lands were handed over to Chandrama Pandey, which has been annexed with the records. The next document is the actual affidavit sworn on behalf of the then Anchal Adhikari Vishwanath Singh and the document goes to show that the appellant No. 1 had already been handed over the possession. I may state here that the grounds for cancellation of the basgit purcha under the Bihar Privileged Persons Homestead Tenancy Act was that the informant Chhotan Ram and other respondents in the writ application were not privileged persons within the meaning of the Act as they had their own houses over plot No. 717 and 718 and other plots mentioned in the order. In the mean time, the respondents filed a writ application in the year 1983 making a prayer therein that the State Government/Anchal Adhikari should be restrained from handing over possession to Chandrama Pandey with respect to plot No. 716. CWJC No. 513 of 1983 was dismissed in limine.

11. The facts that emerges from the various orders of the Court is that Chandrama Pandey was put in possession over plot No. 716. Learned Counsel for the appellants, therefore, submits that on the basis of the order of this Court, it would be apparent that the informant was no longer in possession over plot No. 716 and as such the allegations against the appellants that they had tried to oust the informant and others from plot No. 716 by setting fire to the huts of the informant appears to be a false and concocted story in order to take possession over the lands.

12. The Investigating Officer has not been examined in this case. The Investigating Officer could have given independent finding with respect to this aspect of the occurrence.

13. In the facts discussed aforesaid, I find that the prosecution has not been able to prove their case beyond reasonable doubts and as such the appellants are entitled to be acquitted by giving them the benefit of doubt.

14. In the result, this appeal is allowed. The judgment dated 15th December, 1997 is set aside and the above named appellants are acquitted from the charges levelled against them. The appellants are also discharged from the liabilities of the bail bonds furnished earlier in this case before the Trial Court.