
(2009) 02 PAT CK 0025

In the Patna High Court

Case No : Criminal Appeal No. 325 of 1993

Tapeshwar Yadav @ Tappo Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 27-02-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 34

Citation : (2009) 3 PLJR 191

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Advocate : K.P. Yadav, Suresh Kumar and Avinash Kumar, for the Appellant;
Dashrath Mehta, for the Respondent

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—The four appellants have been convicted for a composite charge under Sections 436 read with Section 34 of the IPC by the learned 3rd Additional Sessions Judge, Madhepura by the judgment and order of conviction passed on 4.10.1993. Each of the appellants was found guilty and was directed to suffer rigorous imprisonment for four years. The above judgment and order of conviction was passed against the appellants in Sessions Trial No. 59 of 1986. The appellants have brought the present appeal against the above noted judgment and order of conviction. The facts lie in a very narrow compass. While sleeping in his house with his wife Julekha Sahesia (P.W. 4) and Bahnoi Sakoor Sahesia (P.W. 3), the informant awoke by a sense of heat on account of his house catching fire. All the occupants came out and the informant started raising a hulla of the house catching fire and, allegedly, found the four appellants running away. The informant (P.W. 9) claimed to have chased the appellants but failed while running and the appellants made good their escape. It was alleged that the informant had litigations with the appellants from before the occurrence and that just 4-5 days prior to the incident the she-goat of P.W. 9 had grazed the field of the appellants and he requested them for releasing it. However, the

appellants freed the she-goat after a couple of days or so. It was stated, as such, that the appellants committed the offence on account of either of the above reasons.

2. The fardbeyan (Ext. 3) of the incident was lodged by the informant P.W. 9 on 23.8.1983 at 7.30 A.M. in respect of the occurrence taking place at 2.00 A.M. on 22.8.1983. The F.I.R. (Ext. 2) was drawn up on the same day at 2.30 P.M. and the investigation was started. After close of the investigation the four appellants were sent up for trial and accordingly they were put on trial as noted above which ultimately ended in the judgment impugned herein.

3. It appears from the cross-examination of the witnesses that the appellants had taken a plea of false implication on account of reasons assigned by the informant himself.

4. The prosecution examined as many as 11 witnesses in support of the charge out of whom P.Ws. 1 and 2 were formal in nature having proved the signatures or writings on the seizure memo and of the fardbeyan. P.Ws. 7 and 8 were tendered for cross-examination. P.W. 11 was also a formal witness who proved the writings of the fardbeyan in the hand of one J.N. Mishra who was the Officer-in-charge of Bihariganj Police Station on 23.8.1983. As regards the other witnesses the informant (P.W. 9), his wife (P.W. 4) and his Bahnoi, P.W. 3 Sakoor Sahesia, claimed themselves to be the witnesses on seeing the four appellants running away from the scene of occurrence. Other witnesses, like, P.W. 6 Wasil Sahesia P.W. 10 Noor Mohammad Sahesia are witnesses who learnt about the incident from P.W. 9 the informant. The I.O. was not examined.

5. The defence did not examine any witness nor did it produce any document in support of its version.

6. Sri K.P. Yadav, Advocate appearing on behalf of the appellants had, firstly, contended that the witnesses being related to each other and the informant being inimical towards the appellants, their evidence could not be accepted, especially when the witnesses themselves stated that there were other independent persons of the village who had been attracted to the scene of occurrence. It was further contended that the appellants had also their houses on least three sides of the house of the P.W. 9 as may appear from the evidence of a couple of witnesses and it does not appear within the evidence of probability that they were setting a house at fire which could have caused arson to any of their own houses. The third contention was that there was no eye witness as to who had really set the house of P.W. 9 at fire and all witnesses appeared either making the statement out of their imagination or on account of being tutored by the informant P.W. 9.

7. The learned Additional Public Prosecutor, Sri Dashrath Mehta has supported the findings recorded by learned Trial Judge on the ground that the circumstances appearing from the evidence of the witnesses could also be utilized to hold that it could be the appellants who had set the house of informant

(P.W. 9) on tire because they had the motive to do it. It was contended that the witnesses appear naturally the persons who could be available on or around the scene of occurrence. Merely because they were related, they could not be said to be interested and, as such, their evidence could not be rejected on that score. Sri Mehta further contended that the charges appear proved from the evidence of the witnesses.

8. It was rightly contended by Sri Mehta, the learned Additional Public Prosecutor, that merely being related to the informant cannot be sufficient to reject the prosecution evidence in the wholesale. If the defence wanted the Court to reject an evidence of a witness it has to show interestedness of such a quality and class as the witness could be having an interest in deposing falsely so as to ensuring that the accused was convicted and sentenced to imprisonment. The other aspect of interestedness could be a witness could be having stake in the decree which may be passed in a case of civil nature and as such he could be making a false statement. It was contended that no such probability was coming from the evidence of any of the witnesses.

9. However, when one could look to the evidence of witnesses one could find that one thing does not appear denied that P.W. 9 Jasim Sahesia, his wife Julekha Sahesia and his Bahnoi Sakoor Sahesia are the three eye witnesses. Admitted position is that the informant was inimical towards the appellants and he admits it in his fardbeyan itself. Might be that the accused persons had captured the she-goat of the informant on account of putting pressure of any sort upon the informant by withholding the she-goat for some days. As such, there could always be a chance and a psychological state of mind of witnesses like P.Ws. 3, 4 and 9 that they could be yearning either to teach the appellants a lesson or to ensure that they are properly shown their place by obtaining a judgment of conviction in the case as was recorded by the learned Additional Sessions Judge. As such the mere relationship among P.Ws. 3, 4 and 9 is not the only aspect of interestedness rather the Court finds that the interestedness was real and meaningful that they could be deposing in Court with a view to ensuring the conviction of the appellants and a sentence of imprisonment being inflicted upon each of them.

10. As regards other witnesses they also appear related to P.W. 9. P.W. 6 Wasil Sahesia stated that he was the Phuphera brother of the informant P.W. 9. It appears in paragraph-4 of cross-examination of P.W. 6. P.W. 5 Salam Sahesia has admitted in paragraph-4 of his cross-examination that he was the elder brother of the informant (P.W. 9). As regards P.W. 10 Noor Md. Sahesia he had admitted in paragraphs of his cross-examination that he was deposing as he was told to depose by P.W. 9. P.W. 10 appears a rank tutored witness on account of his admission to that effect in paragraph-2 of his evidence and the evidence of P.Ws. 5 and 6 may not be acceptable without a pinch of salt as they are related to the informant.

11. The law is not as was contended by the learned Additional Public Prosecutor.

The Law is that evidence of such witnesses has to be appreciated by the Court with care and if the Court finds that there was any infirmity or there could be any reason for inferring the tendency in them to falsely implicate the accused it may not be safe to act upon them to record a conviction. One reason which this Court finds is that there was a hulla and on account of the house catching fire and the inmates of the house like P.Ws. 3, 4 and 9 were all raising a cry "Aag Lag Gaya" as may appear stated by P.W. 6 in his very examination-in-chief. He says that the informant was saying that his house had been set at fire by any one. When everyone of the village had assembled then the informant was convincing them the case that it could be the four appellants who could have set fire to his house. This is the real reason for the learned counsel for the appellants to submit as to why the appellants could be setting the house of the informant at fire and inviting doom for themselves. Witnesses like P.W. 6 in paragraph-6 and others have stated that on all three sides of the house of P.W. 9 there were houses which belonged to one or the other of the four appellants. The contention was that if the informant could be running out of his finding one such house in his close vicinity having caught fire for life or for approaching safety how could it not be a case that the appellants could not be seen running. It was rightly contended that the appellants might also be running to safety, finding that it could be any of their houses which could be next at fire. This probability is not easily to be overruled.

12. As appears from the evidence of so many witnesses that the house in question was in the village. The villagers were attracted to the cries of the informant. Some of them were extinguishing fire but except the witnesses like P.Ws. 5, 6 and 10 no one came forward either to say that he had also seen either the four appellants or any of them running away from the scene of occurrence or that the informant informed them that it were the four appellants who were running away after setting fire to the house.

13. On reading the evidence of the three eye witnesses, i.e., P.Ws. 3, 4 and 9 what is found is that P.W. 4 Julekha Sahesia woke up P.W. 9 informing him that the house had caught fire. The evidence of the witnesses like P.Ws. 3, 4 and 9 is that in fact the house was really engulfed by flames. Probably this could give a picture of the house being set on fire some times before either the informant or his wife could have come out to raise a cry, it was, as such, contended that by that time the appellants might not have remained present at the scene of occurrence so as to be seen running away from there. I find force in the contention.

14. On consideration of the evidence and in the light of the facts indicated above, I find that the judgment of conviction and order of sentence suffer from misappreciation of evidence. The charges were not brought home satisfactorily. In fact, the evidence was not as satisfactory as to suggesting passing of a judgment and order of conviction. Accordingly, the same is hereby set aside. In the result, the appeal is allowed and each of the appellants is hereby acquitted of

the charges framed against them. The appellants are on bail. They shall stand discharged from the liabilities of their respective bonds.