

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.585 of 2015

Arising Out of PS.Case No. -20 Year- 1995 Thana -JAGDISHPUR District- BHAGALPUR

1. Pankaj Yadav S/o Chandeshwar Yadav resident of village - Tarchha, P.S.
Jagdishpur, District - Bhagalpur

.... Appellant/s

Versus

1. The State of Bihar
2. Upendra Yadav S/o Late Nathan Yadav
3. Pradip Yadav S/o Upendra Yadav
4. Bibhisan Yadav S/o Upendra Yadav
5. Dilip Yadav S/o Upendra Yadav
6. Manoj Yadav S/o Upendra Yadav All 2 to 6 resident of village - Tarchha, P.S.
Jagdishpur, District - Bhagalpur

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Niraj Kumar @ Sanidh, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 22-12-2015

The present appeal, under proviso to Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), has been preferred against the judgment and order, dated 01.09.2014, passed by the learned 3rd Additional Sessions Judge, Bhagalpur, in Sessions Trial Mo. 124/1996, arising out of Jagadishpur P.S. Case No. 20 of 1995, whereby the respondent Nos. 2 to 6 have been acquitted of the charges under Sections 148, 326 and 302 read with Section 34 of the Indian Penal Code.

2. The appellant is the informant of Jagdishpur P.S. Case No.

20 of 1995, which gave rise to Sessions Trial No. 124 of 1996. The deceased was the grandfather of the appellant.

3. From the materials on record, what transpires is that Jagdishpur P.S. case No. 20 of 1995 came to be registered, treating a complaint, which had given rise to Complaint Case No.32 of 1995, as the First Information Report in terms of Section 156(3) of the Code of Criminal Procedure.

4. According to the prosecution's case, on 01.09.1994, when the informant was ploughing his field with his grandfather (the deceased), the respondent Nos. 2 to 6, armed with *khanti* and *lathi*, came and, following some altercation between them, the respondent Nos. 2 to 6 started assaulting his grandfather. Respondent No.2 is said to have given a blow by *khanti* on the head of the deceased, whereas the respondent Nos. 3 to 6 allegedly assaulted the deceased with *lathis* causing grievous injuries. Upon hearing *hulla*, Jaddu Yadav (P.W.1), Suresh Yadav (P.W.2), Hari Mohan Yadav (P.W.3), (Parsadi Yadav (P.W.5) and Sk. Haidar Ali (P.W.8) came. Upon noticing them, the respondent Nos. 2 to 6 allegedly fled away. The deceased was taken to hospital, where he died on the very same day. The reason, for occurrence, has been described as some dispute over transfer of the land, which was being ploughed by the deceased at the time of occurrence. According to P.W.6, his grand-mother had given respondent No.2 a sum of Rs. 30,000/- for purchase of the said land, it

was on this basis that the informant and his grandfather were ploughing the field.

5. Upon completion of the investigation, the investigating officer submitted *charge sheet*.

6. At the trial, charges, under Sections 147,148 and 302 read with Section 149 of the Indian Penal Code, were framed against the accused persons. To the charges so framed, the accused pleaded not guilty.

7. In support of their case, prosecution examined as many as 11 (eleven) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in their examinations aforementioned, the accused persons denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced on behalf of the defence.

8. By the impugned judgment and order, the learned trial Court has acquitted the respondent Nos. 2 to 6 of the charges framed against them under Sections 147,148 and 302 read with Section 149 of the Indian Penal Code.

9. Aggrieved by the judgment and order aforementioned, this appeal, as indicated above, has been preferred by the informant.

10. It transpires from the record that apart from the appellant

herein, PW 4, the son of the deceased, has also claimed to be an eye-witness of the occurrence. According to him, when he reached the place of occurrence, he saw the deceased and respondent No.5 exchanging hot words. Upon comparison of the evidence of P.W.6 and P.W. 4 (Bindeshwari Yadav), it can be easily seen that the informant did not say that P.W.4 was present at the time of occurrence; rather, he said that villagers, including P.W.4, assembled after occurrence had already taken place and the deceased was lying unconscious.

11. Learned trial Court has recorded acquittal of the respondent Nos. 2 to 6 giving benefit of doubt for more than one reason. Learned trial Court has found that there was no convincing evidence on record to explain the delay of nearly five months in lodging First Information Report (Complaint Case) after the occurrence had allegedly taken place. The learned trial Court has also found that the medical evidence on record did not corroborate the oral evidence; rather, the medical evidence falsified the prosecution's case. Whereas, according to the prosecution's case, respondent No.2 had given a blow with *khanti* on the head of the deceased, the injury, on the head of the deceased, was found to have been caused by a hard and blunt substance. Further, P.W.6, in his evidence, had deposed that several blows of *lathi* were given by the respondent Nos. 2 to 6 on various parts of the body of the deceased, whereas multiple injuries

commensurate with multiple assault on the deceased, had not been found.

12. Learned trial Court, upon analyzing the evidence on record, has mentioned, in the impugned judgment and order, that the criminal case was instituted against the respondents for mounting pressure on them for the purpose of acquiring the land in dispute.

13. Learned Counsel, appearing on behalf of the appellant, has submitted that learned trial Court was wrongly swayed away by the mere delay in filing of a complaint case, i.e., nearly five months after the date of occurrence. He has contended that though the witnesses consistently supported the prosecution's case, learned trial Court has disbelieved them without any valid reason. He has further submitted that the evidence on record proves the guilt of the respondent Nos. 2 to 6. We have, however, no doubt that the acquittal of the respondents by the impugned judgment and order is not erroneous.

14. Upon having perused the materials on record and considered the submissions advanced on behalf of the appellant, we find that the delay of five months, in the institution of the complaint case, does not have any cogent explanation by way of evidence on record. Delay of several months, in lodging the case, in the nature of a complaint case or First Information Report, itself raises suspicion over the veracity of the allegations made therein. Medical evidence adds to

the doubt over the prosecution's case inasmuch as it does not corroborate the oral evidence; rather, falsifies the prosecution's case.

15. In view of the facts and circumstances of the case and on the basis of evidence on record, the conclusions, arrived at by the learned trial Court in the judgment and order under appeal, is a reasonably possible view. The findings arrived at, by the learned trial Court, cannot, therefore, be said to be perverse.

16. Situated thus, we do not find any reason to interfere with the acquittal of the respondents by the judgment and order, dated 01.09.1994, passed by the 3rd Additional Sessions Judge, Bhagalpur, in Sessions Trial No. 124 of 1996, arising out of Jagadishpur P. S. Case No. 20 of 1995.

17. This appeal is therefore, not admitted and shall accordingly stand dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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