

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.786 of 2015

Arising Out of PS.Case No. -98 Year- 2002 Thana -BOCHHA District- MUZAFFARPUR

Upendra Rai S/o Late Rajdeo Rai, resident of village- Karnpura, P.S.- Bochahan,
District- Muzaffarpur

.... Appellant

Versus

1. The State of Bihar
2. Bishwanath Rai S/o Late Ramphal Rai
3. Ramjinish Rai, S/o Satahu Rai
4. Ram Shresth Rai S/o Satahu Rai
5. Satahu Rai s/o Late Ram Sunder Rai - All residents of village- Karnpura, P.S.-
Bochahan, District- Muzaffarpur

.... Respondents

Appearance :

For Appellant : Mr. Kumar Mangalam, Advocate
For the State : Mr. S N Prasad, APP

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)
Date: 30-10-2015

I A No. 1654 of 2015

This Interlocutory Application has been filed seeking condonation of delay of seven days in presenting the present petition for appeal.

2. For the reasons stated in this application and the submission made in support thereof, we are satisfied that there

existed sufficient cause which prevented the appellant from preferring the appeal within time. The delay of seven days in preferring the present petition for appeal is condoned.

3. I A No. 1654 of 2015 stands allowed.

Cr. Appeal No. 786 of 2015

4. The informant is the appellant in the present appeal, filed under the proviso to Section 372 of the Code of Criminal Procedure, 1973, aggrieved by the judgment and order of acquittal, dated 30.4.2015, passed by the learned Additional Sessions Judge IV, Muzaffarpur, in Sessions Trial No. 333/07/527/2014, arising out of Bochahan PS Case No. 98 of 2002 (GR No. 1903 of 2002).

5. From the introductory paragraph no.1 of the petition of appeal, though it appears that the appellant is aggrieved by acquittal of respondent nos. 2 to 5 recorded by the court of learned Additional Sessions Judge IV, Muzaffarpur, what we notice is that the learned Additional Sessions Judge has acquitted the aforesaid respondents of the charges punishable under Sections 324, 325, 504 and 307 read with Section 34 of the Indian Penal Code and has convicted them for the offence punishable under Sections 341 and 323 of the Indian Penal Code. After having convicted them for the aforesaid offences, the learned Additional Sessions Judge has given the respondents the benefit of the Probation of Offenders Act, 1958.



6. According to the prosecution case, on the date of occurrence i.e., on 10.8.2002, the informant was sowing brinjall plants in his field, when the respondents came armed variously and assaulted him with *lathi* and spear (*bhala*). Allegedly, respondent no. 4 assaulted the appellant with spear on his chest, which caused serious injuries. Upon cry for help, the informant's brother, Lal Babu Rai (PW 5), and *his sister-in-law* Sunita Devi, came, whereafter respondent No. 4 assaulted them also, causing injuries. Respondent No. 2 is said to have assaulted the said Lal Babu Rai with *lathi* causing fracture of the bone of his right hand. Respondent No. 5 is said to have assaulted the mother of the informant on her leg with *lathi*, which caused fracture of her right leg. On the basis of the said statements of the informant, Bochahan PS Case No. 98 of 2002, for the offences punishable under Sections 341, 323, 324, 325, 307 and 504/34 IPC, was instituted against respondent Nos. 2 to 5. The police, upon investigation, submitted *charge-sheet* against the respondents under Sections 341, 323, 324, 325 and 504/34 IPC.

7. On the case having been committed to the court of sessions, charges were framed against the respondent Nos. 2 to 5 for the offences punishable under Sections 341, 323, 324, 325, 307 and 504 read with Section 34 IPC. Since the respondents pleaded not guilty, thereafter the trial commenced.

8. Altogether five witnesses were examined, namely, Hari Lal Rai (PW 1), Sunita Devi (PW 2), Upendra Rai, informant (PW 3), Mahavati Devi (PW 4) and Lal Babu Rai (PW 5).

9. It is also not in dispute that the appellant and the private respondents are agnates and there was some dispute between them over the land, where the informant was sowing brinjal plants.

10. Out of the said five witnesses, PW 1 (Hari Lal Rai) was declared hostile to the prosecution. From the impugned judgment, it appears that PW 5, Lal Babu Rai, was not produced for his cross-examination despite opportunity having been given to the prosecution in this regard. The learned Additional Sessions Judge, therefore, has not taken into account the evidence of the said PW 5, in the absence of any opportunity being made available to the defence to cross-examine. The doctor, who is said to have treated the injured persons, was not examined. The Investigating Officer was also not produced by the prosecution for examination. The learned Additional Sessions Judge, in the absence of evidence of the doctor, arrived at a conclusion that the prosecution could not prove the injuries caused in course of occurrence. He also arrived at a conclusion that even the place of occurrence cannot be said to have been established in the absence of evidence of the Investigating Officer. He accordingly

arrived at the conclusion that the charges against the respondents Nos. 2 to 5 under Sections 324, 325 and 307 read with Section 34 of the Indian Penal Code could not be proved, beyond all reasonable doubts.

11. Dealing with Section 504 IPC, the learned Additional Sessions Judge recorded, in the impugned judgment, that the witnesses did not disclose specifically as to the abuses hurled by the private respondents and, therefore, the charge, under Section 504 IPC, could not be proved. However, as regards charge, under Sections 341 and 323 IPC, the learned Additional Sessions Judge found consistency in the evidence of Sunita Devi (PW 2) and Mahavati Devi (PW 4) as also the informant (PW 3) that the private respondents had assaulted the informant with *lathi* causing injuries. Ignoring minor discrepancies in the evidence of witnesses on this aspect, the learned Additional Sessions Judge held that the charges, under Sections 341 and 323 IPC, stood proved against respondent Nos. 2 to 5. After having held them guilty of the aforesaid charges, the learned Additional Sessions Judge gave them the benefit of the provisions under the Probation of the Offenders Act, 1958.

12. Mr. Kumar Mangalam, learned counsel appearing for the appellant, has submitted that despite there being sufficient evidence adduced in course of trial, the learned Additional Sessions Judge erroneously acquitted respondent Nos.



2 to 5, of some of the offences and convicted them only for the offences punishable under Section 341 and Section 323 of the Indian Penal Code. He has also submitted that the learned trial court ought to have imposed suitable punishment of imprisonment upon respondent Nos. 2 to 5 instead of giving them the benefit of the provisions of the Probation of Offenders Act, 1958.

13. We have perused the impugned judgment. No plea has been taken that the evidence of the witnesses have been wrongly recorded in the impugned judgment. There is no dispute, thus, that there were only three witnesses, namely, Sunita Devi (PW 2), Upendra Rai (PW 3) and Mahavati Devi (PW 4), whose evidence could be considered in support of the prosecution case. Out of these three, PW 3 is the informant himself and is, therefore, a highly interested witness. PW 2 is his *Bhabhi* (elder brother's wife) and PW 4 is his mother. There is no independent witness examined in support of prosecution. Lal Babu Rai (PW 5), the brother of the informant, was not made available for his cross-examination. The learned trial court rightly refused to consider his evidence for the purpose of prosecuting the private respondents.

14. In the given circumstance as has been discussed above, we are of the view that the impugned judgment does not require any interference at the instance of

the appellant. We do not find any reason or ground to take a different view than what has been taken by the learned trial court, while acquitting the respondent Nos. 2 to 5 of the offences punishable under Sections 324, 325, 504 and 307 read with Section 34 IPC. The discretion, exercised by the trial Court of giving the benefit of the provision under the Probation of Offenders Act, 1958, in the facts and circumstances of the case, cannot be said to be unreasonable or arbitrary requiring interference by this Court in an appeal preferred under proviso to Section 372 of the Code of Criminal Procedure, 1973.

15. We do not find any merit in this appeal. It is accordingly dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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