

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.764 of 2015

Arising Out of P.S. Case No.-63 Year - 2003 Thana-GHOSBARI District-PATNA

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Damodar Mahto, Son of Late Yugal Mahto, R/o Village-Ghoshwari,
P.S.-Ghoshwari, District-Patna.

.... Appellant

Versus

1. The State of Bihar.
2. Sagar Mahto.
3. Dhaneshwar Mahto, Both are sons of Late Sunder Mahto, R/o
Village-Ghoshwari, P.S.-Ghoshwari, District-Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Helal Ahmad, Advocate

For the Respondents : Mr. Abhimanyu Sharma, APP

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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

This appeal has been preferred under the
proviso to Section 372 of the Code of Criminal Procedure,



1973, assailing the Judgment & Order, dated 24.06.2015, passed by learned Assistant Sessions Judge-Ist, Barh, Patna, in Sessions Trial No.187 of 2005, arising out of Ghoshwari P.S. Case No.63 of 2003, whereby he has acquitted respondent Nos.2 and 3 of the charges punishable under Sections 324 and 307 of the Indian Penal Code on the ground that the prosecution failed to prove these charges beyond all reasonable doubt. Learned trial Court has, however, convicted them by the said Judgment & Order, under challenge, for the offences punishable under Sections 323, 341 and 504 read with Section 34 of the Indian Penal Code and has released them giving benefit of Section 3 of the Prohibition of Offenders Act, 1958, after due admonition.

2. Briefly stated, the prosecution's case, as narrated by the informant, Yugeshwar Mahto, in his written report, is that he had given a sum of Rs.11,000/- to one Dev Mahto for transfer of his land in favour of the informant and he was using the said land for tying and feeding his cattle. Sagar Mahto (respondent No.2), however, got a registered sale-deed executed in his favour with respect to the same land on payment of higher amount. On the date of occurrence, the respondent Nos.2 and 3 came and attempted to remove



the articles, more particularly, the pot (*nadh*), which was kept there for feeding. This was resisted by the informant's son, Damodar Mahto (the appellant). An altercation took place between the members of the family of the informant and the respondents. Respondent No.3, Dhaneshwar Mahto, is said to have assaulted the son of the informant, Damodar Mahto, with spade, which he was carrying. When the informant and his grandson attempted to rescue the son of the informant, accused Sagar Mahto (respondent No.2) assaulted them after snatching away the stick from the informant, which he was carrying.

3. The police, upon investigation, submitted *charge-sheet* under Sections 323, 324, 341, 307 and 504 read with Section 34 of the Indian Penal Code, whereafter the case was committed to the Court of *Sessions*, upon taking cognizance, for trial.

4. Altogether seven witnesses were examined by the prosecution at the trial. P.W.1, Mahesh Kumar, is a formal witness, who proved the injury report of the two injured, namely, Maheshwar Kumar (grandson of the informant) and Damodar Mahto (son of the informant). He has, however, been declared hostile to the prosecution inasmuch as he deposed in the cross-examination that he

had never worked with the Doctor, who had prepared the injury report nor did he work with the Officer-In-Charge.

5. P.W.2, Lal Pari Devi, is the wife of the injured, Damodar Mahto (P.W.5). P.W.3, Tarani Devi, is the wife of the informant, who supported the prosecution's case as a hearsay witness. P.W.4, Maheshwar Kumar, is the grandson of the informant, who supported the prosecution's version as an eye-witness. The Investigating Officer was examined as P.W.7. One Manoj Kumar and Bhawesh Kumar have been examined as Court Witness Nos.1 and 2. The informant could not be examined since he had died.

6. On the basis of analysis of evidence available on record, learned trial Court came to a finding that the prosecution had failed to prove the charge of commission for the offences punishable under Sections 324 and 307 of the Indian Penal Code. The trial Court, however, convicted them for commission of offence punishable under Sections 323, 341 and 504 read with Section 34 of the Indian Penal Code and released them, giving benefit of Probation of Offenders Act, 1958, after due admonition.

7. We have heard Mr. Helal Ahmad, learned counsel, appearing on behalf of the appellant, and Mr.

Abhimanyu Sharma, learned Additional Public Prosecutor, appearing on behalf of the State.

8. Mr. Helal Ahmad, learned counsel, appearing on behalf of the appellant, has submitted that the prosecution, on the basis of evidence adduced at the trial, proved, beyond all reasonable doubts, the time, place and manner of occurrence. He has contended that the respondents had caused injuries upon the appellant with an intention to kill him, as is evident from the evidence adduced at the trial. According to him, learned trial Court failed to appreciate the evidence on record in correct perspective and acquitted the respondents of the charges punishable under Sections 324 and 307 of the Indian Penal Code. Mr. Ahmad, learned counsel, has further submitted that in any event, in the background of the facts and circumstances of the present case and the gravity of the offence, learned trial Court ought not to have given the respondents benefit of the provisions contained in Section 3 of the Probation of Offenders Act, 1958.

9. We are not convinced by the submissions advanced on behalf of the appellant. What is evident from the records and the evidence adduced at the trial is that the appellant was using the land, which was,



admittedly, purchased by the respondents, through registered sale-deeds. The occurrence took place, there being dispute between the appellant/family, on the one hand, and the respondents, on the other, as regards the purchase of the said land. No evidence on record has been pointed out to us based on which it could be proved that the respondents had any intention to kill the appellant or the informant. Further, the prosecution failed to examine the Doctor, who could have proved the injuries.

10. Keeping in view the genesis of the occurrence and the evidence available on record, we do not find any reason to conclude that the learned trial Court has wrongly acquitted the respondents of the charges, framed against them, for the offences punishable under Sections 324 and 307 of the Indian Penal Code by giving them benefit of doubt. Nothing has been brought to our notice on the basis of which it could be confidently held that respondents were guilty of the offences punishable under Sections 324 and 307 of the Indian Penal Code. We do not find any such infirmity, legal or factual, in the impugned Judgment and Order acquitting the respondents of the charges for the offences punishable under Sections 324 and 307 of the Indian

Penal Code. Further, learned trial Court has assigned reasons for giving the respondents the benefit of Section 3 of the Probation of Offenders Act, 1958. The reasons, as assigned in the Judgment and Order, under appeal, are germane and cannot be said to be irrational.

11. We do not find any merit in this appeal, which is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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