

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1004 of 2015

Arising Out of PS.Case No. -52 Year- 1997 Thana -SC/ST District- BHAGALPUR

Most. Shiya Devi wife of Late Amir Das, Resident of Panchkathiya, Police Station-
Shahkund, District- Bhagalpur. Appellant

Versus

1. The State of Bihar
2. Uday Bhanu Singh son of Sri Yamuna Pd. Singh, Resident of Main Road Turha
Toli, Police Station- Buxar, District- Buxar Respondents

Appearance :

For the Appellant/s : Mr. Md. Najmul Hoda, Advocate

For the Respondent/s : Mr. D.K. Sinha, A.P.P.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

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

Date: 21-12-2015

This is an appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973, preferred by the appellant assailing the judgment and order, dated 25.06.2015, passed, in Sessions Trial No. 1136 of 2007, by learned Special Judge, (Scheduled Castes/Scheduled Tribes (Prevention of Atrocities Act), Bhagalpur, recording acquittal of respondent No. 2, who was put on trial on the charges, framed under Sections 342, 386 and 307 of the Indian Penal Code and Sections 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989.

2. From the First Information Report, which has been brought on record by way of Annexure-I to the petition of appeal, it appears that respondent No.2, at the relevant point of time, was posted



as an Assistant Sub Inspector of Police at Shahkund Police Station district-Bhagalpur. There was some dispute between the family of the informant and a co-villagers, including one Dhoraiya Chamar, which had led to initiation of a proceeding under Section 107 of the Cr.P.C. The persons, who were inimical to the informant, were arrested by the Police under Section 151 of the Cr.P.C. and were, thereafter, released. It is alleged that on 02.10.1997, the respondent No.2, along with other four persons, came to the residence of the informant at 8.00 A.M. and arrested her son, Sanjay Das, without any reason. Respondent No. 2 is said to have abused the informant taking her caste name, when she asked about the reason behind arresting her son, Sanjay Das. It was also alleged that respondent No. 2 demanded Rs. 10,000/- for release of her son. It was further alleged that respondent No. 2 had ordered his associates to assault the appellant's son, whereafter they had assaulted the appellant's son with the butt of gun. The said Sanjay Das, the informant's son, was said to have been tortured in the Police custody and, later on, forwarded to judicial custody. A complaint case, it appears, was filed on 07.10.1997, which was sent to the police for registration of First Information Report under Section 156 of the Cr.P.C.

3. Based on submission of charge sheet by the police, upon completion of investigation, cognizance was taken and the case

was committed to the Court of Sessions and, later on, transferred to the Special Court, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, for trial and disposal.

4. Altogether seven witnesses were examined. P.W.1 and P.W. 2 were declared hostile. The appellant was examined as P.W.5. Her son, Sanjay Das, was examined as P.W.7. Uncle of P.W. 7, Kabir Das, was examined as P.W.6 and Manohar Das, nephew of the informant, was examined as P.W. 3, Ajay Das, another son of the appellant-informant, was examined as P.W.4. Investigating Officer was not examined.

5. Learned trial Court, upon considering the evidence adduced at the trial, recorded acquittal of the sole respondent on the ground that there had been delay of five days in lodging the complaint without any explanation and that the prosecution had not been able to prove the case against respondent No. 2 beyond all reasonable doubts.

6. Mr. Md. Najimul Hoda, learned counsel appearing on behalf of the appellant, has submitted that learned trial Court wrongly recorded acquittal of the sole respondent on flimsy ground despite there being sufficient evidence available on record to convict him of the charge, for which, he was put on trial. He submits that the evidence on record were sufficient to prove the guilt of respondent No. 2 of commission of the offences, alleged against him.



7. We must point out, at the outset, that there is no submission made on behalf of the appellant that evidence of the witnesses have not been correctly described, in the impugned judgment, by learned trial Court. It is easily noticeable that no independent witness was examined at the trial and all the witnesses are interested and closely related to each other. P.Ws. 4 and 7 are sons of the informant. P.W.6 is the uncle of P.Ws. 4 and 7. P.W.3, who is the nephew of the informant, in his evidence, did not claim that he identified respondent No.2. He was, admittedly, a Police Officer, posted in the concerned Police Station of the area. P.W.4, the other son of P.W.5, has stated that respondent No. 2 had filed a case against him earlier.

8. In the absence of examination of any independent witness and even the Investigating Officer to support the prosecution's case, we do not find any reason to take a different view than what has been taken by the learned trial court. Learned trial court has rightly recorded that no case under Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989, could be made out in the absence of any proof that the occurrence had taken place within public view.

9. The view taken by learned trial Court, on the basis of evidence available, is a reasonably possible view, which, in our

considered view, does not require interference in an appeal against acquittal under the proviso to Section 372 of the Code of Criminal Procedure, 1973. Admittedly, there were disputes between the families of the informant/appellant with her co-villagers, which had necessitated the police intervention. The case was instituted against son of the informant/appellant, Ajay Das. (P.W.4). In such circumstances, conviction of respondent No. 2 could not be based on the evidence of highly interested witnesses without evidence of any independent witness supporting the prosecution's case, we do not find any merit in this appeal.

10. Coupled with the above and most importantly, the appellant's son, Sanjay Das, who is alleged to have been assaulted and it was, therefore, the appellant's son, Sanjay Das, who could have, under the proviso to Section 372 of the Code of Criminal Procedure, preferred an appeal. Considered from this angle too, this appeal cannot be sustained, and must be dismissed.

11. In the result and for the reasons discussed above, this appeal is dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

Vats/-

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