

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.44 of 1993

Arising Out of PS.Case No. -72 Year- 1985 Thana -TOWN District- DARBHANGA

The State of Bihar

.... Appellant/s

Versus

1. Binod Kumar Mandal, son of Ramsarah Mandal, resident of Village Chanderdih, P.S. Raj Nagar, District Madhubani
2. Vijay Raghav, son of Baidyanath Thakur, resident of Village Pipra, P.S. Singhwara, District Darbhanga
3. Md. Rizwan, son of Galeed Ali, resident of Village Purkhopali, P.S. Bahadurpur, District Darbhanga

.... Respondent/s

Appearance :

For the Appellant : Mr. A.K. Sinha, APP

For the Respondents : None

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 30-06-2015

Pursuant to order dated 02.12.1993, passed in the instant appeal, notices were issued to respondent nos. 1 to 3, who have been acquitted of the charges levelled against them under Sections 452, 324, 307, 307/109, 307/34, 379, 148, 448 of the Penal Code but till date notices have not been served, as would appear from the different report(s) appended with the brief including the one contained in letter no. 76 dated 04.04.2015.

2. From perusal of different report(s), we are satisfied that the notices issued to respondent nos. 1 to 3 are not likely to be served, in the circumstances, we have chosen to peruse the impugned

judgment dated 20.03.1993, passed by 2nd Additional Sessions Judge, Darbhanga, in Sessions Trial No. 71/1986 along with the lower court records and considered the merit of the appeal.

3. Prosecution case of the informant Hari Shankar Jha, Executive Engineer (P.W. 4) that he was attacked by Accused Nos. 2, 3 Vijay Raghav, Md. Rizwan in his office at the instance of Accused No. 1 Binod Kumar Mandal, has been disbelieved by the trial court in the light of the evidence of P.W. 1, whose presence at the place of occurrence itself has been doubted, as his name is not being included in the fardbeyan as a witness and further for the reason that his testimony also does not inspire confidence, as according to his own saying he was sitting at the verandah at the time of occurrence but the Investigating Officer has not found any such verandah outside the place of occurrence.

4. Evidence of P.W. 2 i.e. Cooperative Extension Officer has also been disbelieved as he has not been able to explain as to how he knew the accused persons from before. Such aspect of the matter has been dealt with in paragraphs 9, 10 of the impugned judgment.

5. P.W. 3 has not been relied upon as he is not the witness of the occurrence.

6. Evidence of injured informant (P.W. 4) has been

discussed in paragraph 11 and rejected in paragraph 12 for the reasons indicated in paragraphs 12, 13 of the impugned judgment. In paragraph 15 the trial court held that the prosecution has failed to prove the motive behind the occurrence and thereafter again considered the evidence of P.W. 4 in paragraph 28 for the reasons mentioned in paragraphs 29 to 32 and rejected his evidence in paragraph 33 holding him to be not reliable.

7. Trial court having acquitted the three respondents giving them benefit of doubt under judgment dated 20.03.1993, at this distant of time, it may not be prudent to keep the appeal pending for ensuring service on the three respondents and thereafter to proceed with the appeal, which is, accordingly, dismissed.

(V.N. Sinha, J)

(Nilu Agrawal, J)

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