

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.7 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

Raj Kumar Rai, S/o Late Bala Rai, Resident of Village-Sariya, P.S.-Basantpur,
Dist.-Siwan. Appellant

Versus

1. The State of Bihar.
 2. Vakil Rai, S/o Late Ram Balak Rai.
 3. Mukhtar Rai, S/o late Ram Balak Rai.
 4. Manan Rai, S/o late Ram Balak Rai.
- All resident of Village-Sariya, P.S.-Basantpur, Dist.-Siwan.

.... Respondents

Appearance :

For the Appellant/s : Mr. Kumar Binode Bariar, Advocate
For the Respondent/s : Mrs. Abha Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-03-2015

Learned counsel for the petitioner is permitted to make
necessary correction in cause title of Special Leave Application.

This application under Section 378(4) of the Code of
Criminal Procedure has been filed on behalf of the petitioner
(complainant) seeking leave to appeal against the judgment and
order dated 12.09.2014 in Cr. Appeal No. 41 of 2003 passed by the
learned Additional District & Sessions Judge-III, Siwan whereby
and whereunder he has set aside the judgment and order dated 19th
April, 2003 passed by the learned Judicial Magistrate, 1st class,
Siwan and acquitted the opposite party nos. 2 to 4 with regard to
complaint Case No. 1184 of 1995 corresponding to Tr. No. 152 of

2003.

The petitioner filed a complaint case in the Court of the Chief Judicial Magistrate, Siwan alleging therein that on 21.11.1995 at 10.00 a.m. when he had gone to his field with Potato seeds, all the accused persons armed with *lathi*, came and started assaulting him by fist, slap and *lathi*. The son of the complainant who came in rescue had also been beaten mercilessly by the accused persons and, thereafter, they started pelting stone chips and bricks which also caused injury to the complainant. It has also been alleged that the accused persons damaged seeds worth Rs. 1,000/- and took away the bag containing fertilizer. One Kalawati Devi is alleged to have snatched the wrist watch worth Rs. 532/- of one Ramjanam. When the complainant went to the police station to lodge FIR, he saw the accused persons sitting there from before and the police personnel refused to entertain the complaint of the complainant. Finding no other option, the complaint petition was filed in the Court.

On the basis of the aforesaid complaint, after examining the complainant and his witnesses, the learned Judicial Magistrate-1st Class, Siwan found a *prima facie* case to be made out under Sections 147, 323, and 227 of the Indian Penal Code and, accordingly, the substance of accusation was explained to the five accused persons named in the complaint to which they pleaded not guilty and

claimed to be tried. Accordingly, the trial was held.

In course of trial, altogether five witnesses were examined on behalf of the prosecution. On the basis of evidence collected in course of trial, the learned Magistrate held opposite party nos. 2 to 4 guilty under Section 323 of the Indian Penal Code but acquitted them under Sections 147 and 447 of the Indian Penal Code. They were extended benefit of Section 3 of the Probation of Offenders Act and were let off after due admonition. The opposite party nos. 2 to 4 preferred an appeal against the judgment of the learned Magistrate and the appellate Court vide its judgment dated 12.09.2014 set aside the judgment and order passed by the learned Magistrate and acquitted the three accused persons.

Learned counsel for the petitioner has submitted that the judgment of the appellate Court is perverse as all the witnesses examined in course of trial had duly corroborated the case of the complainant. Even the medical report was brought on record to show that the complainant had sustained certain injuries.

I have heard learned counsel for the appellant and perused the impugned judgment passed by the learned appellate Court as well as the judgment and order passed by the learned Magistrate. It would appear from the record that the trial Court has elaborately discussed the evidence led before it. It has categorically

held that the evidences led by the complainant and his witnesses were full of contradictions. It has recorded that the story propounded by the witnesses was wholly unbelievable. After discussing the evidence, it has held that P.W. 1 could not have been present at the place of occurrence whereas P.W. 2 was on inimical terms as he was accused in a counter case lodged by one of the accused. It has also recorded that from the deposition of P.W. 3, it would appear that he has supported the defence of the accused instead of supporting the case of the prosecution. Based on such findings, the learned Magistrate has recorded conviction against opposite party nos. 2 to 4 under Section 323 of the Indian Penal Code. I fail to understand as to why the trial Magistrate after recording so many discrepancies in the prosecution case convicted the accused persons. The appellate Court has rightly set aside the judgment passed by the Magistrate and acquitted opposite party nos. 2 to 4.

I find no reason to grant leave to the petitioner to file an appeal against the judgment of the appellate Court. Accordingly, the application for leave to appeal is rejected.

(Ashwani Kumar Singh, J.)

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