

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.78 of 2015

Arising Out of PS.Case No. -157 Year- 2006 Thana -BENIPATTI District- MADHUBANI

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Lal Yadav Son of Ram Prit Yadav, Resident of village - Baishatha, P.S-Benipatti,
Distt.- Madhubani

.... Appellant/s

Versus

1. The State of Bihar
2. Raj Kumar Mahto Son of Ram Avtar Mahto
3. Mishri Mahto Son of Late Raghunandan Mahto
4. Mohan Mahto Son of Nand Lal Mahto
5. Madan Das Son of Rameshwar Das, 2 to 5 are Resident of village -Baishatha,
P.S-Benipatti, Distt.-Madhubani

.... Respondent/s

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Appearance :

For the Appellant : Mr. Raj Kumar, Advocate
Mr. Ratnakar Jha, Advocate

For the State : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

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

Date: 29-01-2015

Heard learned counsel for the appellant and the State.

2. Informant of Benipatti P.S.Case No. 157 of 2006 has
filed this appeal assailing the judgment of acquittal dated 14.03.2014
passed by Ad hoc Additional Sessions Judge-III, Madhubani in
Sessions Trial No. 813 of 2007 whereunder private Respondent nos. 2
to 5 have been acquitted of the charge under Sections 302/34 of the
Indian Penal Code.

3. Prosecution case as set out in the fardbeyan of the



informant, P.W.4, son of the deceased Ramprit Yadav is that his father used to stay and sleep at a sitting place near Baluaha Kundi Pokhar (pond). It is further stated in the fardbeyan that in the night between 29 – 30.11.2006 the deceased after having his dinner had gone to the sitting place for sleeping. In the same night informant and his cousin brother, Sri Narain Yadav, P.W.3 went to their Khalihan near the same pond for maintaining a watch. Informant having reached near the sitting place found his father absent and began to look for him. Informant, however, identified 15 persons putting his father in a gunny bag who was groaning, blood was also smeared on his person. Informant, P.W.4 and his cousin, P.W.3 identified the accused persons in the torchlight. It is further asserted in the fardbeyan that the accused persons were armed with knife, sword and lathi. Accused persons having seen the informant and his cousin chased them on which informant raised alarm and went back to the village and came back with the prosecution witnesses and others, by that time the accused persons had fled away.

4. In the light of the aforesaid prosecution case, investigation proceeded, the charge sheet was, however, submitted against the four private respondents only. During trial, besides the informant, his cousin, P.W.3, supported the factum of the incident, others who supported the case during investigation have been declared

hostile as they have deposed that no such incident had taken place. The trial court having appreciated the fact that it is only the informant and his cousin who supported the prosecution case, has chosen to disbelieve their evidence for want of corroboration by any of the independent witnesses including the villagers who had come to the place of occurrence with the informant after he was chased away by the private respondents and again came back with the prosecution witnesses. The trial court has further noted the fact that the torch by which the private respondents were identified by the informant and his cousin was not produced either during investigation or trial.

5. The view taken by the trial court appears to be plausible, in the circumstances, we are not inclined to take a different view in the matter. The appeal is, accordingly, dismissed.

6. Having dismissed the appeal on merit, no useful purpose will be served by condoning the delay in filing the appeal, as such, the limitation petition, bearing I.A. No. 144 of 2015 is also dismissed.

(V.N. Sinha, J.)

(Rajendra Kumar Mishra, J.)

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