

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.223 of 2015

Arising Out of PS.Case No. -60 Year- 1998 Thana -JALE District- DARBHANGA

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Rakesh Kumar, Son of Yamuna Prasad, Resident of village-Rampur Pachasi, Police Station- Pokhari, District- Sitamarhi.

.... Appellant

Versus

1. The State of Bihar
2. Dharmendra Kumar @ Guddu Jha, Son of Sitaram Jha
3. Sitaram Jha, son of not known to the Appellant
4. Shailendra Jha, son of Sitaram Jha
5. Jitendra Jha, Son of Sitaram Jha
6. Kaushlendra Jha, Son of Sitaram Jha

All Resident of village- Ghoghraha, P.S.- Jale, District- Darbhanga.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ravindra Kumar Singh, Advocate

For the Respondent/s : --

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-07-2015

This appeal under Section 372 of the Code of Criminal Procedure (for short 'the Code') is directed against the judgment and order dated 15.12.2014 passed in Cr. Appeal No. 9 of 2014 by the learned *Ad hoc* Additional Sessions Judge-IV, Darbhanga whereby respondent nos. 2 to 6 have been acquitted from the charges under Sections 143 and 323 of the Indian Penal Code.



The prosecution case, according to the informant, Rakesh Kumar, is that on 31.5.1998 at about 6-6.30 p.m. while he was going along with his brother Ranjeet Kumar and one Amarnath on a Rajdoot motorcycle bearing no. BPG 2785 to Pupri to purchase medicines and other articles and was having Rs. 10,000/- in cash with him, 4-5 persons surrounded them near Brahmasthan of Ghoghraha Chowk. They were armed with *lathi* and *phatha*. Out of them, respondent no. 6, Kaushlendra Jha took out key of motorcycle and on his order, the other accused persons and 5-6 unknown persons assaulted them badly with *lathi* and deadly weapons. On raising alarm by the informant the villagers rushed to the spot and only thereafter all the accused fled away taking motorcycle and cash along with them.

On the basis of the aforesaid allegations made in the written report submitted by the informant to the S.H.O. of Jale police station, Jale P.S. Case No. 60 of 1998 was registered under Section, 143, 323 and 379 of the Indian Penal Code.

On completion of investigation, the police submitted charge sheet under the aforesaid sections. The learned Chief Judicial Magistrate, Darbhanga took cognizance of the offence and made over the case to another Judicial Magistrate for trial, whereupon charges were framed under Sections 143, 323 and 379 of the Indian

Penal Code against respondent nos. 2 to 6 on 08.03.1999.

In course of trial altogether five witnesses were examined on behalf of the prosecution. The defence also examined three witnesses in order to prove innocence of the accused persons (respondent nos. 2 to 6).

After holding the trial and hearing the arguments advanced by respective counsel for the parties, the learned Sub-Divisional Judicial Magistrate, Darbhanga vide order dated 30.01.2014 convicted the accused persons under Sections 143 and 323 of the Indian Penal Code and sentenced them to undergo simple imprisonment for three months and six months respectively.

Being aggrieved by the aforesaid judgment and order of the trial court, the accused persons preferred a Cr. Appeal No. 09 of 2014 before the Court of Sessions. The appellate court vide judgment dated 15th December, 2014, reversed the judgment passed by the trial court and acquitted respondent nos. 2 to 6 from the charges under Sections 143 and 323 of the Indian Penal Code. The aforesaid judgment dated 15th December, 2014 is under challenge before this Court.

I have heard learned counsel for the appellant and learned counsel for the State and perused the materials on record.

It would appear from the record that the doctor, who



examined the informant, was not examined during trial. The radiologist, who had conducted x-ray in respect of the injury sustained by the informant, has also not been examined during trial. The investigating officer of the case has also failed to turn up before the court during trial. The trial court has recorded that the witnesses examined on behalf of the prosecution have given contradictory statement to each other. The trial court has also recorded that though the alleged occurrence is said to have taken place at about 6 p.m. at a busy place but no person of the locality has come forward to support the prosecution case. On the basis of such finding if the trial court has come to a conclusion that the charges framed against the accused persons were not proved beyond reasonable doubt, no fault can be found with the order.

In my considered opinion, the findings recorded by the trial court cannot be held to be erroneous as there is no perverse appreciation of evidence. It is a settled position of law that in case of acquittal, there is double presumption in favour of the accused. Firstly, presumption of innocence is available to them under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, the accused having secured their acquittal, the presumption of their innocence is further re-inforced,

re-affirmed and is strengthened by the trial court. The parameter available to deal with an appeal against the judgment of acquittal is that if two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

For the reasons assigned, hereinabove, I find no merit in this appeal. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J.)

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