

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.471 of 2015

Arising Out of PS.Case No. -44 Year- 1997 Thana -SC/ST District- BHAGALPUR

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Mahendra Paswan, son of Parmeshwar Paswan, resident of Village- Bhawanathpur,
P.S.- Akbar Nagar, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar
2. Bishundeo Rai, son of Rameshwar Rai
3. Niroj Rai, son of Bishundeo Rai
4. Manoj Rai, son of Bishundeo Rai
5. Saroj Rai, son of Bishundeo Rai.

All resident of village Bharat Rasalpur, P.S. Nath Nagar, District- Bhagalpur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha, Adv.

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-08-2015

This appeal under proviso to Section 372 of the Code of Criminal Procedure has been filed by the appellant against the judgment dated 09.04.2015 passed by the learned 1st Additional Sessions Judge-cum-Special Judge, Bhagalpur in T.R. No. 66 of 2001 arising out of Harijan P.S.Case No. 44 of 1997, whereby the learned trial Judge has acquitted respondent nos. 2 to 5 from the charges leveled against them under Sections 341, 323, 379, 504, 506 of the Indian Penal Code and 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SC/ST Act').

2. Initially, a complaint case was filed by the appellant

Mahendra Paswan, which was referred to the police under Section 156(3) of the Code of Criminal Procedure, pursuant to which Harijan P.S.Case No. 44 of 1997 was registered against respondent nos.2 to 5 under Sections 341, 323, 379, 504, 506 of the Indian Penal Code and Section 3(1)(x) of the SC/ST Act.

3. According to the prosecution case as narrated in the First Information Report, on 3rd October, 1997 at about 8.00 a.m. while the appellant (informant) was at his house, the accused Bishundeo Rai (respondent no.2) with the help of his sons, namely, Neroj Rai, Manoj Rai and Saroj Rai (respondent nos.3 to 5) kept bricks over the land near the house of the informant. The informant protested against the act of the accused persons. Thereafter, accused Bishundeo Rai and his sons abused the appellant by taking name of his caste. They also assaulted him with fists, slaps and lathi causing injury on his leg and back. It is further stated that the accused Bishundeo Rai instigated his sons upon which his son Manoj Rai fired from his pistol but somehow the informant could manage to save his life. The accused Niroj Rai is stated to have snatched Rs.850/- from the pocket of the informant.

4. On completion of investigation, the Investigating Officer of the case submitted charge sheet under Sections 341, 323, 379, 504, 506 of the Indian Penal Code and Section 3(1)(x) of the SC/ST Act.

5. After taking cognizance of the offence, the case was

committed to the court of Special Judge. Learned Additional Sessions Judge-cum-Special Judge framed charges against the accused persons under Sections 341, 323, 379, 504, 506 of the Indian Penal Code and 3(1)(x) of the SC/ST Act. The accused persons did not plead guilty and claimed to be tried. Accordingly, the trial commenced.

6. In course of trial, six witnesses were examined in support of the prosecution case. It would be evident from the record that out of six witnesses examined during trial, P.W.3 Chunna Paswan and P.W.4 Sita Ram Paswan have not supported the prosecution case. They were declared as hostile at the request of the prosecution. P.W.2 Kanhai Paswan is a hearsay witness. His evidence is of no help to the prosecution. P.W.5 Mahendra Paswan, who is the informant, and P.W.1 Raghvendra Kumar have supported the prosecution case as narrated in the FIR in examination-in-chief. However, they contradicted each other on material particular during their cross-examination.

7. P.W.6 Pochan Paswan is a village chowkidar. In his deposition, he has stated that there is a pucca house of accused Bishundeo Rai on the P.O. land. He further stated that Bishundeo Rai had purchased that land from Tanki Devi wife of Khoya Paswan. The sale deed in respect of the plot in dispute was also proved by P.W.6, which has been marked as Ext.-1. The sale deed corroborates the fact

that the same was executed in favour of Bishundeo Rai by one Tanki Devi.

8. For recording a judgment of acquittal, the trial court has considered the fact that no document was filed on behalf of the prosecution to show right, title or possession over the plot in dispute. The trial court has also taken into account the fact that the Investigating Officer of the case was not examined and there is vital contradiction in the statements of P.W.5 and P.W.6, who have supported the case of the prosecution during trial.

9. Having considered the arguments advanced by the learned counsel for the appellant, I am of the view that there is no error in appreciation of evidence by the trial court. The witnesses examined during trial were not consistent. The Investigating Officer of the case has not been examined. There is no evidence to corroborate the fact that the victim sustained any injury.

10. Taking these facts into account if the trial court has recorded the judgment of acquittal, no fault can be found with the judgment passed by the trial court. Accordingly, the appeal, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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