

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.631 of 2014

Arising Out of PS.Case No. -109 Year- 2002 Thana -BAHADURPUR District- DARBHANGA

Satya Narayan Jha, Son of Late Ram Swaroop Jha, Resident of Village - Udhara,
P.S. -Bahadurpur, District - Darbhanga. Appellant

Versus

1. The State of Bihar
2. Krishna Kant Jha, Son of Sri Ramchandra JHa
3. Ram Chandra Jha, Son of Baikunth Jha
4. Sumant Jha, Son of Baikunth Jha All resident of Village - Udhara, P.S. - Pator
(O.P), Bahadurpur, District -Darbhanga. Respondent/s

Appearance :

For the Appellant/s : Mr. Ravi Ranjan, Advocate

For the Respondent/s : Mr. S. N. Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-02-2015

This appeal under proviso to Section 372 of the Code of Criminal Procedure has been filed by the informant against the judgment and order dated 20th November, 2014 passed by the learned 2nd Additional Sessions Judge, Darbhanga in Sessions Trial No. 93 of 2003 whereby he has acquitted respondent 2nd set of the charges levelled against them for the offences punishable under Sections 341, 447, 504, 324 and 307 of the Indian Penal Code and convicted them only for the offence punishable under Section 323 of the Indian Penal Code.

2. The prosecution case is based on the written



statement made by P.W. 4 Satya Narain Jha. He has alleged in his written report that on 6.6.2002 at about 4 p.m., respondent no. 3 Ram Chandra Jha was tilling his field by tractor tiller and in that course, he damaged the ridge of the field of the informant. The informant raised protest. Upon which, the respondents Ram Chandra Jha started abusing him. After the incident, the informant came to his *Bathan*. The respondent nos. 2 to 4 namely Krishna Kant Jha, Ram Chandra Jha and Sumant Jha being variously armed with *lathi*, *danda* and spade followed him and they started assaulting him indiscriminately. When his son Shankar Kumar Jha (P.W. 3) came to rescue him, he was also badly assaulted by the three accused respondents on his head as a result of which his scalp got fractured and it started profusely bleeding.

3. On the basis of the aforesaid written information submitted to the Officer-in-charge of Pator (O.P.), Darbhanga, Bahadurpur P.S. Case No. 109 of 2002 registered under Sections 341, 323, 324 and 504 read with 34 of the Indian Penal Code.

4. On conclusion of investigation, the investigating officer submitted charge sheet against the respondents 2nd set for the offences punishable under Sections 341, 323, 324, 307, 447 and 504 read with 34 of the Indian Penal Code vide charge sheet no. 189/2002 dated 31st August, 2002 before the Court of the learned



A.C.J.M. Darbhanga who took cognizance of the offence against the aforesaid persons in due court of time, after complying with the mandatory requirements of Section 207 of the Code of Criminal Procedure, the case was committed to the Court of Sessions for trial. The Sessions Court framed charges against all the three accused respondents under Sections 323, 341, 324, 307, 447 and 504 of the Indian Penal Code.

5. In order to prove its case, the prosecution examined altogether 8 witnesses. The informant Satya Narain Jha has been examined as P.W. 4 whereas the other injured Shanker Jha has been examined as P.W. 3. P.W. 1 Sita Ram Jha is an independent witnesses whereas P.W. 2 Chandra Kala Devi is wife of the informant. P.W. 5, Dr. Krishna Kumar Mishra is a radiologist on 13th June, 2002. He had examined the informant in Central Casualty Department of Darbhanga Medical College and Hospital. P.W. 6 Kanhaiya Singh is the investigating officer of the case. P.W. 7 Chandeshwar Rai is a formal witness whereas P.W. 8 Dr. Vijay Kumar Prasad is the doctor who had examined the two injured on the relevant date of occurrence.

6. On scrutiny of evidence of the prosecution witness, the Court below has recorded that the witnesses examined in course of trial have made contradictory statements to each other. It has



taken into consideration the injuries found on the person of the informant and his son Shankar Jha for forming an opinion that no case under Section 307 of the Penal Code is made out. According to P.W. 8, doctor Vijay Kumar Prasad, Satya Narain Jha had sustained three injuries on his person. All the three injuries were simple in nature. They were in the nature of swelling with tenderness, swelling with abrasion and complain of pain on both shoulders. According to the doctor, the injuries found on the person of Satya Narayan Jha were caused by hard and blunt substance. Similarly, he found only two injuries on the person of Shankar Jha (P.W. 3). Out of the two injuries, one was simple and superficial whereas the other one was an incised wound measuring $\frac{1}{2}$ " x $\frac{1}{4}$ " x bone deep on frontal region of scalp. The doctor has opined the said injury to be grievous in nature.

7. I find that the case of the prosecution is that the informant and his son were indiscriminately assaulted by three accused respondents with *lathi*, *danda* and *Kudal* but the injuries found on the two injured persons do not corroborate the ocular testimony of the witnesses.

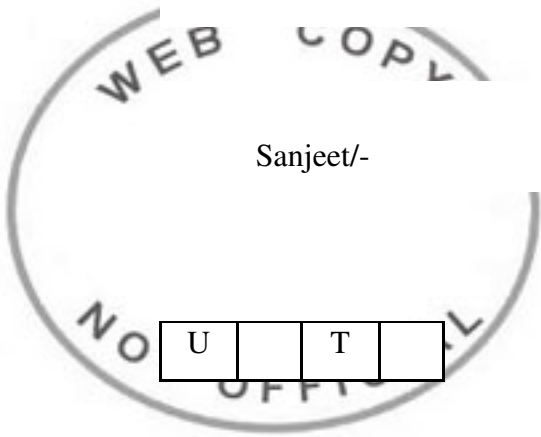
8. While recording the judgment of acquittal, the Court below has also taken into consideration the deposition of the investigating officer of the case who has categorically admitted that

while inspecting the place of occurrence, he could not find any material evidence. He further admits that he did not see anything on the basis of which it can be inferred that the field where the first part of the occurrence took place was tilled by tractor tiller.

9. I have heard learned counsel for the appellant and with his assistance have gone through the findings recorded by the learned trial Court. In my considered opinion, the findings recorded by the learned 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 him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further re-enforced, 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.

10. For the reasons assigned, hereinabove, I find no merit

in the present appeal. Accordingly, the appeal is dismissed.



(Ashwani Kumar Singh, J.)

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