

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.8 of 2015

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

=====

Amarendra Narayan Chaudhari, S/o Late Suhridya Narayan Chaudhari, Resident of
Slum 100, Kankarbagh, P.S.- Kankarbagh, Patna.

.... Petitioner

Versus

1. Govind Jha S/o Sri Sahdeo Jha
2. Shankar Jha S/o Shri Govind Jha

Both are the Resident of Kursa, Post- Kursonadiyama, P.S.- Sakatpur, District-
Darbhanga.

3. Gulam Dhuniya S/o Rahiman Dhuniya, Resident of Village-Kurso, Post -
Kursonadiyama, P.S.- Sakatpur, District Darbhanga.

4. The State of Bihar.

.... Opposite Parties

=====

Appearance :

For the Appellant/s : Mr. Alok, Advocate

For the Respondent/s : Mr. S.A. Ahmad, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-09-2015

The present application under Section 378(4) of the
Code of Criminal Procedure (For short 'Cr. P.C.') seeking leave to
appeal has been filed by one Amrenedra Narayan Chaudhari, one of
the witnesses of the original complaint case. He has filed the present
application because of the death of the original complainant, who
died on 28.09.2013. He was the father of the petitioner of the

present case. The leave to appeal has been sought for against the order of acquittal dated 17.05.2014 passed by the learned Judicial Magistrate-1st Class, Patna under Sections 323, 342, 379, 420 and 120-B of the Indian Penal Code in Complaint Case No. 1386(c)/2001 corresponding to Tr. No. 1507/2010.

2. According to the complainant, opposite party no. 3 Gulam Dhuniya instigated by opposite party no. 1 Govind Jha and opposite party no. 2 Shankar Jha forcibly occupied the land of the complainant in his village and constructed his house. The total area of the land forcibly occupied by accused Gulam Dhuniya was about 16 dhurs belonging to Khata No. 420, Khesra No. 872. The complainant has further stated that when he protested against construction, the opposite party no. 1 Govind Jha and the opposite party no. 2 Shankar Jha suggested him to sell the constructed part of the land to opposite party no. 3 Gulam Dhuniya for which the complainant agreed. It was also agreed upon that in lieu of such deal the complainant had to give 4 dhurs of land as commission to the accused Govind Jha and Shankar Jha from the same part of land. As per the agreement, the accused Gulam Dhuniya bought 4 dhurs land in the name of his two sons for Rs. 56000/-. As the full and final payment was not made, the complainant did not hand over the sale deed. The complainant has further stated that it was agreed



upon that the remaining amount of money will be paid by June, 2000. After the end of June, 2000 when the complainant inquired about the payment of the remaining amount of money, the accused Gulam Dhuniya told him that he had already paid the entire due amount to Govind Jha. When the complainant enquires about the same from Govind Jha, he abused him using filthy language. Thereafter, a panchayati was convened in which the accused persons agreed to pay the remaining amount of money by 30.04.2001. The complainant has further stated that when all his efforts went in vain, he sent a legal notice in June, 2001. Thereafter, once again, a panchayati was convened in which the accused persons assured the complainant that the due amount of money would be paid to him. The complainant has further stated that on 25.07.2001 at about 8:00 p.m. in the night, the accused persons came to his house and stayed there for the whole night. On 28.07.2001, at about 5:30 a.m., the accused persons demonstrated the currency notes which they had brought for the payment to the original complainant and demanded the sale deed. The moment the complainant took out the sale deed from his bag, Govind Jha and Gulam Dhuniya caught the complainant and Shankar Jha snatched the bag and fled away. When the complainant protested, he was slapped by Govind Jha and was thrashed by Gulam Dhuniya

causing injuries to the head and waist of the complainant.

3. On the basis of the aforesaid complaint, Complaint Case No. 1386 (c)/2001 was registered under Sections 323, 342, 379, 420 and 120B of the Indian Penal Code.

4. The complainant was examined on solemn affirmation and apart from the complainant, three other witnesses namely, Umesh Kumar Jha (C.W. 3), Amrendra Narayan Choudhari (petitioner) and Gangesh Narayan Choudhari (C.W.1) were examined in course of inquiry conducted under Section 202 Cr.P.C.

5. After holding inquiry, the learned Magistrate summoned the opposite party nos. 1 to 3 to face trial. After their appearance, the learned Magistrate framed charges under Sections 323, 342, 379, 420 and 120-B of the Indian Penal Code against opposite party nos. 1 to 3. Opposite party nos. 1 to 3 denied the charges and thereafter the trial commenced.

6. During trial, altogether four witnesses were examined. They are C.W. 1 Gangesh Narayan Choudhari, C.W. 2 Amrendra Naryan Choudhari, C.W. 3 Umesh Kumar Jha and C.W. 4 Sri Hriday Naryan Choudhari. The complainant did not prove any document during trial. The defence has neither produced any witness nor produced any document in their behalf. However, while being examined under Section 313 of the Cr.P.C., they pleaded their

innocence. After holding the trial, the trial Magistrate acquitted the accused persons vide impugned judgment dated 17.05.2014.

7. Learned counsel for the petitioner has submitted that while recording the judgment of acquittal, the learned Magistrate has not taken into account the evidences led before the court in right perspective. He has submitted that the learned Magistrate has discarded the evidences of witness for minor discrepancies. According to him, each and every witness has stated during trial that the incident had taken place on 26th July, 2001, but only due to typographical error in the complaint petition, the learned Magistrate disbelieved the case of the complainant.

8. He contends that it was proved beyond reasonable doubt that all the accused persons came to the house of the complainant in the night of 25th July, 2001, enjoyed the meal and stayed in the night and the alleged incident took place on 26th July, 2001 at about 5:30 a.m.

9. I have heard learned counsel for the petitioner and perused the impugned judgment passed by the court below.

10. It would be evident from the impugned judgment that the petitioner who was examined as complaint witness no. 2 did not turn up for cross-examination after charge. Hence, his evidence was discarded as it was of no use for the prosecution. No

documentary evidence was led before the trial court. Even the complaint petition was not formally proved by the complainant.

11. I further find that the complaint witness no. 1 Gangesh Narayan Choudhari has admitted in cross-examination that he knew nothing about the transaction of the land in question. It is relevant to note here that Gangesh Naryan Choudhari is none else but son of the complainant and brother of the present petitioner. He has further admitted that his father had never told him that any money was due to be paid to him by the accused persons. Similarly, complaint witness no. 3 Umesh Kumar Jha has admitted in cross-examination that no part of occurrence had taken place in his presence. The complainant, who had been examined as complaint witness no. 4, has also admitted in cross-examination that the accused Gulam Dhuniya used to work as a Masion at his house for which he did not make any payment to him. He has also admitted that he did not sustain any injury on the date of occurrence.

12. I further find that all the witnesses who were examined before the court have stated in their deposition that the alleged incident took place on 26th July, 2001 whereas in the complaint it has been alleged that the occurrence took place at 5:30 a.m. on 28th July, 2001. Further, it would be evident that though name of several independent witnesses were given in the complaint

petition, but, most of them were not examined before the court during trial.

13. Regard being had to the evidence led during trial, in my view, the learned Magistrate has rightly acquitted the accused persons. There is no coherence in the evidence of the witnesses examined during trial. The witnesses have not supported the major part of allegation. By no stretch of imagination such evidence could have resulted in conviction of the accused persons.

14. The application seeking leave to appeal lacks merit. Accordingly, leave to appeal is refused.

15. The application stands dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

U		T	
---	--	---	--