

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (SJ) No.3 of 2015

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

State of Bihar through the District Magistrate, Khagaria

.... Appellant

Versus

1. Bipin Yadav S/O Ramautar Yadav.

2. Ramautar Yadav S/O Late Bhutto Yadav.

Both residents of Village- Bela Pir Nagara, P.S. Beldaur, District- Khagaria

.... Respondents

Appearance :

For the Appellant/s : Mr. Rajendra Nath Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-12-2015

By way of the present appeal under Section 378 (1) & (iii) of the Code of Criminal Procedure (for short “Cr.P.C.”), the State has challenged the judgment dated 13th April 2015 passed by learned 1st Additional Sessions Judge, Khagaria in Sessions Trial No. 374 of 2007 by which the accused-respondents have been acquitted from the charges levelled against them under Sections 323, 341 and 504 of the Indian Penal Code (for short “IPC”) and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “SC/ST Act”).

2. Heard Mr. Rajendra Nath Jha, learned Additional Public Prosecutor for the appellant-State.

3. Though memo of appeal does not contain relevant document, learned counsel for the appellant has produced certified copy of the FIR, charge-sheet and deposition of witnesses at the time of argument.

4. Learned counsel for the appellant-State has submitted that the trial Court has erred in law in acquitting the accused persons as there is no finding on the charge of Section 3(1)(x) of SC/ST Act. He has further contended that the trial Court has failed to appreciate the evidence in correct perspective. According to him, all the witnesses have fully corroborated the prosecution case and trial Court ought to have held the respondents guilty of the charges.

5. The informant, Pushkar Paswan (P.W. 3) filed a written report before the Station House Officer, Beldaur police station on 23rd April, 2007 on the basis of which Beldaur P. S. Case No. 25 of 2007 dated 23.04.2007 was registered under Sections 341, 323 and 504 IPC and Section 3 & 4 of SC/ST Act. It has been alleged in the written report that on 23rd April, 2007 at 4.30 p.m., when the informant went to his field, he saw the respondent no. 2, Ramautar Yadav grazing his buffalo in the maize field of the informant and feeding the maize corn to his buffalo. When the informant reached there, respondent no. 2 said that due to mistake



the buffalo had gone in his field and grazed the maize corn and the plants. The informant showed his serious objection over this act, then respondent no. 1 Bipin Yadav came and assaulted the informant with *lathi*, and thereafter, respondent no. 2 Ramautar Yadav also assaulted him with *lathi* and abused him by taking his caste name. On hue and cry raised by the informant, the persons working in the nearby field came and rescued him.

6. On completion of investigation, the police submitted charge-sheet against the respondents under Sections 341, 323 and 504 IPC and Section 3 & 4 of SC/ST Act, pursuant to which the Jurisdictional Magistrate took cognizance of the offence and the case was committed to the Court of Sessions for trial. After receipt of the record, the trial Court framed charges against the respondents under Sections 341, 323 and 504 IPC and Section 3(1)(x) of SC/ST Act. The respondents denied the charges and thus, the trial commenced.

7. In course of trial, the prosecution has produced as many as three witnesses. The informant, who was examined as P.W. 3, has deposed that he had gone to see his maize field where the respondents, namely, Bipin Yadav and Ramautar Yadav were grazing their buffalo in the field of the informant and also feeding maize corns and plants to their buffalo. On protest, Ramautar

Yadav gave *lathi* blow on his leg and later on, Ramautar Yadav wrapped the neck of the informant with *gamachha* and abused him taking his caste name. In cross-examination, the informant has admitted that his family is of five brothers and collectively they have only 10 *dhurs* of homestead land. He has also admitted that he does not own any cultivable land. He has stated that the land, in question, where the buffalo of the respondents was grazing belonged to one Dashrath Yadav.

8. The other two witnesses examined in this case are: P.W. 1 Roshan Paswan and P.W. 2 Indal Paswan.

9. In his deposition, Roshan Paswan has given a completely different picture. During examination-in-chief, he has stated that it was respondent no. 1 Bipin Yadav, who repeatedly assaulted the informant Pushkar Paswan with *lathi*. Furthermore, he has stated that it was Bipin Yadav, who had abused the informant taking his caste name. In cross-examination, he has admitted that when he reached at the place of occurrence, save and except the informant, accused persons and him, there was no other person at the place of occurrence.

10. I further find that P.W. 2 Indal Paswan has given a complete go-bye to the story of abusing the informant by any of the accused. He too has stated that it was the accused Bipin

Yadav, who repeatedly assaulted the informant with *lathi*.

11. After the closure of the prosecution case, the statements of the accused persons were recorded under Section 313 Cr.P.C. in which they completely denied about their involvement in the said case. After hearing the parties and appreciating the evidence on record, the trial Court has acquitted the accused persons giving them the benefit of doubt.

12. Having heard learned counsel for the appellant and perused the evidence adduced during trial, I find that the prosecution has miserably failed to prove the charges levelled against the accused persons. Apparently, according to the FIR, the place of occurrence was the maize field of the informant. However, while deposing in Court, the informant has admitted that he has got no cultivable land of his own. Furthermore, as per FIR and according to the informant, it was the accused-respondent no. 2 Ramautar Yadav, who had assaulted him and used abusive words against him, but the other two witnesses, namely, Roshan Paswan and Indal Paswan have stated in their deposition that it was the accused Bipin Yadav, who had repeatedly assaulted the informant with *lathi* and used abusive words against the informant. I further find that P. W. 1 Roshan Paswan has ruled out the presence of P.W. 2 Indal Paswan at the time when the occurrence took place. The

contradictions, in the evidence of the witnesses, are on material particulars. By denying ownership of any cultivable land, the informant has given a death blow to the prosecution case. The very genesis of occurrence has not been proved. The important witnesses, like the doctor and the investigating officer, have not been examined. In their absence neither the place of occurrence nor the injury on the person of the informant could be established. In view of all these deficiencies, in my view, the trial Court had only one option and that was to acquit the accused persons by giving them the benefit of doubt and it has rightly done so. The trial Court has given clear, cogent and convincing reasons for acquitting the accused persons. Mere non-mentioning of Section 3(1)(x) of SC/ST Act in the finding portion of the judgment would not vitiate the findings of the trial Court.

13. In view of the discussion made, hereinabove, I do not find any merit in this case. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

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