

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.942 of 2015

Arising Out of P.S. Case No.-32 Year-2001 Thana-Sheohar

District- Sheohar

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Radheshyam Singh @ Radhe Singh, Son of Late Amir Singh,
resident of Village - Fatahpur, P.S. - Sheohar, District - Sheohar.

.... **Appellant**

Versus

1. The State of Bihar.
2. Ram Kumar Singh @ Lamku Singh, Son of Hitan Singh.
3. Ramkalewar Singh @ Muntun Singh, Son of Hitan Singh.
4. Birendra Singh, Son of Late Ram Nihora Singh.
5. Rakesh Kumar Singh, Son of Ganga Singh.
6. Krishan Bihari Singh, Son of Late Ramdeo Singh.

All residents of Village-Fatahpur, P.S.-Sheohar, District-Sheohar.

.... **Respondents**

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Appearance :

For the Appellant : Mr. Bhola Prasad, Advocate.

For the Respondents : Mr. Z. Hodda, Additional Public Prosecutor

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 18-12-2015

Respondent Nos.2 to 6 were put on trial, in



Sessions Trial Nos.341 of 2005/268 of 2012, on the charges of offences punishable under Sections 307 and 447 read with Section 34 of the Indian Penal Code. The said trial arose out of Sheohar P.S. Case No.32 of 2001 (G.R. No.25 of 2001). Learned trial Court, by its judgment and order, dated 16.07.2015, has recorded acquittal of respondent Nos.4, 5 and 6 and has convicted respondent Nos.2 and 3 of the offences punishable under Sections 324 and 447 of the Indian Penal Code. Learned trial Court has, however, given them the benefit, under Section 3 of the Probation of Offenders Act, with due admonition.

2. The informant of the aforesaid Sheohar P.S. Case No.32 of 2001 has presented this petition for appeal, under the proviso to Section 372 of the Code of Criminal Procedure, aggrieved by the said order of learned trial Court, as, according to him, acquittal of respondent Nos.4, 5 and 6 and conviction of respondent Nos.2 and 3 for lesser offences and award of lesser punishment were, in the light of the evidence adduced at the trial on behalf of the prosecution and gravity of offences committed by them, erroneous.

3. We have heard Mr. Bhola Prasad, learned counsel, appearing on behalf of the appellant, and Mr. Z. Hodda, learned Additional Public Prosecutor, appearing on behalf of the State of Bihar. We have perused the materials

available on the record and have given our anxious consideration to the submissions advanced on behalf of the appellant.

4. The *fardbeyan* of the informant/appellant, recorded by the police, on 14.05.2001, is the basis for institution of the First Information Report, according to which, the occurrence had taken place at about 12.45 A.M. in the night of 13/14.05.2001, when the informant was sleeping by the side of his son, namely, Mukund Kumar, outside his house. According to the case, as narrated in the *fardbeyan*, respondent Nos.2 and 3 removed the cover (Chadar), which the informant was wearing, and respondent No.2 started assaulting him with '*Khuria*' on his mouth and shoulder. It seems, as per the prosecution's case, one blow was given on the informant's mouth and the second one on his shoulder causing serious injuries on the body of the informant. As regard other respondents, i.e., respondent Nos.4, 5 and 6, it is stated that they were also present, when respondent No.2 was assaulting the informant. Thereafter, on alarm having been raised by the son of the informant, the accused persons fled away.

5. The police, upon investigation, submitted *chargesheet*, under Sections 307, 324 and 447 read with Section 34 of the Indian Penal Code, against the accused

persons. Upon taking cognizance, the case came to be committed to the Court of *Sessions*. Charges were framed against respondent Nos.2 to 6 for the offences punishable under Sections 307 and 447 read with Section 34 of the Indian Penal Code. Since they pleaded not guilty, trial against them commenced.

6. In order to prove the charges against the persons facing trial, the prosecution examined altogether twelve witnesses. Out of total twelve prosecution witnesses, two, namely, Ramswarath Singh (P.W.-3) and Pramod Kumar Singh (P.W.-6), did not support the prosecution's case and they were accordingly declared hostile to the prosecution. P.W.-7, Binod Kumar Singh, is a tendered witness. P.W.2, Navin Kumar, did not identify the accused persons. The remaining witnesses were Mukund Kumar (P.W.-1), son of the informant, Shambhu Singh (P.W.-4) and Srinarain Singh (P.W.-8), neighbours of the informant, Binita Devi (P.W.-5), the wife of the informant, and Rajan Kumar Singh (P.W.-9), another son of the informant. The informant was examined as P.W.-11, whereas the police officer, who had submitted *chargesheet*, as P.W.-10. The doctor was examined as P.W.-12. We further notice that P.W.-2, who is an independent witness, deposed that because of the darkness in the night, he could not identify the accused



persons. The informant in his deposition, at the *cross-examination* in paragraph-22, admitted that at the time of occurrence, the moon was going to set. He, however, said in his evidence, at the trial, that a lantern was lying lit there. In order to establish the means of identification, the son of the informant, namely, Mukund Kumar (P.W.-1), on the other hand, said that he was having a torch with him.

7. From the impugned judgment, we find that learned trial Court doubted the prosecution's case that lantern/torch was available as means of identification of the accused persons, particularly, as the said means of identification were not produced at the trial by the prosecution.

8. We further find that no role at all was attributed to respondent Nos.4, 5 and 6. Apparently, there was political rivalry between the parties. The accusations, levelled against the accused persons, read with the evidence adduced at the trial, do not, in our view, make out an offence under Section 307 of the Indian Penal Code. Learned trial Court has, however, convicted the respondent No.2 of the offence punishable under Section 324 of the Indian Penal Code. It cannot be said, on the basis of materials available on record, that the prosecution was able to prove commission of offence punishable under Section

307 of the Indian Penal Code against him.

9. This is established principle that while deciding an appeal against an order of acquittal, the appellate Court may interfere only if it is shown that the conclusion, arrived at by the trial Court, is totally perverse, i.e., against the weight of the evidence.

10. In our considered view, the reasoning, assigned by the learned trial Court, recording acquittal of respondent Nos.4, 5 and 6, cannot be said to be perverse. Secondly, conviction of respondent Nos.2 and 3, on the basis of materials available on record, cannot be said to be for offences lesser than what the prosecution was able to establish beyond all reasonable doubts at the trial. We, therefore, do not consider it to be a fit case for admission.

11. This appeal stands dismissed accordingly.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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