

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.821 of 2015

Arising Out of PS.Case No. -26 Year- 2003 Thana -BAIKUNTHPUR District- GOPALGANJ

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Ramadhar Singh, son of late Kuberi Singh, Resident of Village- Gambhari, P.S. Baikunthpur, District Gopalganj. Appellant

Versus

1. The State of Bihar
 2. Dasai Singh son of Kubery Singh
 3. Sunardeo Manjhi, Son late Madan Manjhi
 4. Bikarama Singh, son of Birendra Singh
 5. Harrendra Singh son of late Kedar Singh
 6. Bacchi Devi wife of Dasai Singh All resident of Gamhari, P.S. Baikunthpur District Gopalganj.
 7. Bishwanath Singh Son of late Balan Singh Resident of Village –Salwania, P.S. Baikunthpur Distt-Gopalganj. Respondents
- =====

Appearance :

For the Appellant/s : Mr. Mritunjay Prasad Singh, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, A.P.P.

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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: 21-12-2015

Present appeal has been preferred under the proviso to Section 372 of the Code of Criminal Procedure, 1973, by the appellant assailing the judgment and order, dated 06.08.2015, passed, by learned IVth Additional Sessions Judge, Gopalganj in Sessions Trial No. 35 of 2007, whereby, recording acquittal of respondent Nos. 2 to 6 herein. They stood charged for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code. Respondent No. 2 was also charged for the offences punishable under Sections 324 and 379 of the Indian Penal Code.

2. Before we proceed to consider the prosecution's case and other materials on record, we take note of the fact that the appellant, who is the informant of the concerned Baikunthpur P.S. Case No. 26 of 2003, which gave rise to Sessions Trial No. 35 of 2007, is the full brother of respondent No. 2 and respondent No. 6 is the wife of respondent No.2.

3. A *fardbeyan* of the informant, recorded at the Primary Health Centre, Baikunthpur, at 6 P.M., on 27.03.2003, is the basis for registration of the First Information Report, wherein the informant alleged that he had seen his brother, Dasai Singh (respondent No. 2) and his wife, Bachhi Devi (respondent No. 6), at about 2.45 P.M., taking away box, etc., from his (informant's) house after entering into the said house through window; they were being objected by the informant's wife, Kanti Devi (P.W.3) and daughter, Sobha Kumari (P.W.1), where, in the meanwhile, the informant reached there and stopped them from doing so. Thereafter, other co-accused persons, namely, Bikarama Singh (respondent No. 4), Harendra Singh (respondent No. 5) and one Sona Manjhi started assaulting him (the informant) with *lathi*. It was further alleged in the *fardbeyan* that co-accused, Bishwanath Singh (respondent No.6) and Satya Narayan Singh (since deceased) also came there and started assaulting the informant with *lathi*. The informant became unconscious, because of

the injuries, which he had sustained and after having regained consciousness at the Primary Health Centre, his *fardbeyan* came to be recorded. The reason, behind the occurrence, has been described as a dispute over the land, which was raised by respondent No. 2.

4. After completion of investigation, the police submitted *chargesheet* against the accused persons under Sections 341/ 323/ 307/504/34 of the Indian Penal Code, whereafter cognizance of the offences was taken and the case was committed to the Court of Sessions for trial.

5. A charge, under Section 307 read with Section 34 of the Indian Penal Code was framed against all the respondents. In addition thereto, respondent No. 1 was charged for the offences, punishable under Sections 324 and 379 of the Indian Penal Code. All the accused pleaded not guilty to their respective charges. One of the accused persons put on trial, namely, Satya Narayan Singh, died during the pendency of the trial.

6. At the trial, the prosecution examined altogether five witnesses. Informant has been examined as P.W.5 and his wife, Kanti Devi, as P.W.3, whereas, his daughter, Sobha Kumari, has been examined as P.W.1. Investigating Officer has been examined as P.W.2. One Bachhu Thakur was also examined as P.W.4; but has been declared hostile to the prosecution.



7. Learned trial Court, upon analyzing the evidence adduced for the prosecution, found material contradictions, in their evidence *vis a vis*, the allegations as contained in the First Information Report as also in their own depositions. Considering that all the witnesses were highly interested witnesses coupled with the fact that the doctor was not examined to prove the medical report, learned trial Court recorded acquittal of the respondents giving them benefit of doubt.

8. Mr. Mritunjay Prasad Singh, learned counsel appearing for the appellant, assailing the impugned judgment and order passed by the learned trial Court has submitted that the learned Court below failed to correctly scrutinize and appreciate the evidence of the prosecution witnesses, in whose presence, the occurrence had taken place.

9. We have perused the petition of appeal and materials on record. No submission has been made nor any ground has been taken that evidence of the prosecution witnesses have wrongly been described by the learned Court below in the judgment under appeal.

10. We have noticed that P.W. 5, being the informant himself, P.W.3, his wife, and P.W.1, his daughter, are highly interested witnesses. It is true that their evidence cannot be brushed aside only on the ground that they were interested witnesses; but at

the same time, while appreciating their evidence, great care and caution are required to be taken in order to reach to the conclusion of guilt as against the accused persons of the offences for which they were put on trial.

11. It is evincible from the record that while in the *fardbeyan*, the informant has alleged that his brother (Dasai Singh, respondent No.2) and his brother's wife, Bachhi Devi (respondent No. 6) were seen taking away box and other materials from his house after entering into the house through the window, no witness has supported this fact that these accused persons had entered into the house of the informant through a window. Whereas, it is alleged in the *fardbeyan* that respondent No. 2 assaulted the informant with *farsa (hatchet)*, the informant's wife, (P.W.3), in her evidence, has not named the person, who had assaulted the informant, though she claimed to be the eye witness. At the cross-examination, she could not say as regards the parts of the body of the informant, where he had received injuries. P.W.1, the informant's daughter, in her evidence, has deposed that the accused persons assaulted her mother, Kanti Devi (P.W.3), also. This was neither the case in the *fardbeyan* nor any witness gave any evidence to the effect that said Kanti Devi was also assaulted. Evidence of P.W.1 and P.W.3 suffered from material contradictions inasmuch as P.W. 3 deposed that she had also sustained injuries and

she was treated by a private doctor; whereas, P.W.1, her daughter, deposed that no medical treatment was given to P.W.3.

12. From the evidence of the Investigating-Officer, we find that the informant, in his statement to the police, had denied the allegation of *theft*. We find that there is material contradiction in the evidence of the witnesses over the charge of theft against respondent No. 1.

13. Considering the nature of contradictions in the evidence of witnesses, the fact that all the witnesses are highly interested witnesses, we do not find any infirmity in the impugned judgment and order, recording acquittal of respondents No. 2 to 6, by giving them benefit of doubt. On the basis of the evidence, it could not be said that the prosecution was able to prove the charges against the respondents No. 2 to 6 beyond all reasonable doubt. The view taken by learned trial court is a reasonably possible view and, therefore, does not require interference in the present appeal, against acquittal.

14. We do not find any merit in this appeal, which is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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