

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.586 of 2015

Arising Out of P.S.Case No. - 221 Year - 2006 Thana - AMARPUR District - BANKA

Shivnarayan Paswan, Son of Late Kartik Paswan, resident of Village - Suriyari,
P.S. - Amarpur, District - Banka.

.... Appellant

Versus

1. The State of Bihar.
2. Sadanand Paswan, Son of Satya Narayan Paswan.
3. Kavita Devi, Wife of Sadanand Paswan.

Both resident of Village - Suriyari, P.S. - Amarpur, District - Banka.

.... Respondent/s

Appearance :

For the Appellant : Mr. Praveen Kumar, Advocate

For the Respondent (State of Bihar) : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

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

Date: 17-08-2015

The appellant has preferred this appeal, under Section 372 of the Code of Criminal Procedure, 1973, against the judgment of the trial Court, dated 01/06/2015, recording acquittal of the respondents in S.T. No. 760 of 2009 / Trial No. 452 of 2015. On the basis of a complaint case, filed by the

appellant, and subsequent reference made under Section 156(3) of the Code of Criminal Procedure, a First Information Report was instituted by the police, giving rise to Amarpur P.S. Case No. 221 of 2006.

2. It was alleged in the complaint petition filed by the appellant herein that on the alleged date of occurrence, i.e., on 21/11/2006, when he was at his home, the persons named as accused in the complaint petition, alongwith 8 - 10 unknown persons, after having formed an unlawful assembly, came there armed with *lathi* and *iron rods* and began to remove the thatched roof of the appellant's house. Upon protest having been made by the appellant and his wife, the accused, namely, Satya Narayan Paswan, ordered the other accused persons to assault them. The other accused persons, who are respondent Nos. 2 and 3 herein, thereafter hit the wife of the appellant with *iron rods* causing injuries on her person. Allegedly, respondent No. 1 continued to assault her with *iron rod*. It was also alleged that when the appellant and his son tried to rescue the wife of the appellant, the respondents assaulted them too with *iron rod* and *lathi*. The police, upon investigation, submitted *chargesheet* against three persons, namely, Satya Narayan Paswan, father of respondent No. 2, respondent No. 2 and respondent No. 3, who

is wife of respondent No. 2. After having taking cognizance, the case was committed to the Court of Sessions. Charges were, thereafter, framed against the three accused persons for commission of offences punishable under Sections 341, 323, 324, 326, 307, 504 and 427 read with Section 34 of the Indian Penal Code.

3. Since the accused persons pleaded "*not guilty*", to the charges framed against them, the trial commenced. In course of trial, Satya Narayan Paswan, father of respondent No. 1, died and accordingly, vide order, dated 02/05/2014, the proceeding, as against him, was closed, as having abated. The respondent Nos. 2 and 3 were, accordingly, put on trial.

4. It appears, on the basis of the petition of appeal and the judgment of learned 6th Additional Sessions Judge, Banka, dated 01/06/2015, which is under challenge, that altogether six prosecution witnesses were examined. The appellant-informant was examined as P.W.-1. P.W.-2, namely, Godavari Devi, happened to be the wife of the informant and P.W.-3, namely, Jai Prakash Paswan, the son of the informant. A private doctor, namely, Dr. Beni Madhav Gupta, was examined as P.W.-4, who is said to have examined the injured persons. P.W.-5 and P.W.-6, namely, Ajay Kant Mishra and Lilavati Devi, were also

examined, who, however, did not support the accusations levelled against the respondent Nos. 2 and 3.

5. It appears from the judgment under appeal that in his examination as P.W.-1, the informant, in order to explain as to why he did he not make any attempt to lodge the First Information Report before filing the complaint case, deposed that when he reached Amarpur police station to lodge the First Information Report, he saw respondent No. 2 and few unknown persons at the police station and when he went to Banka hospital for his treatment, there also he found respondent No. 1 alongwith unknown accused persons and that, he, thereafter, went to his Advocate, who sent him to a private doctor for treatment and also prepared his complaint petition.

6. Learned trial Court has treated this part of the evidence to be highly improbable and not trustworthy. Further, the accused, Satya Narayan Paswan, is the own elder brother of the informant, P.W.-1. In course of cross-examination, P.W.-1 has deposed that he had not gone to Banka police station nor did he go to Banka hospital and he had directly gone to the Advocate. In Paragraph 18 of his cross-examination, P.W.-1 has said that the house, with respect to which the occurrence took place, belonged to one Ramdeo Paswan after whose death, his

widow had sold the land to the accused persons, who were in possession of the said land and a title suit, bearing T.S. No. 91 of 1995, was pending before the learned Munsif in respect of the said land.

7. P.W.-3, the son of the informant, made similar statement, which has not been believed by the learned trial Court.

8. P.W.-5 and P.W.-6 did not support the prosecution's case, as narrated by the informant.

9. P.W.-4 is Dr. Beni Madhav Gupta, who had examined Narayan Pawan, and found following injuries on his person:-

“(i) Lacerated wound on left Arm, External part of wrist $\frac{1}{2}$ ” x $\frac{1}{4}$ ” x $\frac{1}{2}$ ”.

(ii) Blunt injuries, right side of the back of chest 10” x 2”.

(iii) Blunt injury left back of chest 8” x 2”.

(iv) Bruise at the right side of the cheek.”

10. P.W.-4 examined Godavari Devi and found the following injuries on her person:-

“(i) Lacerated wound on upper part of head 1” x $\frac{1}{4}$ ” x $\frac{1}{2}$ ”.

(ii) Blunt injury left side at the back 10” x 2”.

(iii) Blunt injury on the right side of the back of the chest 9” x 2”.”

11. P.W.-4 examined Jai Prakash Paswan and found

following injuries on his person:-

*“(i) Blunt injury on the right side of Back of Chest
11” x 3”.*

*(ii) Blunt injury left side of back of the chest 10” x
2”.*

*(iii) Blunt injury left side back of the thigh 13” x
2”.”*

12. While considering the medical evidence on record, the learned trial Court has pointed out that P.W.-4 was a private doctor and did not even know whether 13” long injury can possibly be caused at the thigh or not. This apart, the learned trial Court has also pointed out that 10” and 11” long injuries at the back of chest, as claimed to have been found by the doctor (P.W.-4), could not have been possible unless the arm was kept on the back and, then, hit with other hard object; whereas there was no such evidence on record supporting causing of such injury. The learned trial Court, therefore, concluded that the injury reports appear to be concocted and cannot be relied upon. The learned trial Court has also pointed out, in this regard, that injuries, appearing 2” breadth, could not have been caused if the occurrence had taken place in the manner as the ocular evidence indicated.

13. We find no reason to disagree with the findings recorded by the learned trial Court as regards the veracity or

correctness of the medical evidence on record.

14. We have heard learned counsel for the appellant and have also perused the appeal petition and the judgment, under appeal, carefully. We find that P.W.-1, P.W.-2 and P.W.-3, the informant, his wife and son, respectively, were highly interested witnesses having interest in the property. It emerged from the evidence of P.W.-1, at the trial, that the land, in question, was, admittedly, sold in favour of the respondents by its owner and there was a title suit pending in this regard. Learned trial Court has rightly refused to believe the statement of P.W.-1 that he did not lodge the First Information Report, because the accused persons were present at the police station and he did not go to the Government hospital because the accused persons were present there also.

15. In our considered view, the appellant has failed to make out a case that sufficient grounds exist for interference with the judgment of acquittal recorded by the learned trial Court. The view taken by the trial Court, which had the advantage of not only recording the evidence of the witnesses and analyzing them, but also the advantage of seeing the demeanor of the witnesses, cannot be said to be not a possible view, which could have been taken on the basis of the evidence,

as discussed in the judgment under challenge. In our opinion, the impugned judgment of acquittal does not suffer from any infirmity.

16. We do not find any merit in this appeal. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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