

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.686 of 2015

Arising Out of PS.Case No. -23 Year- 2003 Thana -SAHEBPUR KAMAL District- BEGUSARAI

Dewan Mahton, son of Late Ganesh Mahton, resident of Village- Sadpur,
P.S. Sahebpur Kamal, District- Begusarai.

.... Appellant

Versus

1. Mitho Mahton, son of Late Bhushan Mahton
2. Kundan Mahton, son of Tanuklal Mahton
3. Ram Chandra Mahton @ Bucho Mahaton, son of Late Mishri Mahton,
4. Tanuklal Mahton, son of Late Amol Mahton
5. Singhji Mahton, son of Ram Chander Mahton, All residents of Village-
Sadpur, P.S.- Sahebpur Kamal, District- Begusarai.
6. The State of Bihar

.... Respondents

Appearance :

For the Appellant : Mr. Ashwani Kumar Sinha, Advocate

For the State : Mr. Ajay Mishra, APP

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOUABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

2 29-09-2015

This is an appeal under proviso to Section 372 of the Code of Criminal Procedure, 1973 filed by the son of the deceased, being aggrieved by the judgment and order, dated 18.6.2015, passed by learned Additional Sessions Judge II, Begusarai, in Sessions Trial No. 308 of 2003, whereby he has recorded acquittal of respondent Nos. 1 to 5 herein of the charge of murder punishable under Section 302/34 of the Indian Penal Code, but has convicted them for the offences punishable under Sections 341 and 323 of the Indian Penal Code. Giving the respondents No. 1 to 5 benefit of the provisions contained in Section 3 of the Probation of Offenders Act, 1958, learned trial

Court has released them by the impugned judgment and order.

2. Briefly stated, it was the prosecution's case that the informant, the appellant and their father, Ganesh Mahton (the deceased), were engaged in construction of a latrine in front of their house over their land, when co-villagers, Bhushan Mahton, armed with pistol, Ram Chandra Mahton @ Bucho Mahaton (respondent No.3), armed with *lathi*, Tanuklal Mahton (respondent No.4), armed with *lathi*, Awadhesh Mahton, Singhji Mahton, (respondent No.5), Mitho Mahton (respondent No.1) and Kundan Mahton (respondent No.2), armed with *lathis*, came and while objecting to construction of the latrine, they abused the informant, the appellant and their father. When the informant objected to the accused persons hurling abuses, accused Awadhesh Mahton is said to have given *lathi* blow on the head of the deceased, whereupon he fell down on sustaining injuries. Respondent no.3 and respondent no.5 are said to have assaulted the appellant with *lathis* causing injuries on his head and left hand. Respondent nos. 1, 2 and 4 are said to have assaulted the informant with *lathis*, as per the prosecution case, on his head. It was further alleged that co-accused, Bhushan Mahto, opened fire with his country-made pistol with an intention to kill the informant. However, the informant escaped the shot.

3. Initially, the case was registered for the offences punishable under Sections 341/342/323/379/504/34 of

the Indian Penal Code, wherein the persons above-named were made accused. As the victim, Ganesh Mahton, died subsequently, Section 302 of the Indian Penal Code was added. The police, upon completion of investigation, submitted *charge-sheet* against the accused persons, including the respondents, for the offences punishable under Sections 341, 323, 342, 504 and 302/34 of the Indian Penal Code.

4. At the trial, charges under Section 302 read with Section 34, Section 323 and Section 341 of the Indian Penal Code were framed against all the accused persons and, as against co-accused, Bhushan Mahton, a charge, under Section 307 of the Indian Penal Code, was further framed.

5. From the impugned judgment, it transpires that during the course of trial, the co-accused, Bhushan Mahton, died and proceedings, as against him, came to abate.

6. It further transpires from the impugned judgment that altogether 9 prosecution witnesses were examined, including the doctor as PW 7, who had, on 24.2.2003, performed the *post mortem* on the dead body and found the following *ante mortem* injuries:-

- “(i) *Lacerated wound over left external ear.*
- (ii) Stitched wound over occipital area 1 ½ `` long.*
- (iii) Old hilled abrasion over right elbow lateral aspect.*
- (iv) Intracath present on left cavital Fossa.*
- (v) Folley's catheter was present.*

On dissection :-

(i) Head and neck fracture of occipital bone and left parietal bone. Brain cavity full of blood clots more in left parietal area.

Time elapsed since death :- 12 to 24 hours.

Cause of death – Due to neurogenic and hemorrhagic shock due to head injury which was massive in nature. During cross-examination the post-mortem report was written and signed by him which is Ext. 2. During cross-examination he said that the patient may be unconscious since seven days before post-mortem.”

7. The prosecution witnesses supported the time, place and manner of occurrence. On the analysis of the evidence of the prosecutions' witnesses, learned trial Court concluded that the allegation of giving fatal blow was against Awadhesh Mahton, who was not put on trial, and there was no evidence to prove that these respondents, in furtherance of common intention, had prompted the said Awadhesh Mahton to cause assault upon the deceased. The learned trial Court also came to a finding that there was ample and specific evidence to show that these respondents had assaulted the other injured, i.e., the informant and the present appellant, causing injuries, which were found to be simple in nature. On the basis of evidence, the learned trial Court came to a specific finding that there was no evidence to the effect that the present respondents inflicted injuries upon the deceased, which resulted into his death. Learned trial Court accordingly, while acquitting the respondents of the charge punishable under Section 302 read with Section 34 of the Indian Penal Code, convicted

them of the charges punishable under Section 323 and Section 341 of the Indian Penal Code. Upon consideration of various attending circumstances, learned trial Court gave the respondents benefit of Section 3 of the Probation of Offenders Act, 1958.

8. Mr. Ashwani Kumar Sinha, learned counsel appearing on behalf of the appellant, has submitted that despite there being ample evidence on record for convicting the respondents under Section 302 read with Section 34 of the Indian Penal Code, the learned trial Court acquitted the respondents of the charge under Section 302 read with Section 34 of the Indian Penal Code.

9. We have perused the impugned judgment. This is not the case of the appellant that evidence of the prosecution witnesses have not been correctly described in the impugned judgment. The informant, in his evidence, as PW 3, has stated that the occurrence took place, because of the dispute between the parties over construction of a latrine. Though he has stated that co-accused, Awadhesh Mahton, in course of scuffle assaulted his (informant's) father, Ganesh Mahton, on his head by *lathi*, it is not culled out from his statement that there was any instigation, direct or indirect, attributable to the respondents No. 1 to 5, which led the said Awadhesh Mahton cause the assault on Ganesh Mahton. On the basis of his statement, it cannot be said that the respondents had gone to the place of occurrence with an intention to kill the

deceased or they had gone there in furtherance of any object to kill the deceased. The evidence of the other prosecution witnesses is also on the same line and consistent on the point that the occurrence had taken place, because of the land dispute between the parties. Curiously, PW 8, a doctor of a private nursing home, had found injury caused by fire-arm, though it was never the prosecution's case that the deceased Ganesh Mahto had received any fire-arm injury.

10. The findings, arrived at by the trial Court, is based upon analysis of the evidence on record. We are not convinced with the submission made on behalf of the appellant that the prosecution could prove, beyond all reasonable doubts, commission of offence punishable under Section 302 read with Section 34 of the Indian Penal Code against the present respondent Nos. 1 to 5.

11. This is settled law that if a view, taken by trial Court acquitting a person charged of an offence, can be said to be a probable view, this Court would not interfere, in appeal, with such judgment on the ground that another view is also possible.

12. We do not find any compelling and substantial reason to upset the findings of the learned trial Court, acquitting the respondents of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. The findings of the learned trial Court, leading to acquittal of the respondents under

Section 302 read with Section 34 of the Indian Penal Code, cannot be said to be unreasonable and/or perverse, requiring interference by this Court in the appeal against acquittal.

13. A submission has been made on behalf of the appellant that after having held the private respondents guilty of the offences punishable under Sections 341 and 323 of the Indian Penal Code, they ought not to have been allowed the benefit of Section 3 of the Probation of Offenders Act, 1958. From the judgment and order under appeal, we find that learned trial Court has assigned reasons for giving the respondents benefit of the provisions of Section 3 of the Probation of Offenders Act, 1958, which cannot be said unjustified, calling interference by this Court.

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

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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