

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.21 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

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The State Of Bihar Through Collector Vaishali

.... Appellant/s

Versus

1. Naval Rai Son of Ram Pravesh Rai
2. Arjun Rai, Son of Doman Rai
3. Nand Kishore Rai, Son of Ram Pravesh Rai
4. Raj Kishore Rai, Son of Ram Pravesh Rai
5. Suresh Rai, Son of late Mahadeo Rai
6. Ganesh Rai, son of late Mahadeo Rai
7. Budha alias Ram Pravesh Rai, son of Mahadeo Rai
8. Doman Rai, son of late Yadunandan Rai
9. Arjun Rai, son of Doman Rai

All resident of Village Sarariya Wet-Tola, P. S. Lalganj, District
Vaishali.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satya Narayan Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 23-08-2016

The State of Bihar is aggrieved in the present appeal filed, under Section 378(1) (3) of the Code of Criminal Procedure, 1973, by the judgment and order, dated 18.04.2016, passed by learned 4th Additional Session Judge, Vaishali, at Hajipur, in Sessions Trial No. 219 of 2005, whereby he has recorded acquittal of the respondents, who are nine in number, and were charged of commission of offences under Sections 147, 427 and 307

read with Section 149, and Section 360 of the Indian Penal Code.

2. *Fardbeyan* of the informant, recorded on 30.07.2004, at Lalganj Primary Health Centre, by Assistant Sub Inspector of Police of Lalganj Police Station, is the basis of registration of the First Information Report. In her *fardbeyan*, the informant alleged that on the date of occurrence, i.e., on 29.07.2004, when her husband had gone for agricultural purpose to the fields, she was alone in her hutment, busy with her household work. In the meanwhile, the respondents came and they started uprooting the hut and abusing her. When the informant attempted to stop them, Respondent No.6 gave a blow with *farsa* (a sharp cutting weapon) on her head causing injuries. She alleged that they took away 25-30 hens from her poultry farm and Respondent No.5 took away a box containing a sum of Rs. 4,000/-. On alarm having been raised, Respondent No.3, while fleeing away, assaulted her with *lathi*, whereafter she became unconscious. With the aforesaid allegations, Lalganj P. S. Case No. 137 of 2004 came to be registered for the offences punishable under Sections 147, 323,324,427,307,379 of the Indian Penal Code.

3. The police, upon completion of investigation,

submitted charge-sheet for the offences punishable under the aforesaid provisions of the Indian Penal Code on 13.11.2004. Cognizance was thereafter taken of the said offences and the case was committed for trial to the Court of Sessions. Since the respondents denied the charges framed against them, trial against them commenced.

4. At the trial, altogether nine witnesses, in support of the prosecution's case, were examined. After closure of the evidence of the prosecution witnesses, the response of the persons put on trial were taken under Section 313 of the Cr.P.C., who pleaded not guilty.

5. Learned trial Court, upon analysis of the evidence on record, came to the conclusion that the prosecution had failed to establish the charges of commission of offence framed against the respondents beyond all reasonable doubt and, giving them benefit of doubt, recorded their acquittal by the impugned judgment and order.

6. Learned Public Prosecutor, appearing on behalf of the State, has submitted that the learned Court below failed to appreciate that the prosecution witnesses duly supported the case of the prosecution and it took into account unnecessary minor discrepancies in the evidence of the prosecution witnesses before arriving at the conclusion that the prosecution had failed to prove the case beyond all

reasonable doubt. According to him, four prosecution witnesses had proved the case of the prosecution beyond all reasonable doubt.

7. On the basis of the materials on record and the submissions advanced on behalf of the appellant, whether the learned trial Court has failed to take into account any clinching evidence on record, which could have been the basis of conviction of the respondents rendering the judgment and order under appeal perverse, warranting interference by this Court in the appeal against acquittal? Whether the view taken by learned trial court acquitting the respondents of the aforesaid cannot be said to be reasonably possible view? These are the questions which need consideration in the present appeal.

8. Coming to the evidence adduced at the trial, we find that the doctor, who had examined the informant, has deposed as P.W.7 and proved following injuries on the body of the informant:-

"Lacerated wound 1 ½" x ½" x muscle deep on middle portion of scalp caused by hard and blunt substance. Nature of injury-simple"

9. This is to be noticed at the outset that in the *fardbeyan*, there is allegation of assault on the head of the informant by Respondent No.6 (Ganesh Rai) with *farsa*, which is a sharp cutting weapon. The doctor, however,

found only one injury on the body of the informant and that too lacerated wound by hard and blunt substance and not an injury, which could have been caused by a sharp edged weapon, such as, *farsa*.

10. Out of other witnesses, no witness other than P.W.1 and P.W.2 supported the case of the prosecution. P.W. 2 is the informant herself and P.W.1 is her husband. P.Ws. 3, 4, 5 and 6 have been declared hostile. P.W. 9 is the investigating Officer; whereas P.W.8 is a formal witness, who proved the First Information Report.

10. From the judgment and order under appeal, we have noticed that learned trial Court has taken into account the evidence that P.W.9, the Investigating Officer, did not find that informant's hutment was uprooted. Learned trial Court has also noticed the admitted land dispute resulting into lodging of the criminal cases between the parties concerned. Learned trial Court has disbelieved the evidence of the prosecution witnesses of causing assault by *farsa* in the hut of the informant considering the low height of the roof of the said hut.

11. Since P.Ws. 1 and 2 are highly interested witnesses their evidence, in the absence of corroboration by other evidence worth credence, adduced at the trial, it would not have been safe for the learned trial Court to have

held the accused guilty of the offences alleged.

12. We have no hesitation in recording that the appellant has not been able to establish that on the basis of the evidence on record, conviction of the respondents could have been the only possible view, despite materials contradictions in the evidence of witnesses, which have been considered by the learned trial Court in its judgment and order under appeal. No clinching material has been shown, which can be said to have escaped the notice of the learned trial Court and which could have been basis for conviction of the respondents. We do not notice any perversity in the judgment and order under appeal.

13. Considering the above, we do not find any merit in this appeal, which does not deserve admission and is accordingly dismissed.

(I. A. Ansari, CJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-c

AFR/NAFR	
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