

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.2 of 2016

=====

AGAINST THE JUDGEMENT DATED 05.05.2015 PASSED BY SRI BINAY KUMAR MISHRA, 2ND ADDITIONAL SESSIONS JUDGE, SHEOHAR IN SESSIONS TRIAL NO. 706 OF 2006, ARISING OUT OF PURNAHIYA POLICE STATION CASE NO. 21 OF 2006.

=====

State Of Bihar

.... Appellant

Versus

1. Mitaram Sah S/o Rajdeo Sah.
2. Guddu Sah S/o Rajdeo Sah.
3. Madam Sah S/o Late Raman Sah.
4. Chulahai Sah S/o Late Tekan Sah.
5. Shatrughan Sah S/o Chulahai Sah
6. Baldeo Sah S/o Ganga Sah. Village Marpa, P.S. Mejarganj, District Sitamarhi.
7. Rajdeo Sah S/o Laqte Raman Sah, Resident of village Chandiha, P.S Purnahiya District Shephar

.... Respondents

=====

Appearance :

For the Appellant : Mr. S.C.Mishra, Addl.Public Prosecutor

For the Respondents : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. P. Singh)

Date: 25-04-2016

This memo of appeal, preferred by the Government, is directed against the judgment of conviction, dated 05.05.2015, passed by Assistant Sessions Judge-II, Sheohar, in Sessions Trial No. 706 of 2006, arising out of Purnahiya Police station Case No. 21 of 2006, by which he has acquitted the respondents of charges framed under Sections 147, 148, 307, 109, 323, 324, 379 and 326 of the Indian Penal Code.

2. Before we examine the merits of this appeal, it would be relevant to notice the facts of the case in brief :-

The informant, in his *fardbeyan*, recorded at Dhanwati Bishwanath Hospital, at Vasant Jagjiwan, in injured condition, on 15.06.2006, at 8.30 AM, by the Sub-Inspector Krishna Murari Rai, stated that on previous day, while he was renovating the roof of his house on his newly purchased land, at about 6 PM, the accused persons, most of whom are his relatives, came armed with *lathi*, *danda* and knife and asked him to stop the renovation work of the roof, to which he protested. The accused persons, in retaliation, started disturbing the work of the roof and in the process, some of the accused namely, Mitaram Sah, Madan Sah and Chulahai Sah, assaulted the informant with *lathi* causing injuries over his right shoulder, right arm and right leg. Accused Guddu Sah also struck him with knife causing injury on his head. In the meantime, his uncle, Dharikshan Sah, nephew, Bajrangi Sah, younger sister-in-law, Sikiliya Devi, mother, Gangiya Devi, and daughter-in-law, Premwada Devi, came to rescue him, but the accused persons assaulted them also with *lathi*, and knife. Accused Mitaram Sah and Guddu Sah assaulted Premwada Devi with fists and slaps at her lower abdomen. Accused No.3 Madan Sah caused injury on her

breast. Accused Mitaram Sah snatched away silver neck sickles, weighing 25 Bhar, and nose-pin of gold weighing 04 Annas. Occurrence is said to have been witnessed by villagers, namely, Sahdeo Sah, Bachchu Sah, Kamala Sah, Jageshwar Sah and others. Informant and other injured were brought to Vasant Jagjeevan Hospital for treatment.

3. On the basis of the *fardbeyan* Purnahiya Police station Case No. 21 of 2006 was instituted under Sections 147, 148, 307, 149, 323, 324, 379 and 326 of the Indian Penal Code. On completion of investigation, *charge sheet* was submitted and accordingly cognizance was taken and the case was committed to the Court of Sessions. Charges were framed under Sections 147, 148, 307, 149, 323, 324, 379 and 326 of the Indian Penal Code.

4. Prosecution, in support of its case, examined altogether following nine witnesses:- PW 1 Sahdeo Sah, PW 2 Bachchu Sah, PW 3 Kamal Sah, PW 4 Dharikbhaw Sah, PW 5 Dr. Kashnath Jha, PW 6 Sakaliya Devi PW 7 Premba Devi, PW 8 Gangiya Devi and PW 9 Birjan Sah. Defence, too, examined three witnesses, namely, DW 1 Gajendra Sah, DW 2 Kamal Kishor Sah, DW 3 Ramchandra Mahto and DW 4 Ram Srescha Sah.

5. Statements of accused persons were recorded under

Section 313 of the Code of Criminal Procedure, wherein they pleaded not guilty. The learned trial Court on consideration of materials on record, acquitted the accused persons of the charges.

6. Assailing the impugned judgment of acquittal, learned counsel for the State submitted that the learned trial Court ought to have convicted the accused persons as the prosecution witnesses, namely, PWs 1 to 3, supported the prosecution's case as eye witness. Mere failure on the part of the prosecution to examine the Investigating Officer cannot be a ground for acquitting the accused persons, in absence of any prejudice claimed by them. It is submitted by learned Counsel for the appellant that the injury report of the doctor, i.e., PW 5 also supports the prosecution's case. The learned trial Court ought to have given weightage to the evidence of the witnesses as most of them sustained injuries.

7. We find that the learned trial Court acquitted the accused persons in view of a number of grounds, namely, inherent contradictions in the statements of witnesses, injuries on the persons of the victims were not examined by a Government doctor, but by a private doctor, etc. Further-more, statement of the private doctor (PW 5) is full of contradictions. In the examination-in-chief, he has stated that he examined the victim on 15.06.2006, but the



date of injury report of the doctor bears the date 14.06.2006. Besides this, requisition by police, addressed to the Medical Officer of the Primary Health Centre concerned, bears the date 15.06.2016. Further, adverse inference would be drawn against the prosecution for non-examination of the Investigating Officer. The learned trial Court noticed that the PW 1 stated that the place of occurrence is a cane field; whereas according to the informant, the incident took place on the issue of renovation of roof of his house. PW 2 stated that it was Niranjana, who was doing the renovation of the roof, and in paragraph 6, he has stated that this work was being done by him. PW 3 stated that he sustained a blow of knife on his hand, whereas according to the informant, Gudu Sah caused knife injury on the head of the informant.

8. On perusal of materials on record, we, too, are of the view that even examination of the injuries by a Government doctor casts doubt on the veracity of prosecution's case. That apart, evidence of the doctor is itself contradictory as the date of injury report is 14.6.2006, whereas police made requisition bearing date 15.06.2006. Non-examination of the Investigating Officer and the inherent contradictions in the statement of the prosecution witnesses makes the prosecution case not only weak, but wholly

unable to place reliance upon.

9. Situated thus, and in view of circumstances noticed above, we have no reason to differ from the findings of the learned trial Court that the prosecution has not been able to prove its case against the accused persons beyond all reasonable doubt.

10. In the result, there is no merit in this appeal and it is, thus, dismissed.

(I.A. Ansari, ACJ)

(Samarendra Pratap Singh, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
Uploading Date	22.6.2016
Transmission Date	22.6.2016