

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.67 of 2016

Arising Out of PS.Case No. -228 Year- 1999 Thana -KARAI PARSURAI District- NALANDA
(BIHARSHARIFF)

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Indrajeet Prasad S/o late Dwarika Mahto Resident of Village- Kamarthu,
P.S- Karari, District Nalanda.

.... Appellant/s

Versus

1. The State of Bihar
2. Sukariya Gope S/o late Ramadhin Gope Resident of Village- Rupaspur,
P.s Karai Parsurai, at present P.S- Chickshauara, District Nalanda.
3. Sohrai Yadav S/o Late Rambalak Gope Resident of Village-
Khalimchak, P.s Karai Parsurai, District Nalanda.
4. Balbir Gope S/o late Harnandan Gope Resident of Village- Shandh Ke
Bighapar , P.s Karai Parsurai, District Nalanda.
5. Naresh Yadav S/o Late Ramadhin Yadav Resident of Village-Rupaspur,
P.s Karai Parsurai, at Present P.S Chickshauara, District Nalanda.
6. Mathura Yadav S/o late Mahto Yadav Resident of Village- Khalimchak,
P.s Karai Parsurai, District Nalanda.
7. Yogi Yadav S/o Harinandan Gope Resident of Village-Shandh Ke
Bighapar, P.s Karai Parsuarai, District Nalanda.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Om Prakash Prasad
For the Respondent/s : Mr. S.N.Prasad(App)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

3 18-03-2016

The present appeal is directed against the judgment
and order of acquittal, dated 04.12.2015, passed in Sessions
Trial No. 15 of 2001, arising out of Karai (Hilsa) P.S. Case No.
228 of 1999, whereby and whereunder the learned 6th Additional
Sessions Judge, Nalanda, has acquitted the accused-respondents
of the charges under Sections 364, 302, 201, 411 read with

Section 34 of the Indian Penal Code.

2. The prosecution's case, as it unfolded at the trial, may, in brief, be described as under:

(i) On 15.07.1999, Indrajeet Prasad, the appellant, along with his father, was going towards the direction of north-east of the village for transplanting paddy. When the appellant herein was sitting on the ridge, he saw Naresh Yadav, his brother, Sukariya Yadav, and others coming towards them armed with gun, etc. Seeing them coming, the appellant started fleeing away and while doing so, though he was chased, he could not be apprehended, but the informant also saw that his father had been apprehended and one of the bullocks was being taken away by the accused. On protest, the unknown persons started taking away another bullock also and they also started assaulting the appellant's father and opened fire. They took away the bullock and the plough. The reason for the occurrence was that the culprits were suspecting that one Anirudh Gope, brother of accused Sukariya, was killed by the members of the prosecution party. It was claimed that for this reason, the father of the appellant was kidnapped and bullocks, etc., were taken away.



(ii) On 17.07.1999, the informant lodged a *fardbeyan*, at Karai (Hilsa) Police Station, and treating the same as First Information Report, Karai (Hilsa) P. S. Case No. 228 of 1999 was registered, under Sections 364 and 379 read with Section 34 of the Indian Penal Code, against the accused persons and, on completion of investigation, a *charge sheet* was laid, under Sections 364, 302, 201, 379 and 411 read with Section 34 of the Indian Penal Code, against the accused aforementioned.

3. At the trial, charges, under Sections 364, 302, 201, 379 and 411 read with Section 34 of the Indian Penal Code, were framed against three accused persons. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 4 (four) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, arrived at the finding that the charges against the accused-respondent Nos. 2 to 7, under Sections 364, 302, 201, 379 and 411 read with Section 34 of the

Indian Penal Code, had not been proved, the learned trial Court acquitted them.

6. Aggrieved by the acquittal of the respondent Nos. 2 to 7 under Sections 364, 302, 201, 379 and 411 read with Section 34 of the Indian Penal Code.

7. Heard Mr. Bakshi S.R.P. Sinha, learned Senior Counsel for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor for the respondent-State.

8. P.W 1 (Chameli Devi) is the widow of the deceased, Dwarika Prasad, who claims to be an eye-witness. In her deposition, she has stated that she heard *hulla* that Naresh and Sukriya Yadav, along with others, were committing theft near the field of her husband and that her husband had been taken away by the accused persons along with the oxen and other implements. She has deposed that the reason behind such an occurrence was that a year back, one person from Rupuspur village had been killed and, in revenge thereof, the accused persons took away her husband and killed him. She has, however, deposed that she had never met the accused. She has further deposed (paragraph No. 7) that at the time of occurrence, she was sitting in her courtyard along with her daughter-in-law, grand daughter and grandson. Her neighbours came to her house

and after they left, her son, Indrajeet, came in. She has also deposed that after hunting for her husband for about two hours, her son went and informed the police.

9. P.W. 2 is one Rajendra Prasad Singh, who is Advocate's clerk and has merely proved the formal First Information Report (Exhibit 1).

10. P.W. 3 is Munni Prasad, who deposed that on 15.07.1999, while he was at his field, 8-10 persons, who were variously armed, came and caught hold of his brother, namely, the deceased, Dwarika Prasad, and took him along with his bullocks towards the north-east. They also tried to catch hold of Indrajeet Prasad, son of the deceased, but Indrajeet Prasad fled away. Soon thereafter, he heard the shot of firing. Later on, he came to know that Dwarika Prasad had been chopped to death and his body had been thrown away in the river. However, he has deposed that he has not seen anybody killing Dwarika Prasad, but had heard so from others. The said witness has deposed that at time of occurrence, other persons like Suresh Choudhary, Kailash Mahto, Shyam Sunder, Indrajeet Prasad were also present. However, the said persons, including the son of the deceased, have not come forward to depose in the present

case. P.W.4 is Kailash Mahto, who has denied having seen the occurrence and, as such, he has been declared hostile.

11. The learned trial Court, upon carefully considering the depositions of the witnesses, has come to the conclusion that save and except one witness, there is no other witness to support the case of the appellant. Thus, in view of the fact that there was only one eye witness and all other had become hostile, the learned trial Court opined that such evidence of this witness, for want of corroboration by any other witness, cannot be safely relied upon. As such, the learned trial Court has come to the conclusion that the charges, against the accused persons, have not been proved beyond reasonable doubt and has accordingly acquitted the accused persons.

12. Having heard learned Counsel for the appellant and learned Counsel appearing for the State and on perusal of the discussion of evidence and findings arrived therefrom, we find that the learned trial Court has rightly come to the conclusion that the charges were not brought home against the accused persons beyond doubt inasmuch as on a close scrutiny of the evidence of the widow of the deceased, it clearly transpires that she was not an eye witnesses to the occurrence

and her son, who was the sole eye witness has not been examined in the present case as a witness. In such an event, the charges could not have been held, and has rightly not been held, to have been brought home beyond reasonable doubt.

13. Because of what has been discussed and pointed out above, we do not find any merit in this appeal. The appeal is, therefore, dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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