

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 241 of 2016

Arising Out of P.S. Case No. - 151 Year - 1991 Thana - BAHERA District -
DARBHANGA

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Krishna Kumar Jha, Son of Lakshman Jha, resident of Village -
Tumaul, P.S. - Bahera, District - Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar.
2. Dinesh Jha @ Dinesh Kumar Jha, Son of Balbhadra Jha,
resident of Village - Tumaul, P.S. - Bahera, District -
Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.

For the State : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

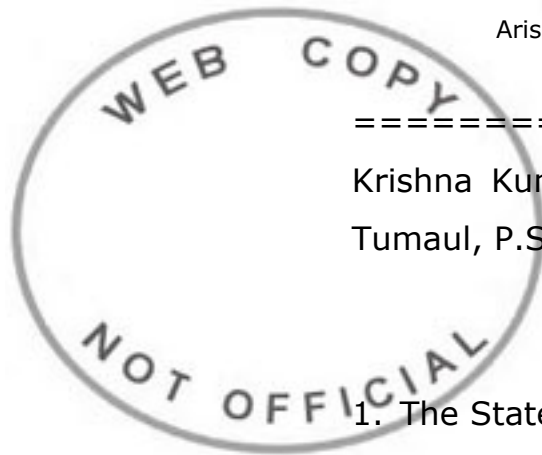
**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT & ORDER

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

Date: 03-08-2016

This appeal, under proviso to Section 372 of
the Code of Criminal Procedure, has been filed against the
judgment and order, dated 26.02.2016, passed by learned
Additional Sessions Judge-Ist, Benipur, District-Darbhangha,



in Sessions Trial No.179 of 1999, whereby he has recorded acquittal of respondent No. 2, who stood charged for the offence punishable under Sections 323, 341 and 307 of the Indian Penal Code, at the trial.

2. The appellant was aged about 10-11 years on the date of occurrence, i.e., 13.08.1991, on the basis of whose *fardbeyan*, recorded by the police at Putai hospital, the concerned First Information Report, giving rise to Bahera P.S. Case No. 151 of 1991, was registered.

3. The case of the prosecution in brief is that on the alleged date of occurrence, i.e., 13.08.1991, at about 4.00 P.M., the appellant (informant) was standing near the house (Darwaja) of one Budhnath Mishra, where 4 persons, namely, Sandip Kumar Mishra, Sachit Rai, Butan Rai and Gopal Jha, were playing cards. The informant was seeing them playing cards. In the meanwhile, said Budhnath Mishra came there from his house and asked the persons, who were playing cards, to stop playing and allow him to sleep. It is alleged that the appellant also asked those persons to stop playing cards, where after one Ramanjee Jha picked up quarrel with him. The father of said Ramanjee Jha, viz. Dinesh Jha (respondent No. 2) came there and he lifted the informant in his lap, jumped in the nearby pond and started pressing him for drowning him under the water. In the



meanwhile, the mother of one Niras Mishra came running, to save him, jumped in the pond and rescued him by taking out from the pond. Since the informant had consumed a lot of water, he was taken to hospital for treatment by his uncle, namely, Kaushal Kumar Jha. At the hospital, the *fardbeyan* of the informant was recorded on the basis of which the First Information Report was lodged, bearing Bahera P.S. Case No. 151 of 1991. The informant also said in his *fardbeyan* that the occurrence was witnessed by Budhnath Mishra and one Arun Kumar Jha.

4. After having investigated the case, the police had submitted charge-sheet for the offence punishable under Sections 323, 341 and 307 of the Indian Penal Code and after cognizance having been taken thereon, the case was committed to the Court of *Sessions* for trial. Respondent No. 2 pleaded not guilty to the charges framed against him under Sections 323, 341, 307 of the Indian Penal Code and, accordingly, the trial proceeded against him.

5. At the trial, altogether 6 witnesses were examined by the prosecution including the informant, namely, Krishna Kumar Jha (P.W.-3), the Investigating Officer, namely, Visheshwar Jha (P.W.-5) and the Doctor, namely, Madan Mishra (P.W.-4). P.W.-6, namely, Nunu Jha,

was examined as a formal witness, who proved the First Information Report. The prosecution, thus, examined 3 witnesses in support of their case at the trial, namely, P.W.-1, Binde Rai, P.W.-2, Uma Nath Jha, and P.W.-3, the informant.

6. After closure of the evidence of prosecution, response of respondent No. 2 was asked, under Section 313 of the Code of Criminal Procedure, who denied the allegation leveled against him.

7. Learned trial Court, upon evaluation of evidence available on record, arrived at a conclusion that because of want of sufficient evidence, the prosecution had failed to prove the charges against respondent No. 2 beyond all reasonable doubts. While recording acquittal of respondent No. 2, accordingly, the learned trial Court took into account, *inter alia*, the fact that the Doctor had not issued any injury report and if any such injury report was made, the same was not proved at the trial. P.W.-4, the Doctor, in his evidence, had deposed that he had not issued any injury report. Learned trial Court also took into account the fact that on the one hand, P.W.-1 and P.W.-2 claimed that they were present at the place of occurrence, but it was unbelievable that in the presence of those persons, a lady would jump in the pond to save the informant.



8. Mr. Ajay Kumar Thakur, learned counsel, appearing on behalf of the appellant, has submitted that learned Additional Sessions Judge, while recording acquittal of respondent No. 2, has taken into account irrelevant facts and the reasons assigned for not believing the evidence of prosecution witnesses is not at all germane. He has submitted that the eye-witnesses were consistent in their deposition at the trial and the evidence, adduced at the trial, were enough to convict respondent No. 2 inasmuch as the charges framed against him were got proved beyond all reasonable doubts.

9. We have perused the judgment and order, under appeal, and other materials available on the record. There is no ground taken in the petition of appeal that the evidence of witnesses have been wrongly described in the impugned judgment and order. According to the *fardbeyan* itself, 4 persons were said to have playing cards and they were present at the place of occurrence. Further, the mother of one Niras Mishra is said to have saved the informant from being drowned. Neither the persons, who were playing cards and present at the place of occurrence, have been examined at the trial by the prosecution nor the mother of said Niras Mishra. It also appears that in the *fardbeyan*, it was said by the informant that Budhnath

Mishra and one Arun Kumar Jha had seen the occurrence, but none of them were examined at the trial. These witnesses were crucial and material witnesses and their non-examination, without any cogent reason, creates a shadow of doubt on the case of the prosecution.

10. On the basis of evidence adduced at the trial, as indicated above, if learned trial Court arrived at a conclusion that the prosecution could not prove the charge against respondent No. 2 beyond all reasonable doubts, such conclusion or finding cannot be said to be not a reasonably possible view. On the other hand, in our considered view, the evidence on record were apparently insufficient to prove charges against respondent No. 2 beyond all reasonable doubts.

11. For the reasons aforesaid, we do not find this appeal fit to be admitted.

12. This appeal is, accordingly, dismissed.

(I. A. Ansari, CJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
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