

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.32 of 2015

Arising Out of Complaint Case No. -23(C) Year- 2008 Thana -null District- PATNA

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Hari Shankar Prasad Pathak, son of late Saryu Prasad Pathak, resident of village- Bilap, P.S.- Bihta, District- Patna.

.... Petitioner

Versus

1. Dileep Pathak
2. Devesh Pathak
3. Bibhutesh Pathak, all sons of late Ramnath Pathak
4. Dev Shankar Pathak, son of late Saryu Prasad Pathak
5. Lallu Pathak son of Shambhu Shankar Pathak, all resident of village- Bilap, P.S.- Bihta, District- Patna
6. Jai Prakash Mishra, s/o not known, son-in-law of Shivesh Prasad Pathak, resident of village- Chakunar Chapra, P.S.- Dighwara, District- Chapra
7. Manoj Pathak, son of Bibhutesh Pathak
8. Supari Mishra, s/o not known, Nati of Devesh Pathak, resident of village- Bilap, P.S.- Bihta, District- Patna.
9. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar, Adv.

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-09-2016

The present application under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'CrPC') has been filed seeking leave to appeal against the judgment and order dated 30th May, 2015 passed by the learned Judicial Magistrate 1st Class, Danapur, Patna in Complaint Case No. 23(C) of 2008/ Trial No. 97 of 2015, whereby and whereunder the opposite parties no.1 to 8 have been acquitted of the charges under Sections 147, 323, 452 and 379/34 of the Indian Penal Code (for short 'IPC').

2. The petitioner herein, a retired government employee, is the complainant of the aforesaid complaint case. According to the complaint case, the complainant was sitting at his door on 30th January, 2008 at about 3.00 p.m.. Suddenly, the opposite parties came to his house and started abusing him. They threatened to withdraw the case otherwise he would be killed. All the accused persons started assaulting him with fists and legs. Accused Dileep Pathak and Bibhutesh Pathak started to press his neck. After few minutes, daughter of the complainant came there and started crying, then, accused Dev Shankar Pathak snatched a gold chain worth Rs.6000/-. In the meantime, the witnesses came there and saved the life of the complainant. It is further stated in the complaint petition that a long standing dispute was going on between the parties and the complainant had also lodged a case against the opposite parties, which is pending in the court of Judicial Magistrate 1st Class, and the opposite parties have committed this crime only in order to put pressure on them to withdraw that case. It is further stated that the complainant got himself treated with herbal medicine. It is stated that the accused persons had assaulted the complainant on 31st December, 2007 also for which Bihta Police Station was informed. The S.H.O. of Bihta Police Station had obtained a bond from both the parties for maintaining peace. It is stated that due to this reason, the complainant

did not report the matter to the police and filed the aforesaid complaint case before the court. On the basis of the averments made in the complaint petition, Complaint Case No. 23(C) of 2008 was filed under Sections 147, 323 and 379/34 of the IPC.

3. After filing of the complaint case, the complainant was examined on solemn affirmation and on his behalf three witnesses were examined in course of inquiry conducted under Section 202 of the CrPC. Thereafter, finding a prima facie case to be made out for the offences under Sections 147, 323 and 379/34 of the IPC, the jurisdictional Magistrate issued summons against the accused persons vide order dated 18th March, 2008.

4. In compliance with the summoning order passed by the jurisdictional Magistrate, the accused persons appeared before the court on 18th February, 2010. On that very day, the complainant filed a petition for adding Sections 452 and 307/34 of the IPC also. After hearing the parties, the Magistrate framed charges against the accused persons under Sections 147, 323, 379 and 452 of the IPC to which the accused persons pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

5. In course of trial, altogether four witnesses were examined on behalf of the complainant. They are C.W.1 Ajeet Singh, C.W.2 Kusum Devi, C.W.3 Basant Kumar Mishra and C.W.4 the

complainant Hari Shankar Prasad Pathak. One of the witnesses cited in the complaint, namely, Janglee Mishra had not been examined.

6. C.W.1 Ajeet Singh though supported the complaint case in his examination-in-chief, in his cross-examination, he stated that the occurrence had already taken place before he went there. He has stated that he had heard the alarm raised from the house of the complainant. He has denied to have recognized the persons who had assaulted the complainant.

7. C.W.2 Kusum Devi is the daughter of the complainant. She has stated in her cross-examination that accused Dev Shankar Pathak is her own uncle and rest of them are distant relatives. She has stated that her father was inside the house at the time of occurrence. On the date of occurrence the accused persons had assembled in the house in the morning. She has further deposed that the accused persons were altercating with her father for 5-10 minutes and she was looking this from her door. She has further stated that there are pending litigations between the parties relating to land.

8. C.W.3 Basant Kumar Mishra has stated in his cross-examination that he remained in his house throughout the day. He had heard the noise in the evening, but he did not come outside. This witness has stated that there was mark on the neck of the complainant and there were nail scratches on his chest with some bleeding.



9. C.W.4 is the complainant himself. He has stated in his cross-examination that prior to the present complaint the accused persons had lodged a case against him of crop looting. Four cases, one civil and three criminal, are going on between them. He has stated that he is in possession of all the papers relating to disputed land, partition deed, papers issued from the Block and survey parcha in his own name but he has not produced any of the papers in the case. He has stated that there was swelling in his neck and scratches on his knees. The complainant has proved the complaint petition, marked as Ext.-1 and his signature on the complaint petition, marked as Ext.-1/1. He has also proved certified copy of FIR No. 56 of 2006 as Ext.-2 and certified copy of the charge-sheet of the said case as Ext.-3.

10. The defence has adduced documentary evidence in order to prove innocence of the accused persons. Statements of the accused persons were recorded under Section 313 of the CrPC wherein they have pleaded their innocence.

11. After considering the evidence adduced on behalf of the parties, the trial court acquitted the accused persons of the offences under which they were charged. The trial court observed that out of four complainant witnesses, C.W.2 and C.W.3 are interested witnesses. C.W.4 is the complainant himself and C.W.1 is a chance



witness. The trial court found material contradiction in the evidence of the witnesses. Though the complainant has alleged in his evidence that he was brutally assaulted by eight accused persons by fists and legs for ten minutes but no serious injury had been caused to him. There was no medical examination and the complainant got himself treated with herbal medicine. The trial court also found that the parties were having land dispute but the complainant has not produced a single chit of paper of the land either in this case or in the previous cases as per his own admission in his evidence. Thus, the trial court concluded that the complainant failed to prove the guilt of the accused persons beyond all reasonable doubt for any of the charges leveled against them. Accordingly, the trial court acquitted the accused persons of all the charges.

12. Heard learned counsel for the petitioner and perused the record.

13. Having seen the reasonings assigned by the trial Magistrate for arriving at a conclusion that the prosecution has failed to prove its case beyond reasonable doubt, this Court is of the view that no error can be found with such finding. The jurisdictional Magistrate has given clear, cogent and convincing reason for arriving at such conclusion. The conclusion arrived at by the jurisdictional Magistrate is neither erroneous nor perverse.

14. In that view of the matter, I do not find any merit in this application. Accordingly, the application preferred under Section 378(4) of the Cr.P.C. seeking leave to file appeal against the impugned judgment is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	