

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.862 of 2015

Arising Out of PS.Case No. -16 Year- 2011 Thana -GORIAKOTHI District- SIWAN

Narayan Prasad @ Narayan Bind son of Late Bhikhari Thakur, R/o Village-
Chhitauli, Navka Tola, P.S.- Gorla Kothi, District- Siwan

.... Appellant/s

Versus

1. The State of Bihar
2. Geeta Devi wife of Bhagwat Bind
3. Bhagwat Bind son of Hardeo Bind
4. Shambhu Bind son of Hardeo Bind
5. Chandrika Bind son of Hardeo Bind
6. Birbali Bind son of Raghunath Bind
7. Mukesh Bind son of Bikrama Bind
8. Dhananjay Bind son of Birbali Bind

All R/o Village- Chhitauli, Navka Tola, P.S.- Gorla Kothi, District-
Siwan

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Bijay Prakash Singh

For the Respondent/s : Mr. Ashok Kumar

Mr. Kaushal Kumar Singh

Mr. Binod Bihari Singh (App)

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

8 04-03-2016 By the judgment and order, dated 22.09.2015,

passed, in Sessions Trial No. 566 of 2011, G.R. No. 667/2011

(arising out of Goriakothi P.S. Case No. 11 of 2011), by the 1st

Ad hoc Additional District and Sessions Judge, Siwan, the

accused-respondent Nos. 2 to 8 have been acquitted of the

charges framed under Section 148 and Sections 341, 504 and 307

read with Section 149 of the Indian Penal Code.

2. The case of the prosecution, as unfolded at the

trial, may, in brief, be described as under:

(i) Fifteen days prior to the date of occurrence, i.e., 20.03.2011, while the grand-daughter and the son of the informant were coming through the wheat field of one Hardeo Bind, they allegedly caused damage to the standing crops. On this, it is alleged, the daughter-in-law of the said Hardeo Bind and the daughter-in-law of the informant, Narayan Bind, came to quarrel with each another. Further, on 20.03.2011, at about 03:00 P.M., while the informant and his wife were sitting at their *bathan*, Gita Devi came there with a *lavda* in her hand and started abusing the informant and his wife to which they raised their protests. In the meantime, Bhagwat Bind, Shambhu Bind, Chandrika Bind came there carrying stick and knife in their hands and accused Shambhu Bind and Chandrika Bind assaulted the son of the informant; whereas Bhagwat Bind gave a knife blow, which hit the informant. It is alleged that when the informant's daughter-in-law came to rescue him, Birbali Bind, Dhananjay Bind and Nitesh Bind assaulted him, his daughter and his daughter-in-law with *lathi* and knife and caused injuries to them. In the meantime, the neighbours came, they intervened and stopped the quarrel between the parties; as a result whereof, the informant's party could be saved.

(ii) On the same day, i.e., 23.01.1999, the informant gave a written report about the incident to the police and treating the same as First Information Report, Goriakotiha P.S. Case No. 16 of 2000 was registered under Sections 147/148/341/323/324/325/504 read with Section 149 of the Indian Penal Code against the accused aforementioned.

3. At the trial, charges, under Section 148 and Sections 341, 504 and 307 read with Section 149 of the Indian Penal Code, were framed against three accused respondent Nos. 2 to 8. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 7 (seven) 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 8, under Section 148 and Sections 341, 504 and 307 read with Section 149 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 8, the informant of the case has preferred this appeal.

7. Heard Mr. Bijay Prakash Singh, learned Counsel, for the appellant, and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State. Heard also Mr. Ashok Kumar, learned Counsel, for the respondent Nos. 2 to 8.

8. It is contended by learned Counsel for the appellant, that the learned trial Court has altogether misappreciated the evidence, which has come on record and failed to consider the evidence of the family members, who had been attacked simultaneously. It is also contended that the accused persons attacked the informant's side and had come there with pre-meditation to kill them on account of an incident which had occurred fifteen days ago. The further contention of the appellant is that the medical evidence also went to indicate, that there was injuries on the vital parts of the body of the informant and other members of the family and in view of such facts and circumstances, Section 307 read with Section 149 of the Indian Penal Code would be clearly attracted. It is, thus, contended that the order of the learned trial Court stood vitiated on account of the aforementioned reasons and was fit to be set aside being bad, both on facts and law.

9. It appears from the discussion of the evidences by the learned trial Court that the informant could not prove the prosecution's case as there were discrepancies in mentioning the date and time of occurrence. The time, indicated by the informant, Narayan Bind, (i.e., the appellant herein) has been stated to be 03:00 P.M. and it has been claimed by him that the altercation took place for about ten minutes and, thereafter, for about twenty minutes, the injured persons stayed at the place of occurrence. Since the hospital was located about 13 kilometers away from the place of occurrence, the time expected to take them to the hospital could not have been less than 15-20 minutes and it will, thus, be concluded that they reached the hospital at 03:40 P.M. However, the aforementioned situations stand contradicted by the report of the doctor, who conducted the medical examination on the injured person. The learned trial Court observed that from perusal of the report given by the Doctor (P.W. 5), it appears that the injured persons, namely, Narayan Bind (P.W.-6), Balmati Devi (P.W.1) and Shivji Bind (P.W. 4) were all examined barely after fifteen minutes at 03:15 P.M. It was observed that P.W. 2 was examined at 03:20 P.M. It was, thus, quite unbelievable that three persons could have been examined by the doctor together within a short span of five



minutes and it is further highly improbable that the descriptions of the wounds, allegedly found on the injured, to be of twelve hours duration, as the colour and texture of wounds change considerably with passage of time. It is for the aforementioned reasons that the learned trial Court has found discrepancies in the medical evidence adduced and the version of the informant regarding the place and time of occurrence. Further-more, the report of the Medical Officer (P.W. 5) has been placed under cloud for the reason that though the doctor has mentioned existence of fracture, no X-ray plate has been brought on record to prove the same.

10. The learned trial Court has further considered the evidence of the witnesses, particularly, that of P.W. 1, who having deposed that she was attacked by Birbali and Dhananjay, could not clearly state as to whether she had been attacked by *lathi* and *danda* or by means of a knife. She has stated that she was hit on her big-toe. P.W.3, Rangila Bind, has stated that the wife of Shivji, i.e., P.W.1, Bhalmati Devi, had been attacked by knife on her hands; but in his cross-examination, he could not clearly state as to who had assaulted Bhalmati Devi. As such, the learned trial Court has rightly held this evidence to be doubtful and cannot be relied upon.

11. Having perused the entire appraisal of evidence made by the learned trial Court, we, too, find and hold that there is no lacuna in the reasonings arrived at by the learned trial Court calling for any interference at the appellate stage.

12. This appeal is, therefore, not admitted and is accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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