



IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.894 of 2015

Arising Out of PS.Case No. - 34 Year - 2006 Thana - BHAGWANPUR District -
VAISHALI (HAJIPUR)

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Bhubneshwar Mahato son of Late Sohan Mahato, resident of
village- Rahasa West, P.S.- Bhagwanpur, District- Vaishali.

.... Appellant

Versus

1. The State of Bihar.
2. Pramod Kumar, son of Sri Bishun Deo Rai.
3. Santosh Rai, son of Sri Bishun Deo Rai.
4. Siyalal Rai, son of Sri Randher Rai.
5. Amitabh Kumar, son of Sri Shambhu Rai.
6. Jai Kisun Rai, son of Sri Surendra Rai.
7. Shiv Kumar Rai, son of Sri Randhir Rai.

All are resident of village-Rahasa West, P.S.-Bhagwanpur, District-
Vaishali.

.... Respondents

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Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Advocate

For the State : Mr. Ajay Mishra, Additional Public Prosecutor

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

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

Date: 21-01-2016



The present appeal, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, has been filed against the judgment and order, dated 21.09.2015, passed by the learned Additional District and Sessions Judge-VI, Vaishali at Hajipur, in Sessions Trial No.102 of 2008, whereby he has recorded acquittal of respondent Nos.2 to 7 of the charges framed against them of the offences punishable under Sections 384, 452, 379, 504 and 307/149 of the Indian Penal Code and has convicted them of the offences punishable under Sections 323 and 324 read with Section 149 of the Indian Penal Code. After convicting them of the offences punishable under Sections 323 and 324 read with Section 149 of the Indian Penal Code, the learned trial Court, by the impugned judgment and order, has given them benefit of the Probation of Offenders Act and has released them upon execution of bond, for maintaining peace and good behaviour, for a period of three years.

2. The appellant is the informant of Bhagwanpur P.S. Case No.34 of 2006, registered on 21.03.2006. He is aggrieved by acquittal of respondent Nos.2 to 7 of the offences punishable under Sections 384, 452, 379, 504 and 307 read with Section 149 of the



Indian Penal Code. Briefly stated, the case of the prosecution, as narrated in the *fardbeyan* of the informant, is that on 15.03.2006, when he was sitting with his wife, respondent Nos.2 to 5 came there and demanded money from him for eating and drinking. No dispute has been raised about the fact that on the date of occurrence, i.e., 15.03.2006, festival of *Holi* was being celebrated. It was alleged by the informant in his *fradbeyan* that when he refused to pay the amount, so demanded, respondent Nos.2 and 3, both sons of one Bishun Deo Rai, assaulted him with *farsa* on his head. When his wife came to rescue him, she too was assaulted with *farsa* and *chura* (dagger) causing injury on her hand. It was also alleged that respondent No.4 assaulted the informant with *lathi*, causing fracture of his metacarpal bones. Respondent No.7 is said to have snatched away the golden chain of the informant's wife, whereas respondent No.6 dragged the informant out of his house and took away the articles of his house. Upon hue and cry for help having been raised, the son of the informant, namely, Shambhu Mahto (P.W.-3), his brother, namely, Prahlad Mahto (P.W.-2) and one Anjanesh Mahto (P.W.-4) rushed there to save him and this is how the informant

could be saved.

3. The police, upon completion of investigation, submitted *chargesheet* on 25.07.2006. Charges were framed, for the offences punishable under Sections 384, 504, 452 and 307/149 of the Indian Penal Code, against all the accused persons. In addition thereto, respondent No.7 was charged of the offence punishable under Section 379 of the Indian Penal Code. Since the respondents pleaded not guilty, they were put on trial.

4. From the materials available on the record, it transpires that at the trial, altogether nine prosecution witnesses were examined, including the Investigating Officer, as P.W.-8, and the Doctor, who had prepared the injury report, as P.W.-7.

5. Dealing with the offence, punishable under Section 384 of the Indian Penal Code, learned trial Court has recorded that there was no evidence of payment of any amount to the accused persons by way of extortion and the charge, therefore, could not be proved against them. As regards the charge, punishable under Section 379 of the Indian Penal Code, learned trial Court found that even the informant, in his *examination-in-chief*, did



not utter a word to prove that respondent No.7 had snatched away the golden chain of the wife of the informant. Upon analyzing the evidence, adduced at the trial, learned trial Court has recorded that the prosecution witnesses were not unanimous in their depositions on the point of snatching away of golden chain by respondent No.7 and, therefore, acquitted him of the charge, framed under Section 379 of the Indian Penal Code. Dealing with the charge, punishable under Section 452 of the Indian Penal Code, learned trial Court has considered the statement of P.W.-2, namely, Prahlad Mahto, the brother of the informant, who, at his *cross-examination*, accepted that the quarrel had taken place outside the house of the informant. P.W.-3, namely, Shambhu Mahto, the son of the informant, also deposed that the occurrence had taken place, when the informant was sitting at the gate of his house. Learned trial Court, therefore, recorded that no offence, under Section 452 of the Indian Penal code, of house trespass, for the purpose of causing hurt or assault to any person, could be proved beyond all reasonable doubt. Learned trial Court has dealt with the charge, punishable under Section 504 of the Indian Penal Code, and has recorded that none of the witnesses, in their

depositions, stated the specific words, used by the respondents, which could be said to be constituting offence under Section 504 of the Indian Penal Code.

6. Considering the charge framed against the respondents under Sections 307 read with Section 149 of the Indian Penal Code, learned trial Court kept in his mind that apart from the Investigating Officer, the doctor and a formal witness, all the prosecution witnesses belonged to the family of the informant and, therefore, their evidence were required to be analyzed with much care and caution, though their evidence could not have been brushed aside on this ground alone.

7. We notice from the impugned judgment and order that upon analyzing the evidence of the witnesses, learned trial Court arrived at a conclusion that there was no intention of the accused persons to kill the informant. Upon appreciation of evidence available on the record, learned trial Court was of the view that the injuries, said to have been caused upon the informant, could not be said to have been essentially caused by an axe. The doctor, in his evidence, appears to have deposed that the injuries, found on the person of the informant, could have been caused by glass pieces or

sharper sides of a steel plate.

8. Mr. Ajay Kumar Thakur, learned Counsel, appearing on behalf of the appellant, has submitted that learned trial Court has failed to appreciate the evidence on record in its correct perspective and has erroneously acquitted the respondents of major offences and convicted them only for the minor offences, giving them the benefit of the Probation of Offenders Act.

9. Upon perusal of the impugned judgment and order, dated 21.09.2015, consideration of the materials available on the record and the submissions, advanced on behalf of the appellant, we do not find that the conclusion arrived at by learned trial Court, recording acquittal of respondent Nos.2 to 7 of the charges, punishable under Sections 379, 384, 452, 504 and 307/149 of the Indian Penal Code, can be said to be perverse. The view taken by the learned trial Court, recording acquittal of the respondents of the charges, under the aforesaid sections, does not suffer from any infirmity, requiring interference by an appellate Court, exercising *jurisdiction* under the proviso to Section 372 of the Code of Criminal Procedure, 1973. The view taken by the learned trial Court is a reasonably possible view and

this Court is not required to interfere in such circumstance, on the ground that other view is also possible.

10. We, therefore, do not find any merit in this appeal. This appeal does not deserve to be admitted and is, accordingly, dismissed at this stage itself.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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