

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1056 of 2015

Arising Out of PS.Case No. -71 Year- 1998 Thana -PANDARAK District- PATNA

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Siya Ram Yadav, son of Vishnu Yadav, resident of village - Gowasa
Shekhpura, P.S- Pandarak, District - Patna

.... Appellant/s

Versus

1. The State of Bihar.
2. Tanik Yadav, son of Late Balgovind Yadav
3. Yogi Yadav, son of Tanik Yadav
4. Sushil Yadav
5. Sunil Yadav, both sons of Suresh Yadav
6. Ratan Yadav
7. Pravesh Yadav alias Ram Pravesh Yadav
8. Pradip Yadav, all sons of Ram Ashish Yadav
9. Rajesh Yadav, son of Ratan Yadav, all residents of Village - Gowasa
Shekhpura, P.S.- Pandarak, District - Patna.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Bhola Kumar, Advocate

For the Respondent-State : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

3 24-02-2016 This appeal is directed against the judgment and order,

dated 27.05.2015, passed by Shri Narendra Prasad, learned

Assistant Sessions Judge 1st, Barh, Patna, in Sessions Case

No.359 of 2000/G.R. Case No.824 of 1998, arising out of

Pandarak P.S. Case No.71 of 1998, whereby and whereunder,

the learned trial Court has, while acquitting the accused

Respondent Nos.2 to 9 herein of the charges under Sections 147

and 307 read with Section 149 of the Indian Penal Code,

convicted them under Section 323 read with Section 149 of the

Indian Penal Code. The learned trial Court though has convicted respondent Nos. 2 to 9, of the charge framed under Section 323 read with Section 149 of the Indian Penal Code, but has directed their release under Section 3 of the Probation of Offender Act, 1958, after due admonition.

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

(i) The cow of accused Yogi Yadav was grazing, in the presence of Yogi Yadav, Maize and *Janera*, harvested in the field of the informant, which was adjacent to his house. The brother of the informant having seen the occurrence came near accused Yogi Yadav and forbade him to do so and asked him to keep away the cow from his field. This led to an altercation between accused Yogi Yadav, on the one hand, and the brother of the informant, on the other hand. On hearing *hulla*, the accused persons, Yogi Yadav, Sushil Yadav, Sunil Yadav, Suresh Yadav, Tanik Yadav, Ratan Yadav, Pradeep Yadav, Pravesh Yadav @ Ram Pravesh Yadav and Rajesh Yadav, assembled there and Yogi Yadav and Sushil Yadav assaulted the informant's brother by means of *lathis* on his head. When the nephew of the informant, namely, Raja Ram Yadav, came there for his rescue, he was also assaulted by means of *lathi* on his

head by Sushil Yadav and Sunil Yadav. When the informant went there, Tanik Yadav gave order to Pradeep Yadav to kill him and, following his order, Pradeep opened fire from his pistol, which hit the informant on his leg. Thereafter, all the accused persons fled away.

(ii) The *fardbeyan* of the informant was recorded by the police, on 24.08.1998, and treating the same as First Information Report, Pandarak P.S. Case No.71 of 1998 was registered under Sections 147/148/149/323/324 and 307 of the Indian Penal Code against accused respondent Nos. 2 to 9 and, on completion of investigation, a *charge sheet* was laid against the accused aforementioned.

3. At the trial, charges, under Sections 323 read with Section 149 of the Indian Penal Code, had been framed against all accused persons. This apart, while charges, under Sections 147 and 323 of the Indian Penal Code, had been framed against Yogi Yadav, Sushil Yadav, Sunil Yadav, Tanik Yadav, Ratan Yadav, Pradeep Yadav, Pravesh Yadav @ Ram Pravesh Yadav and Rajesh Yadav, charges under Section 307 of the Indian Penal Code and Section 27 of the Arms Act were framed against accused Pradeep Yadav. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 06 (six) witnesses, namely, P.W. 1, Indradeo Yadav, P.W.2, Raja Ram Yadav, P.W.3, the informant himself, P.W.4, Surendra Prasad Singh, the A.S.I. of Pandarak Police Station, who had submitted *charge sheet*, P.W.5, is the formal witness, who had proved the injury report and P.W.6, Manoj Kumar, is Court witness. 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 offence, which was 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 persons, Yogi Yadav, Sushil Yadav, Sunil Yadav, Tanik Yadav, Ratan Yadav, Pradeep Yadav, Pravesh Yadav @ Ram Pravesh Yadav and Rajesh Yadav under Sections 147 and 307 read with Section 149 of the Indian Penal Code, had not been proved, and further the charges, under Section 307 of the Indian Penal Code and Section 27 of the Arms Act, 1959, had not been proved against accused Pradeep Yadav, the learned trial Court acquitted them of the charges aforementioned, but has convicted all the accused persons under

Section 323 read with Section 149 of the Indian Penal Code, and directed their release under Section 3 of the Probation of Offender Act, 1958, after due admonition.

6. Aggrieved by the release of the accused respondent Nos. 2 to 9, the informant of the case has preferred this appeal.

7. It is submitted, on behalf of the appellant, that all the prosecution witnesses corroborated the prosecution's case and injury report was also proved, but as the doctor had not been examined, the prosecution's case has been partially disbelieved and, although the respondent Nos. 2 to 9 have been found guilty for the offences under Sections 147 and 323 of the I.P.C., but instead of sentencing them, they have been released under Section 3 of the Probation of Offenders Act, 1958.

8. Learned Counsel, appearing on behalf of the appellant, further submits that the impugned judgment is based on conjectures and surmises and though the prosecution had produced several witnesses, the injury report was also proved, but the doctor was not examined, and the learned trial Court has acquitted the accused. It is submitted that though the entire story has not been fully disbelieved, the accused persons have been let off lightly by the learned trial Court by releasing them under Section 3 of the Probation of Offenders Act, 1958.

9. So far as accused Pradeep Yadav is concerned, he was prosecuted under Section 307 read with 149 of the Indian Penal Code and 27 of the Arms Act, but due to misappreciation of the evidence, the accused persons have been illegally released so contends the learned counsel for the appellant.

10. We have heard Mr. Bhola Kumar, learned Counsel, for the appellant, and Mr. Sujeet Kumar Singh, learned Additional Public Prosecutor, appearing for the State and perused the materials placed before us, in this appeal.

11. It appears that the learned trial Court has fully considered the evidence placed before it by the prosecution. While considering the evidence, it may be pointed out that it has come on record that although the trial, the witnesses have consistently stated that there was a land dispute between the parties for which a case had been registered in the year 1994. It was observed by the learned trial Court that though the informant had suffered injury on his foot, he was not examined. The learned trial Court has arrived at the finding that there was no evidence placed on record by the prosecution to show that the accused had come with ulterior motive of killing the informant. Moreover, the learned trial Court has held that most of the witnesses, who deposed, are accused persons in the case lodged

by the informant of Pandarak P.S. Case No.75 of 1998.

12. Having perused the judgment and order under appeal and, in view of the findings arrived at by the trial Court, which has held that the prosecution failed to prove, beyond reasonable doubt, the allegations made against the accused persons, we find no infirmity in the judgment of acquittal. Consequently, the direction to release them under Section 3 of the Probation of Offenders Act, 1958, is, thus, not flawed.

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

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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