

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.746 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

1. Md. Shams Tabrez, son of Md. Hazrat Ali, resident of Village Bharpatia Police Station- Manuapul, District- West Champaran Bettah.

.... Petitioner

Versus

1. The State of Bihar

2. Yogi alias Yogendra Yadav, son of Ramwat Yadav, resident of village- Bharpatia, Police Station- Manuapul, West Champaran, Bettiah.

3. Rajesh Yadav Son of Mahant Yadav, resident of village- Bharpatia, Police Station- Manuapul, District-West Champaran, Bettiah.

4. Vijay Yadav son of Yogi @ Yogendra Yadav resident of village- Bharpatia, Police Station- Manuapul, District-West Champaran, Bettiah.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Shyam Sunder Pandey

For the Respondent/s : Mr. Md. Fahimuddin

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 18-11-2016

The present petition, under Section 397 of the Code of Criminal Procedure, 1973, has been filed by the petitioner, who is aggrieved by the judgment and order, dated 24.06.2015, passed, by the learned 4th Additional Sessions Judge, Bettiah, West Champaran, to the extent he has recorded acquittal of respondent nos. 2 to 4, who stood charged for the offences punishable under Sections 147, 148, 342, 307 read with Section 149 of the Indian Penal Code, in Sessions Trial No. 527 of 2002, arising out of Bettiah Mufassil

(Manuapul) Police Station Case No. 102 of 2000.

2. The petitioner is the informant of the said Bettiah Mufassil (Manuapul) Police Station Case No. 102 of 2000.

3. This is to be noted that the learned Court below, by the impugned judgment and order, has convicted other persons, who were put on trial, namely, Chanda Devi, Dasrath Thakur, Tuil Yadav and Birendra Yadav, of the offence punishable under Section 308 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of three years.

4. The challenge to the impugned order, in the present proceeding, is confined to acquittal of respondent nos. 2 to 4, which, according to the petitioner, is highly improper and a result of erroneous consideration of the evidence on record.

5. It has been informed at the Bar that the convicted persons have preferred criminal appeals before this Court against the impugned judgment and order of the learned Trial Court.

6. This case is confined to the question as to whether the finding of acquittal recorded by the learned Trial Court will require interference in exercise of criminal revisional jurisdiction.



7. It is trite that a judgment of acquittal recorded by the Trial Court should be interfered with only when the findings are perverse, being either without evidence or contrary to the evidence adduced at the trial. A finding of acquittal can also be upset if there is patent illegality, which has resulted into gross miscarriage of justice. This Court, while considering an order of acquittal, is not required to re-appreciate the evidence, like an Appellate Court.

8. Briefly narrated, the case of the prosecution as unfolded by the fardbayan of the petitioner, is that on 26.05.2000, at about 09:00 PM, when the petitioner was going with Subba Mian to oversee lichi crop of one Sitaram Rajgadhia, which was purchased by him, the moment he reached near the house of co-accused Ramayan yadav, all the accused persons, named in the First Information Report, caught hold of the informant/petitioner and dragged him into the house of the said Ramayan Yadav. It is alleged that at the instance of respondent no. 2, other accused persons started assaulting him with *tangi*, *garasi*, *pahsul* and *bhala*, because of which he sustained several injuries. It is also alleged that before he was being assaulted, his mouth was forcibly shut with the help of a piece of cloth.

9. The Police, upon completion of investigation, submitted charge sheet for commission of offences punishable



under Sections 147, 148, 149, 341, 324 and 307 of the Indian Penal Code. After the case having been committed to the Court of Sessions, it was registered as Sessions Case No. 527 of 2002. The accused persons, including these private respondents, were put on trial for the charge of the offence punishable under Sections 147, 148, 149, 341, 324 and 307 of the Indian Penal Code. The trial commenced thereafter since the accused persons denied the charges levelled against them. In their statements, recorded under Section 313 of the Code of Criminal Procedure, 1973, after conclusion of the evidence of the prosecution's witnesses, the accused persons, again, denied the allegation made against them.

10. In their defence, the accused persons, who were put on trial, took a plea that the informant had entered into the house of accused Chanda Devi to commit theft and Chanda Devi had caught him red-handed. According to their defence, said Chanda Devi had hit the informant with a *garasi*, whereafter the informant had fled away after leaving the box, which he was attempting to take away. For the said occurrence, Mufassil Manuapul Police Station Case No. 107 of 2000 had been registered for the offences punishable under Sections 457, 380 and 511 of the Indian Penal Code. This is not in dispute that in the said Mufassil Manuapul Police Station Case No. 107 of 2000, the Police have submitted charge sheet

for the offence punishable under Sections 457 and 290 of the Indian Penal Code.

11. At the trial, altogether 11 witnesses were examined on behalf of the prosecution. According to the First Information Report itself, one Subba Mian was said to be accompanying the informant when the occurrence had taken place. The said Subba Mian has not been examined as a witness during the trial.

12. Upon analysis of oral and documentary evidence adduced at the trial, the learned Trial Court recorded acquittal of all the accused persons for the offences punishable under Sections 147, 148 and 342 of the Indian Penal Code, as the prosecution failed to prove the charges beyond all reasonable doubts.

13. Coming to the charge under Section 307 of the Indian Penal Code, the learned Trial Court held, taking into account the evidence adduced at the trial, that no such offence could be established by the prosecution; rather, a case under Section 308 of the Indian Penal Code could be proved against other accused persons, who were facing trial, but not against respondent nos. 2 to 4.

14. Heard learned Counsel for the petitioner and learned Additional Public Prosecutor, appearing on behalf of the State.



15. Learned Counsel appearing on behalf of the petitioner has submitted that learned Trial Court has taken into account the defence taken on behalf of the accused persons at the trial, according to which the informant, in the present case, had entered into the house of accused Chanda Devi to commit theft and when he was caught red-handed, he was assaulted by said Chanda Devi. According to him, the trial, on the basis of the First Information Report lodged at the instance of said Chanda Devi, has still not commenced, which the Court below ought to have taken note of. For this reason, learned Counsel for the petitioner has submitted that the judgment and order impugned deserves to be interfered with and set aside.

16. I do not find any substance in the submissions made on behalf of the petitioner.

17. The learned Trial Court, upon appreciation of the evidence adduced at the trial, both by the prosecution and the defence, has arrived at a conclusion that no offence against respondent nos. 2 to 4 , for which they stood charged, could be proved beyond all reasonable doubts. The finding cannot be said to be perverse by any means. The view taken by the learned Trial Court cannot be said to be not a reasonable possible view, upon analysis of evidence adduced at the trial. On the ground that another view is also possible, this Court need not interfered with the findings of acquittal, in

a proceeding under Section 397 of the Code of Criminal Procedure, 1973.

18. I, accordingly, do not find any merit in this application. This is, accordingly, dismissed.

19. It goes without saying that the present judgment and order is confined to challenge to acquittal of respondent nos. 2 to 4 and the apprehension of learned Counsel for the petitioner that any observation made in this judgment and order can be prejudicial to the interest of the informant/petitioner in the appeal, preferred by those, who have been convicted at the same trial or at the trial, arising out of Mufassil Manuapul Police Station Case No. 107 of 2000, is misplaced.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
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