

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 210 of 2016

Arising Out of P. S. Case No. - 35 Year - 1989 Thana -BARHARA District -
PURNIA

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1. Bhawani Devi, wife of Late Palakdhari Rai, resident of Village -
Bhangaha Tula, P.S. - Barhara, District - Purnea.

.... Appellant/s

Versus

1. The State of Bihar.
 2. Mukesh Kumar Rai, son of Jawahar Rai.
 3. Prem Kumar Rai @ Bablu Rai, son of Late Padum Rai.
 4. Manoj Kumar Rai, son of Jawahar Rai.
 5. Prabhat Kumar Rai, son of Late Padum Rai.
 6. Arun Rai, son of Ganga Rai.
 7. Shivo Rishideo, son of Awadh Rishideo.
 8. Rajendra Yadav, son of Baso Yadav.
- All are resident of Village - Bhangaha Tula, P.S. - Barhara,
District - Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Udit Narayan Singh, Adv.

For the State : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT & ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 02-08-2016

This appeal, under proviso to Section 372 of the Code of Criminal Procedure, 1973, has been filed against the judgment and order, dated 08.02.2016, passed by learned 2nd Assistant Sessions Judge, Purnea, in Sessions Trial No. 70 of 1995 (CIS No. 4550 of 2013), arising out of Barhara P.S. Case No. 35 of 1989 (G.R. No. 341 of 1989), whereby he has recorded acquittal of respondent Nos. 2 to 8 herein. The said respondents were put on trial with the charges of commission of offences punishable under Sections 147, 148, 157, 158, 452, 380, 307, 323, 426, 427, 109, 411 and 435 of the Indian Penal Code and Section 27 of the Arms Act.

2. The appellant is the wife of the informant, who is said to have died during the pendency of the trial on 23.06.2010.

3. Briefly narrated, the case of the prosecution, as narrated by the informant in his *fardebayan*, is that on the alleged date of occurrence, i.e., 02.03.1989, approximately at 7.30 A.M., the informant noticed from his



house that in the cow-shed of one Dip Narayan Rai, 40 to 50 persons had assembled, who were armed variously. Said Dip Narayan Rai instigated others to ransack the informant's house and raze the entire house to ground. Thereafter, the private respondents as well as said Dip Narayan Rai entered into the courtyard of the informant. Co-accused, namely, Satto Yadav, is said to have opened fire with his three-naught-three rifle. Thereafter, they started assaulting the informant, his wife (the appellant) and children. It is alleged against respondent No. 5, namely, Prabhat Kumar Rai, that he took away one *Attache* case of the informant and respondent No. 2, namely, Mukesh Kumar Rai, took away one box. Others took away many articles and fled away. It is also alleged that at the time of occurrence, one Bhagwat Rishi had indulged in cutting branch of informant's tree. In the meanwhile, co-accused, Dip Narayan Rai, came and set on fire the cow-shed of the informant.

4. After completion of investigation, the police submitted *charge-sheet* for commission of offences under Sections 147, 148, 157, 158, 452, 380, 307, 323, 426, 427, 109, 411 and 435 of the Indian Penal Code and Section 27 of the Arms Act. After taking cognizance, the case was committed to the Court of *Sessions* for trial.

There being denial of the charges framed under Sections 147, 148, 157, 158, 452, 380, 307, 323, 426, 427, 109, 411 and 435 read with Section 27 of the Arms Act by respondent Nos. 2 to 8, the trial against them proceeded.

5. At the trial, altogether 7 prosecution witnesses were examined, though the prosecution had given names of 15 persons to be examined as prosecution witnesses, in support of the charges.

6. Out of total 7 prosecution witnesses, 4 are either official or formal witnesses. The other 3 prosecution witnesses are the wife and two daughters of the informant. The informant was not examined at the trial.

7. From the materials available on the record, it transpires that no article was exhibited at the trial by the prosecution.

8. The Investigating Officer, namely, Ganesh Mandal, who was examined as P.W.-1, deposed that one cot and a pair of shoes were seized from the house of co-accused, namely, Durgi Rishideo, in relation to which a seizure list was prepared, but he accepted that since the articles, so seized, were not produced at the trial in course of evidence, he was not able to identify them.

9. P.W.-2, namely, Mahendra Narayan Kuer, and P.W.-3, namely, Amrendra Kumar Singh, are also

formal witnesses. P.W.-2 identified his signature on the seizure list (Exhibit-2), whereas P.W.-3 identified his signature on seizure list, as a witness (Exhibits-3, 3/A and 3/B). P.W.-4, namely, Shashi Bhushan Kuer, is also a formal witness.

10. P.W.-5, namely, Munni Devi, and P.W.-6, namely, Baby Devi, are daughters of the informant, who have supported the case of the prosecution and claimed to be the eye-witnesses of the occurrence. It is noticeable from their evidence that, according to them, the occurrence had taken place at 10.00 A.M., whereas, as has been noted above, according to the *fardbeyan* of the informant, the occurrence had taken place at 7.30 A.M. Further, there is apparent contradiction between the evidence of P.W.-5 and P.W.-6 on two major aspects of the case. P.W.-5, in her deposition, has said that after co-accused, namely, Dip Narayan Yadav, had torched the heap of straw, which belonged to her father (Dip Narayan Yadav), he had wanted to throw his brother, namely, Kush Kumar, into the fire, which was prevented by her mother, whereas P.W.-6, in her deposition, has said that an attempt was made to throw her younger brother, namely, Love, into the fire, which was prevented by her.

11. It is noteworthy that there is specific



mentioning, in the First Information Report, of the fact that several co-villagers were standing at the nearby village pond and had seen the occurrence. However, no independent witness was examined at the trial by the prosecution and only the wife and the two daughters of the informant deposed, at the trial, in support of the case of the prosecution. No explanation has been offered for not examining the independent witnesses nor is there any explanation discernible from the materials on record.

12. Considering the contradictions in the evidence of the prosecution witnesses coupled with the fact that no material was exhibited in support of the case of the prosecution and there were other discrepancies in the evidence available on record, learned trial Court arrived at the conclusion that the prosecution had failed to prove the charges against respondent Nos. 2 to 8 beyond all reasonable doubts and, accordingly, recorded their acquittal.

13. Mr. Udit Narayan Singh, learned Counsel, appearing on behalf of the appellant, has submitted that contradiction between the case of the prosecution, as narrated in the *fardbeyan*, and evidence of P.Ws.-5 and 6, as regards time of occurrence, is not such as to disbelieve the entire evidence. According to him, the said

discrepancies are minor and inconsequential. He has submitted that despite being sufficient evidence on record, learned Court below wrongly recorded acquittal of respondent Nos. 2 to 8.

14. We are not convinced with the submissions so advanced on behalf of the appellant. No explanation is coming forth as to why when the charges were framed in the year 2007 itself, the informant failed to adduce his evidence at the trial, since he died three years thereafter in 2010. Secondly, according to the *fardbeyan*, several co-villagers had witnessed the occurrence taking place from nearby pond, but none of them have been examined at the trial and, as a matter of fact, no independent witness has at all been examined at the trial.

15. We have also noticed that there is material contradiction between the evidence of P.W.-5 and P.W.-6.

16. It is true that the evidence of interested witnesses cannot be completely brushed aside, but, at the same time, such evidence has to be evaluated with much care and caution and can be relied only if the evidence is found to be of unimpeachable character or/and if they are duly corroborated by other attending circumstances and evidence available on the record. Non-examination of

independent witnesses creates a reasonable doubt as regard accusations made against respondent Nos. 2 to 8.

17. The view taken by learned trial Court, recording acquittal of respondent Nos. 2 to 8, therefore, cannot be said to be perverse or not a reasonably possible view on the basis of evidence available on the record.

18. We do not find any merit in this appeal, which does not deserve admission and is, accordingly, dismissed.

(I. A. Ansari, CJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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