

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.511 of 2016

Arising out of P.S. Case No. -56 Year- 2004 Thana -SHERGHATI District- GAYA

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Umesh Thakur, son of late Gariban Thakur, resident of Village- Gaon Khaap, P.S.- Sherghati, District- Gaya.

.... Appellant

Versus

1. The State of Bihar
2. Mahendra Thakur, son of Sanjivan Thakur
3. Arjun Thakur, son of late Bishun Thakur
4. Charittar Thakur, son of Sanjivan Thakur
5. Krishna Thakur, son of Sanjivan Thakur
6. Uday Thakur
7. Pramod Thakur

Both sons of Mahendra Thakur

8. Pintoo Thakur, son of Late Musafir Thakur

All resident of village- Gaon Khaap, P.S.- Sherghati, District- Gaya.

.... Respondents

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Appearance :

For the Appellant : Mr. Khurshid Alam, Advocate.

For the Respondents :

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-10-2016

Heard learned counsel for the appellant.

2. This appeal under the proviso to Section 372 of the Code of Criminal Procedure has been filed by the informant who claims himself to be the victim against the judgment and order dated 7.4.2016 passed in Sessions Trial No. 385 of 2004/35 of 2007 by the learned Additional District & Sessions Judge-I, Gaya, whereby while convicting the respondents No. 2 to 8 under Sections 147, 148, 149 and 323 of the Indian Penal Code, they have been acquitted of the

charges under Sections 307, 326 and 325 of the Indian Penal Code.

3. It is contended by the learned counsel for the appellant that the trial court has failed to appreciate the evidence on record in correct perspective and it has wrongly acquitted the accused persons of the charges under Sections 325, 326 and 307 of the Indian Penal Code. It is submitted that the witnesses examined during trial have fully supported the prosecution case, but the trial court has committed a patent illegality in acquitting the accused for the serious charges.

4. The alleged offence is said to have taken place on 17th April, 2004 at 8:00 p.m. According to the First Information Report lodged before the Station House Officer, Sherghati Police Station, on 17th April, 2004, the buffalo of the accused Mahendra Thakur had damaged the standing crops of the informant. When the informant complained to Mahendra Thakur regarding the damage done to the standing crops, he became aggressive and started to abuse and assault. The other accused persons being variously armed with Lathi, Danda, Garansa and Khanti also came at the place of occurrence and assaulted the informant. On alarm having been raised by the informant, Ashok Thakur, Bilas Thakur, Deonandan Thakur, Kuleshwar Thakur and Kunti Devi rushed to the place of occurrence to rescue him, but the accused persons assaulted them also causing

serious injuries on their person.

5. On the basis of the aforesaid written report of the appellant Umesh Thakur, Sherghati P.S. Case No. 56 of 2004 was registered on 18th April, 2004 under Sections 147, 148, 149, 448, 323, 307 and 504 of the Indian Penal Code against the accused Mahendra Thakur, Krishna Thakur, Charitar Thakur, Pintoo Kumar, Arjun Thakur, Uday Thakur and Pramod Thakur.

6. After completion of investigation, the Police found the allegations to be true and submitted charges against the accused persons under Sections 147, 148, 149, 323, 324, 325 and 504 of the Indian Penal Code.

7. Having perused the First Information Report, the Police report submitted under Section 173 (2) Cr. P.C. and other materials submitted by the police along with the Police report, the Sub Divisional Judicial Magistrate, Sherghati, Gaya, took cognizance of the offences vide order dated 21st June, 2004 and summoned all the seven accused persons. It would further appear from the record that being aggrieved by the order dated 21st June, 2004, the informant filed a revision application before the Sessions Judge, Gaya, and after receiving the revisional order, the learned Magistrate took cognizance of the offences punishable under Sections 326 and 307 of the Indian Penal Code also. Subsequently,



the order passed by the learned Magistrate was challenged by the accused persons before this Court under Section 482 of the Code of Criminal Procedure and this Court directed the Sub Divisional Judicial Magistrate, Sherghati, Gaya, to consider the matter on the point of cognizance afresh and pass appropriate order in accordance with law.

8. In compliance with the order of this Court, the learned Sub Divisional Judicial Magistrate after taking into consideration the materials available on record found a prima facie case under Sections 147, 148, 323, 324, 325, 326, 307, 504 and 149 of the Indian Penal Code vide order dated 22.7.2016 against the accused persons and summoned them to face trial. Since the offence under Section 307 of the Indian Penal Code is triable by the court of Session, the case was committed to the court of Sessions for trial.

9. In course of trial, the prosecution examined seven witnesses. They are P.W.1 Suresh Thakur, P.W. 2 Kunti Devi, P.W.3 Kameshwar Yadav, P.W. 4 Umesh Thakur, P.W. 5 Renu Devi, P.W. 6 Md. Mazhar Hussain Ansari and P.W. 7 Shiv Shankar Sah. Certain documents were also exhibited during trial.

10. After closing the prosecution case, the trial court recorded the statement of the accused persons under Section 313 of the Code of Criminal Procedure and, thereafter, the case was placed

for adducing evidence on behalf of the defence.

11. The defence examined only one witness in support of the innocence of the accused persons, who has proved certain documents, which have been marked as Ext. A, A/1 and A/2.

12. After the evidence on behalf of the parties were closed, they were heard on merits. In its judgment, the court below found that the prosecution had failed to prove the charges under Sections 307, 326 and 325 of the Indian Penal Code, but the charges under Sections 147, 148, 149 and 323 of the Indian Penal Code were proved beyond reasonable doubts and, hence, the accused persons were sentenced for those offences.

13. As recorded hereinabove, the appellant is aggrieved by the finding of the trial court whereby the accused persons were acquitted of the serious charges. So far as the charges under Sections 307, 326 and 325 of the Indian Penal Code are concerned, from perusal of the evidence, it would be evident that four persons from the side of prosecution are alleged to have sustained injuries. They are, Kuleshwar Thakur, Ram Bilas Thakur, Arjun Thakur and Deonandan Thakur. Out of the four injured, Kuleshwar Thakur, who alone is said to have sustained one grievous injury on his person, was not examined on behalf of the prosecution during trial. Though the doctor has been examined in this case. The



X-ray report, the C.T. scan report and the report of the Radiologist were not proved by the doctor. In absence of the sole injured who had sustained the grievous injury and in absence of the corroborative medical evidence, the trial court has recorded in its finding that the charges under Sections 307 and 325 of the Indian Penal code have not been proved beyond reasonable doubts as the prosecution failed to prove the fact that accused persons intended to kill either the appellant or anyone else. So far as the other three injured are concerned, admittedly, they had sustained simple and superficial injuries.

14. I have heard learned counsel for the appellant and perused the record.

15. The court below has convicted the accused persons for the offence punishable under Section 323 of the Indian Penal Code with aid of Section 149. They have also been convicted under Sections 147 and 148 of the Indian Penal Code.

16. In my considered opinion, the reasons assigned for recording the order of acquittal in respect of the charges framed against the accused persons under Sections 325, 326 and 307 of the Indian Penal Code are well founded. There is neither any illegality nor any irregularity in the aforesaid order. The trial Magistrate has given clear, cogent and convincing reasons for recording the

acquittal order for those offences.

17. In that view of the matter, I see no merit in this appeal.

18. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
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