

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1058 of 2015

Arising Out of PS.Case No. -123 Year- 2010 Thana -FORBESGANJ District- ARRARIA

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1. Md. Mahboob S/o Late Md. Kabir Resident of Village - Doriya Sonapur,
P.S. - Simraha, District - Araria

.... Appellant/s

Versus

1. The State of Bihar
2. Moquim @ Md. Kokim S/o Late Sagir
3. Alim @ Akki S/o Namid @ Mazid
4. Mustafa S/o Late Namid @ Mazid
5. Md. Kalim @ Kalim S/o Late Namid @ Majid
6. Ramzan @ Hannan S/o Md. Kalim
7. Buddhu @ Sarwar S/o Md. Kalim
8. Asad @ Md. Saud S/o Md. Kalim
9. Mustaque @ Mustafa S/o Sakiyad @ Shaiyad

Respondent No. (2) to (9) are resident of Village - Doria, Sonapur,
P.S. - Forbesganj (Simraha), District - Araria

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Prasad Singh

For the Respondent/s : Mr. Abha 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)

2 23-02-2016

Heard Mr. Anil Prasad Singh, learned Counsel for
the appellant, and Ms. Abha Singh, learned Counsel for the
respondents.

2. The informant of the case, being aggrieved by the
order of acquittal, has come in appeal before this Court.

3. By the judgment and order, dated 17.08.2015,
passed by the 1st Additional Sessions Judge, Araria, in Sessions
Trial no. 1036 of 2011/TR.No. 03/2015, while the respondent
Nos. 6 to 9 have been acquitted of all the charges, respondent
Nos. 2 to 5 have been convicted under Sections 323 and 324 read



with Section 34 of the Indian Penal Code. This apart, respondent Nos. 2 to 5, too, have been acquitted of the charge framed against them under Section 307 read with Section 34 of the Indian Penal Code. Following the conviction of the respondent Nos. 2 to 5, under Sections 323 and 324 read with Section 34 of the Indian Penal Code, they have been given benefit of probation, under Section 4 of the Probation of Offender Act, 1958, and have been directed to be released upon furnishing bonds of Rs. 1000/- (one thousand) each for maintaining peace and good behavior for a period of one year. The learned trial Court has further directed that if any of the convicts disobeys the order of probation, he shall be liable to be punished/sentenced by the Court to deposit a further amount of Rs. 300/- (three hundred) as compensation to the victims.

4. The prosecution story, as stated in the *fardbeyan* of the appellant, is, in brief, that on 5.5.2010, at about 5:00 P.M., the appellant, while returning home, upon completion of work, reached near their *Madarsa*, eleven named accused persons, armed with deadly weapons, were seen sitting by the informant. Md. Mokim, Akil and Kalim were armed with *farsas*. Mustafa was armed with a sword, Ramjan was armed with a knife. Buddhu, Asad and Mustafa were armed with *lathis*.

5. It is also the case of the prosecution that all of



them surrounded him and started to assault. Mustafa exhorted his co-accused to hack the informant and, upon being so exhorted, accused Md. Mokim and Akil gave blows with their *farsa* on the informant's head and, as a result thereof, the informant sustained injury on his head. In the meantime, informant's nephew, Khursid, and brother came, who, too, were assaulted by means of *farsa* by the accused.

6. The further case of the informant is that accused Alim took away an amount of Rs. 19,050/- from the informant's pocket. An amount of Rs. 7,000/- was taken away from Rashid by accused Istakhar. A silver chain of Khurshid was taken away by accused Kalim and mobile phone of the informant's brother was taken away by accused Mustafa. The occurrence, according to the prosecution, was seen by Belal, Manzoor and Md. Shahnawaz, who carried the informant and the other injured to hospital for treatment, the reason behind the occurrence being family dispute.

7. On the basis of the aforesaid *fardbeyan*, the police registered Forbesganj (Simraha) P.S. Case No. 123 of 2010 and, upon completion of the investigation, the investigating officer submitted *charge sheet*.

8. At the trial, charges, under Sections 147,148,149,323,324,325,307 and 504 read with Section 149 of

the Indian Penal Code, were framed against the accused persons. To the charges so framed, the accused pleaded not guilty.

9. In support of their case, prosecution examined as many as 08 (eight) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in their examinations aforementioned, the accused persons denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced on behalf of the defence.

10. The learned trial Court, while acquitting respondent Nos. 6 to 9, convicted respondent Nos. 2 to 5 under Sections 323 and 324 read with 34 of the Indian Penal Code, but acquitted respondent Nos.2 to 5, too, of the charge framed under Section 307 of the Indian Penal Code.

11. Aggrieved by the judgment and order of the learned trial Court, this appeal, as indicated above, has been preferred by the informant.

12. It was submitted, on behalf of the appellant, that all the prosecution witnesses have clearly supported the prosecution's case. They have also clearly stated, in detail, while describing the occurrence, the various acts of the individual accused persons. The evidence of the witnesses are, according to the appellant, consistent and there was nothing on record to

disbelieve their evidences and, hence, the learned trial Court has committed error on fact as well as in law in passing the order and, as such, it requires interference in appeal.

13. Learned counsel for the appellant further submits that the learned trial Court has failed to appreciate the evidence on record in its proper perspective and, in acquitting all the accused persons of the charge framed against them under Section 307 of the Indian Penal Code, has overlooked the evidence, which has surfaced on record. It is submitted that despite there having cogent evidence, the learned Court below has failed to take notice of the same and convicted some of the accused-respondents only under Sections 323 and 324 read with Section 34 of the Indian Penal Code, whereas a clear case for conviction, under Section 307 of the Indian Penal Code, had been made out against all the accused persons.

14. Having perused the entire judgment under appeal, it emerges that the judgment has been arrived at after due consideration of the evidence, which have been dealt with, in detail, by the learned trial Court. Having noticed the finding arrived at by the learned trial Court that the doctor has not found repetition of blow being inflicted on the injured persons by the accused and there being no further evidence against the accused persons, we also hold that no case, under Section 307 of the

Indian Penal Code, can be said to have been made out. Furthermore, the doctor has opined, in his cross-examination, that the nature of injuries were not such, which could have caused death of the injured persons and, for the said reason, the learned trial Court has proceeded to convict the accused-respondents only under Sections 323 and 324 read with Section 34 of the Indian Penal Code.

15. We, thus, hold that no case of interference is made out. The appeal is, therefore, not admitted and is accordingly dismissed.

(I. A. Ansari, ACJ)

(Anjana Mishra, J)

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