

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1053 of 2015

Arising Out of PS.Case No. -34 Year- 2010 Thana -KHANPUR District- SAMASTIPUR

Ramashish Rai, son of Mahendra Rai, resident of village Suraul, P.S. Khanpura,
District Samastipur

.... Appellants

Versus

1. The State of Bihar
2. Bishambhar Jha, son of Ram Sudhar Jha
3. Santu Jha, son of Ram Sudhar Jha
4. Mantu Jha, son of Ram Sudhar Jha
All resident of village Barhanjama, P.S. Khanpur, District Samastipur

.... Respondents

Appearance :

For the Appellant/s : Mr. Atif Imam, Adv.
Mr. Deepak Kumar Singh, Adv.
For the Respondent State : Mr. S.A.Ahmad, APP

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 17-02-2016

Heard Mr. Atif Imam, learned counsel for the appellant, and
Mr. S.A.Ahmad, learned Addl. Public Prosecutor, appearing on behalf
of the State.

2. This appeal under proviso to Section 372 of the Code of
Criminal Procedure has been preferred against the judgment and order
dated 13.4.2015 passed by the learned Addl. Sessions Judge IV,
Samastipur in S.Tr.No. 476/2010 arising out of Khanpur P.S.Case No.
34/2010, G.R.No. 491/2010. By the said judgment and order, the
learned court below has convicted respondent no.2 of the offence

punishable under sections 341, 323, 324 and 504 of the Indian Penal Code and respondents no. 3 and 4 of the offence punishable under sections 341, 323 and 504 of the Indian Penal Code and has acquitted them of the charge under section 307 read with section 34 of the Code.

3. The appellant, who is the informant of Khanpur P.S. Case No. 34/2010, has, in the present appeal, raised a grievance that though there were evidence and material on record of the concerned criminal trial, which were sufficient to hold appellants no. 2 to 4 guilty of the offence under section 307 read with section 34 of the Indian Penal Code, the learned trial court acquitted the respondents of the said charge and has convicted them for minor offences.

4. Briefly narrated, the case of the prosecution is that in relation to some land dispute between the informant and the private respondents, respondent no.2 is said to have abused the informant and assaulted him. Allegedly, respondents no. 3 and 4, who are full brothers of respondent no.2, also came and assaulted the informant with *wooden staff*. There is an allegation against respondent no.2 that he gave a blow on the neck of the informant with *sickle (Hasua)*, causing injuries.

5. On the basis of these allegations, the aforesaid Khanpur P.S. Case No. 34/2010 came to be instituted. The police after



completion of investigation submitted charge sheet against respondents no. 2 to 4 under sections 341, 323, 379, 504 read with section 34 of the Indian Penal Code. The learned Chief Judicial Magistrate, Samastipur took cognizance of the offence by an order dated 11.8.2010. The said respondents thereafter stood charged of the offence under sections 341, 323, 324, 379, 504/34 of the Indian Penal Code and since they pleaded not guilty, they were put on trial.

6. At the trial, the witnesses supported the allegation of assault made by respondents no. 2 to 4. The learned trial court, upon evaluating and scrutinizing the evidence on record, arrived at a conclusion that no offence punishable under section 307 of the Indian Penal Code could be proved, in view of nature of assault and injury caused on the informant and the fact that the blow given on the informant with *sickle* was not repeated.

7. Learned counsel, appearing on behalf of the appellant, has submitted that the fact that respondent no.2 had given blow with *sickle* on the neck of the informant, stood proved at the trial, which fact was sufficient to hold the respondents guilty of the charge under section 307 of the Indian Penal Code. It has, accordingly, been submitted that the learned trial court wrongly held respondents no. 2 to 4 guilty of the offences only under sections 341, 323, 324, 504 of the Indian Penal Code and acquitted them of the charge framed for

offence punishable under section 307 read with section 34 of the Indian Penal Code.

8. We have perused the impugned order and the material on record. There is no dispute about the fact that the assault caused by respondent no.2 on the neck of the informant with *sickle* was not repeated, though it has been contended that after receiving the said blow, the informant had fallen unconscious. The respondent, thus, despite having opportunity to repeat blow, did not do so, which demonstrates that he had no any intention to kill the informant.

9. Upon going through the impugned order and the material on record and considering the submission advanced on behalf of the appellant, we are not convinced that the view taken by the learned trial court cannot be said to be a possible view. This Court is required to interfere with the judgment and order passed by the learned trial court exercising appellate power under proviso to Section 372 of the Code of Criminal Procedure only when the view taken by the trial court in the judgment and order is perverse and could not be reasonably a possible view. We do not find any such circumstance in the present case, warranting an interference with the impugned judgment and order.

10. The appeal has no merit and does not deserve to be admitted.

11. The appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

Surendra/-

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