

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.217 of 2016

Arising Out of PS.Case No. -45 Year- 1997 Thana -GAYGHAT District- MUZAFFARPUR

Ranjan Kumar Singh Son of Late Baidyanath Singh, resident of village- Baruari,
P.S.- Gaighat, District- Muzaffarpur

.... Appellant

Versus

1. The State of Bihar

2. Shyam Nandan Singh

3. Ramadhar Singh

4. Ram Nandan Singh, all sons of Ramkewal Singh @ Bhulan Singh

5. Ravi Shankar Prasad Singh, son of Ram Nandan Singh,

All resident of village- Baruari, P.O.- Baruari, P.S.- Gaighat, District- Muzaffarpur

.... Respondents

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the Respondent/s : Mr. Ajay Mishra (APP)

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 22-07-2016

The present appeal is directed against the judgment and order, dated 17.12.2015, passed in Session Trial No. 258 of 1999, whereby the learned 8th Additional Sessions Judge, Muzaffarpur has acquitted the opposite party Nos. 2 to 5 of the charges framed against them under Sections 447/341/337 and 307 read with Section 34 of the Indian Penal Code. However, opposite party Nos. 2 and 5 have been convicted of the



offences under Section 341 and 447 read with Section 34 of the Indian Penal Code and opposite party No. 3 and 4 have been convicted of the offences under Section 323 and 447 read with Section 34 of the Indian Penal Code, but no sentence has been passed against the accused persons and they have been released by giving them benefit, under Section 4 of the Probation of Offenders Act, 1958, with a direction to maintain peace and harmony for one year.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) On 30.03.1997, while the informant was taking tea at his door step, his agnate, Shyam Nandan Singh, came there and started abusing him. When the informant tried to stop Shyam Nandan Singh for doing so, the said Shyam Nandan Singh picked up a *farsa* in his hand and called his brother and nephew and ordered them to assault. Thereupon, accused Ravi Shankar Singh @ Sanjay Singh, armed with with *dabia* (a sharp edged weapon), accused Ramadhar Singh, armed with *lathi*, went to the door of the informant. Thereafter, accused Shyam Nandan Singh assaulted by means of *farsa* on the middle of the head of the informant and, as a result thereof, blood started oozing out. The nephew of informant, Sanjiv Kumar Singh, came to the informant's rescue, but he, too, was assaulted by accused Ravi Shankar Singh @ Sanjay Singh with *dabia*, on his left hand and, as a result thereof,

blood started oozing out. Accused Ramadhar Singh took away the wrist watch of the informant and five hundred rupees, whereas accused Ram Nandan Singh took away the wrist watch from the hand of the nephew of the informant and also assaulted him. On *hulla*, neighbors, namely, Murari Singh and Abhay Kumar Singh @ Sona came and saved the informant.

(ii) On the basis of the *fardbeyan* of the informant, Gaighat P.S. Case 45 of 1997, under Sections 447/341/323/324/307/504/379/34 of the Indian Penal Code, was registered against the accused persons aforementioned.

3. At the trial, charges, under Sections 447, 341, 337 and 307 read with Section 34 of the Indian Penal Code, were framed against all the accused persons. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 7 (seven) witnesses. One witness Dr. Prakash Chandra Sinha was examined as Court witness. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused 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. Defence also adduced evidence by examining three witnesses.

5. Aggrieved by the acquittal of respondent Nos. 2 and 5, the informant of the case has preferred this appeal.

6. Heard Mr. Ajay Kumar Thakur, learned Counsel for the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

7. Learned counsel for the appellant contends that although the evidence, adduced by the prosecution, was adequate to convict the accused-opposite parties, the learned trial Court failed to appreciate the evidence in its correct perspective and acquitted the opposite parties.

8. Learned counsel for the appellant further submits that the learned trial Court also failed to appreciate the evidence of PW 6, who was an injured witness and had been assaulted by the opposite party, Shyam Nandan Singh, with *farsa* on the middle of his head, which stood corroborated by the evidence of the court witness and the injuries were found to be grievous in nature. Moreover, it is contended that the opposite parties had come fully armed with deadly weapons and, with common intention, to the door of the appellant and that the evidence of PW 3, PW 6 and PW 7 fully supported the prosecution story. It is further contended that the learned trial Court, while brushing aside the evidence of material witnesses, who had corroborated the prosecution story, had proceeded to acquit the accused persons by giving them benefit of doubt and had only directed them to execute a bond for one year.



9. We have heard learned counsel for the appellant and perused the materials available on record. We have also carefully considered the evidence, which has been adduced during the course of the trial and it appears from the discussion made by the learned trial Court that the evidence is not sufficient to make out a case against the accused persons under the penal provisions aforementioned. Moreover, none of the witnesses has stated that there was any repetition of blow so as to constitute the offence under Section 307 of the Indian Penal Code. The trial Court has noted that there was a case and counter case between the parties and, in the case filed by the opposite parties, the appellant had been convicted with sentence of imprisonment for a period of one year. The learned trial Court has also noticed that PW 2 and PW 4 have been declared hostile; whereas PW 7, the Investigating Officer, has stated that the accused persons had caused injury to the informant and his nephew with *bricks* and *phata* (*stick made with bamboo*), but he, in his cross-examination, has deposed that he did not find blood at the place of occurrence nor was there any bricks or stones found at the place of occurrence.

10. It was, thus, inferred by the learned trial Court that the prosecution had failed to prove the allegations and the occurrence and there was also no intervening circumstance to prevent the accused persons from completing their intention of killing these persons, had they so intended. Thus, the learned

trial Court has proceeded to acquit the opposite parties of the offences under Sections 447/341/337 and 307 read with Section 34 of the Indian Penal Code.

11. From the above discussions, it is apparent that the learned trial Court has fairly considered the materials available on record and, upon sifting the evidence, has passed the judgment under appeal.

12. Having perused the judgment under appeal and having considered the matter in its entirety and upon consideration of all facts and circumstances, we find that the judgment, under appeal, is based on sound rationale. As such, we find no infirmity in the order of acquittal passed by the learned trial Court.

13. This appeal is, therefore, not admitted and is accordingly dismissed.

(I. A. Ansari, ACJ)

(Anjana Mishra, J)

Jagdish/-