

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.533 of 2016

Arising Out of PS.Case No. -50 Year- 2007 Thana -AMARPUR District-
BANKA

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1. Manoj Kumar Bhagat, son of Jagdish Prasad Bhagat, resident
of Village-Amarpur, P.S.-Amarpur, District-Banka.

.... Appellant/s

Versus

1. The State of Bihar.
2. Shiv Shanker Bhagat, son of Late Jai Mangal Bhagat.
3. Asha Devi, wife of Shiv Shanker Bhagat.
4. Anup Bhagat, son of late Abadhbihari Bhagat.
5. Rajesh Bhagat.
6. Ajit Bhagat.
7. Chandan Bhagat @ Bittu Bhagat.

Accused No.5 to7 are the sons Shiv Shanker Bhagat.

All resident of Village-Amarpur, P.S.-Amarpur, District-Banka.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prahalad Kumar Bhagat, Adv.

For the Respondent/s : Mr. G.P. Jaiswal, PP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

(C.A.V.)

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 19-07-2016

The appellant is the brother of the informant, who has put to challenge the legality of the judgment and order, dated 22.03.2016, passed by learned Additional Sessions Judge-IV, Banka, in Sessions Trial No.1083 of 2008/Trial No.258 of 2016, whereby he has recorded acquittal of respondent Nos.2 to 7 herein, who stood charged for the offences punishable under Sections 307, 341, 323, 504 read with Section 34 of the Indian Penal Code, by filing present application of appeal, under Section 372(1) of the Code of Criminal Procedure, 1973.

2. Case of the prosecution, based on the written report of the informant, namely, Biswageet Kumar Bhagat (since deceased), is that on the alleged date of occurrence, i.e., 07.03.2007, at approximately 8.00 A.M., he was returning from his field. No sooner did he reach Amarpur Hat, Anup Bhagat (respondent No.4) started abusing him and assaulted him with *lathi*. When he reached near his Khopariya house, Shiv Shanker Bhagat (respondent No.2), Rajesh Bhagat (respondent No.5), Ajit Bhagat (respondent No.6) and Chandan Bhagat @ Bittu Bhagat (respondent

No.7) surrounded him under a conspiracy, whereafter Asha Devi (respondent No.3) came there and commanded them to kill the informant. Respondent No.2 attacked him with his mattock (*kudal*), which the informant fended off by catching hold of the mattock and, thereafter, started raising alarm, following which the elder brothers of the informant, namely, Vakil Saheb (Prahalad Kumar Bhagat, P.W.-2), Manoj Kumar Bhagat (P.W.-3), his mother, namely, Shobha Bharti @ Shobha Devi (P.W.-1), and his sister rushed to save him. Respondent Nos.5 and 7 chased P.W.-3, Manoj Kumar Bhagat, for assaulting him. Respondent No.5 charged P.W.-3, Manoj Kumar Bhagat, with a chopper (*garasa*), but said Manoj Kumar Bhagat (P.W.-3), averted the attack as he caught hold of the hand of Rajesh Bhagat (respondent No.5). Thereafter, respondent No.7 is said to have hit Manoj Kumar Bhagat (P.W.-3) with the butt of a pistol. Respondent No.2, Shiv Shanker Bhagat, is said to have thrown a big piece of stone targeting informant's elder brother, Vakil Saheb (Prahalad Kumar Bhagat, P.W.-2), but he is said to have concealed himself under some cover and, thus, narrowly escaped the attack and sneaked away from there and went to lodge the First Information Report. Respondent No.3, Asha Devi, is said to have commanded other accused persons to shoot both the brothers, i.e., the informant and his brother,

Manoj Kumar Bhagat (P.W.-3).

3. On the allegation to this effect, on the written report of the informant, namely, Biswageet Kumar Bhagat (since deceased), Amarpur P.S. Case No.50 of 2007 (G.R. No.270 of 2007) came to be registered. The police, upon completion of investigation, submitted *charge-sheet* under Sections 341, 323, 307, 337, 504 read with Section 34 of the Indian Penal Code. Thereafter, the learned Chief Judicial Magistrate, Banka, took cognizance of the offences and committed the case for trial. Charges were framed against the respondents for commission of offences under the aforesaid sections of the Indian Penal Code. Since the respondents pleaded innocence, the trial against them commenced.

4. At the trial, altogether seven prosecution witnesses were examined including the Investigating Officer (P.W.-5), the Doctor (P.W.-6); and one Kanchan Kumar Sharma (P.W.-7) as a formal witness, who proved the First Information Report, submitted by the informant.

5. There were four witnesses, who came in support of the case of the prosecution and claimed to be the eye-witnesses of the occurrence. Upon analysis, scrutiny and appreciation of evidence adduced at the trial, learned trial Court came to a conclusion that the prosecution had

miserably failed to prove the guilt of the respondents beyond all reasonable doubts and, accordingly, recorded their acquittal. The trial Court noticed apparent contradictions in the evidence of the witnesses, which has been discussed in the impugned judgment.

6. We have heard Mr. Prahalad Kumar Bhagat, learned Counsel, appearing on behalf of the appellant, and Mr. G.P. Jaiswal, learned Public Prosecutor, appearing on behalf of the State of Bihar.

7. It is not the contention, on behalf of the appellant, that the evidence of the witnesses have been wrongly described in the impugned judgment. Mr. Bhagat, learned Counsel for the appellant, has submitted that despite the fact that the eye-witnesses proved the case beyond all reasonable doubts, learned trial Court adopted a hypothetical approach and recorded acquittal merely on account of non-examination of independent witnesses and got influenced by taking into account a compromise petition, filed in the present case, as well as in the counter-case, filed by respondent Nos.2 to 7, being Amarpur P.S. Case No.50 of 2007. He has further submitted that though the prosecution was able to prove the genesis, manner and place of occurrence, learned trial Court wrongly recorded acquittal of respondent Nos.2 to 7.



8. We have perused the materials available on the record and have given our anxious consideration to the submissions advanced on behalf of the appellant. There is no dispute over the fact that all the prosecution witnesses are from the same family and no independent witness has been examined to corroborate the evidence, adduced at the trial, of such witnesses. It is true that an evidence cannot be discarded or brushed aside only on the basis that same has been adduced by the interested witnesses; but, at the same time, it is well accepted principle that unless evidence of such witnesses are corroborated by other reliable evidences, evidence of the interested witnesses have to be considered with utmost caution and circumspection. In the present case, out of four prosecution witnesses, apart from the Investigating Officer, Doctor and a formal witness, P.W.-1 is the mother of the informant, P.W.-2 is the brother of the informant, who was said to have been assaulted, and P.W.-3 is also the brother of the informant, who too was allegedly assaulted.

9. It also transpires that for an occurrence, which had taken place on the same date and time, a First Information Report, being Amarpur P.S. Case No.49 of 2007, was registered, on the basis of written report of respondent No.2 herein, alleging commission of offences under Sections



341, 324, 307, 379 and 504 of the Indian Penal Code, against the appellant and P.W.-3. It is also evident from the records that there is dispute of partition between the two groups. The evidence of P.W.-1 has not been found to be truthful by the learned Court below on the analysis of time of occurrence, as disclosed by her and that mentioned in the First Information Report. The Doctor, on the basis of the injury report, deposed that the injuries were found to be superficial in nature. Learned trial Court has noticed the fact that the respondents had also received injuries and has come to the conclusion that the occurrence had, in fact, taken place near the shop of respondent No.2. Learned trial Court has held that on the basis of evidence on record, it could not be said that the respondents were the aggressors and they had any intention to kill anyone.

10. Considering the materials available on the record, we do not find that the conviction of the appellant could be the only conclusion or inference on the basis of evidence adduced at the trial. In an appeal against the order of acquittal, an appellate Court need not interfere with the judgment of the learned trial Court, unless it is shown to be perverse and that the finding of acquittal is not reasonably possible view. From the impugned judgment, we have noticed that the evidence of prosecution and that of the

defence have been duly and elaborately considered. The conclusion arrived at by the learned trial Court to the effect that prosecution failed to prove the guilt of respondent Nos.2 to 7, cannot be said to be not a reasonably possible view.

11. We, accordingly, do not find any merit in this appeal, which does not deserve to be admitted.

12. The appeal is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.: I agree

(I. A. Ansari, ACJ.)

Praveen-II/-

AFR/NAFR	NAFR
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