

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.2 of 2016

Arising Out of PS.Case No. -12 Year- 1999 Thana -NAUTAN District-
WESTCHAMPARAN(BETTIAH)

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1. Iftekhar Ahmad son of late Abdul Karim resident of village - Balua, PS -
Nautan, District - West Champaran.

.... Appellant/s

Versus

1. The State of Bihar.
2. Dhanesh Yadav son of Doma Yadav
3. Rajendra Yadav son of Bishwanath Yadav
4. Prabhu Yadav son of Bishwanath Yadav
5. Satan Yadav son of Baleshwar Yadav
6. Doma Yadav son of Kodai Yadav
7. Suresh Yadav son of Bishwanath Yadav
8. Pramod Yadav son of Bishwanath Yadav
9. Ramesh Yadav son of Doma Yadav
10. Ramashraya Giri son of Indra Deo Gosai
11. Ganesh Yadav son of Doma Yadav
12. Prema Yadav son of Bishwanath Yadav All R/vill. - Balua, P.S. -
Nautan, Dist - West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pathak Dhananjay Kumar
For the Respondent/s : Mr. Dilip Kumar Sinha (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)

4 03-03-2016 By the judgment and order, dated 27.08.2015,

passed, in Sessions Trial No. 557 of 1999, G.R. No. 140/1999

(arising out of Nautan P.S. Case No. 12 of 1999), by the 1st

Additional District and Sessions Judge-IV, Bettiah, West

Champaran, though the accused-respondent Nos. 2 to 12 have

been acquitted of the charges framed under Sections 325, 307 and

504 of the Indian Penal Code, but have been convicted under Sections 147, 148 and 323 Indian Penal Code. However, they have been released from custody, under Section 4 of the Probation of Offender Act, 1958, after due admonition.

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

(i) On 23.01.1999, at about 6 AM, on finding human excreta scattered in the field of the informant, in front whereof the thatched hut of Ramasharay Gosai was located, the accused persons were abusing, and on being asked by the informant not to abuse, the accused persons came out with *lathi* and *danda* and assaulted the informant, namely, Abdul Karim, and also other persons, namely, Md. Shakil, Ejajuddin, Ejhar Ahmad, Md. Kasim all of whom sustained injuries. It is also alleged that accused Doma Yadav snatched away the wrist-watch of Zeyaul Hasan, whereas accused Prema Yadav snatched away Rs. 4000/- from the pocket of the Abdul Kalam.

(ii) On the same day, i.e., 23.01.1999, the informant gave a written report about the incident to Nautan Police Station and treating the same as First Information Report, Nautan P.S. Case No.12 of 1999 was registered under Sections 147/148/323/379/504 and 307 of the Indian Penal Code against

accused respondent Nos. 2 to 12 and, on completion of investigation, a *charge sheet* was laid, under Sections 147/148/323/325/379/504 and 307 of the Indian Penal Code, against the accused aforementioned.

3. At the trial, charges, under Sections 147, 148, 323, 325, 504 and 307 of the Indian Penal Code, were framed against three accused respondent Nos. 2 to 12. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 12 (twelve) witnesses. 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. No evidence was adduced by the defence.

5. Having, however, arrived at the finding that the charges against the accused-respondent Nos. 2 to 12, under Sections 325, 307 and 504 of the Indian Penal Code, had not been proved, the learned trial Court acquitted them; but convicted all the accused persons under Sections 147, 148 and 323 Indian Penal Code. However, the accused respondent Nos. 2 to 12 have been released from custody, under Section 4 of the Probation of

Offender Act, 1958, after due admonition.

6. Aggrieved by the conviction of the respondent Nos. 2 to 12, under Sections 147, 148 and 323 of the Indian Penal Code, and their release from custody under Section 4 of the Probation of Offender Act, 1958, the informant of the case has preferred this appeal.

7. Heard Mr. Pathak Dhananjay Kumar, learned Counsel for the appellant, and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the respondent-State.

8. Learned Counsel for the appellant has challenged the judgment of the learned trial Court on the ground that the learned trial Court has made an error in arriving at the finding that no witness has stated that there was an intention to kill inasmuch as the learned trial Court has altogether ignored the deposition of the witnesses, which is corroborated by the medical evidence showing that the injuries sustained by Md. Qasim and Abdul Kalam were grievous in nature. It is contended, on behalf of the appellant, that the learned trial Court also made a serious error in acquitting the accused persons from the charge under Section 307 of the Indian Penal Code. The nature of injuries clearly shows, according to learned Counsel for the appellant, that there was a clear intention to kill and, therefore, the accused

persons ought not to have been acquitted of the charge under Section 307 of the Indian Penal Code.

9. We have heard learned counsel for the parties and have fully analyzed the judgment and order of the learned trial Court. On a perusal of the judgment, under appeal, we find that the prosecution was unable to prove the place of occurrence. Even the original First Information Report/*Fardbeyan* has not been brought on record as Exhibit and no independent witness has been examined. It appears that the defence has also put forth a judgment, passed in Nautan P.S. Case No. 13 of 1999, in course of trial to prove previous enmity between the parties.

10. On a perusal of judgment and order of the learned trial Court, it appears that the testimony of the witnesses were such that no danger to life had been found on the person of the members of the informant's side. Though some injuries had been found to be grievous, they were not of such nature so as to have proved fatal.

11. The learned trial Court further found that there being no intervening circumstances available to the accused persons, had there been an intention to kill, the same eventuality would have occurred. The learned trial Court has also held that the charge, under Sections 307 and 325 read with Section 149 of

the Indian Penal Code, could not be proved as each of the persons, who are said to have been injured, received only one wound each and none of the witnesses have stated that it was on the intervention of some force no-one was killed.

12. The learned trial Court on analysis of evidence has found that the charge under Section 325 also could not be proved as the injuries, which came to be caused on the persons of Md. Iftekhar and that of Abdul Kalam, could be attributed to any of the persons in particular. Though learned trial Court having found that the charges, under Sections 147, 148 and 323 of the Indian Penal Code have been proved against the accused persons and has convicted them thereunder, but, after due consideration, has released the accused abovenamed giving them the benefit under Section 4 of the Probation of Offenders Act.

13. Having perused the entire appraisal of evidence made by the learned trial Court, we, too, find and hold that there is no lacuna in the reasonings arrived at by the learned trial Court calling for any interference at the appellate stage.

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

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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