

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.853 of 2016

Arising Out of PS.Case No. -85 Year- 2014 Thana -SC/ST District- BHAGALPUR

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1. Tara Devi Wife of Late Prakash Paswan, Resident of Village-
Gopalpur, P.S Industrial Area, Zero Mile, District- Bhagalpur.

.... Appellant

Versus

1. The State of Bihar.

2. Kukuri Yadav, Son of Naresh Yadav

3. Balmiki Yadav Son of Naresh Yadav

Both 2 and 3 are resident of Village- Gopalpur, P.S Industrial
Area, Zero Mile, District- Bhagalpur.

.... Respondents

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Appearance :

For the Appellant : Mr. Manoj Kumar, Advocate

For the State : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT AND ORDER

C.A.V.

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 15 -09-2016

We have heard Mr. Manoj Kumar, learned Counsel,
appearing on behalf of the appellant, and Mr. Ajay Mishra,
learned Additional Public Prosecutor, for the State.

2. This appeal, under the proviso to Section 372 of
the Code of Criminal Procedure, 1973, has been preferred
against the judgment and order, dated 15.06.2016, passed, by
learned 2nd Additional Sessions Judge -cum- Special Judge,
Bhagalpur, in Sessions Trial No. 218 of 2015, arising out of
SC/ST Police Station Case No. 85 of 2014, whereby he has

recorded acquittal of respondent Nos. 2 and 3, who, along with other accused persons, stood charged for the offences punishable under Sections 302, 341, 325, 326, 379 read with Section 34 of the Indian Penal Code and Sections 3 (xi) (v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act.

3. Initially, the First Information Report, in the present case, was registered for the offences punishable under Sections 341/323/325/326/307/379/34 of the Indian Penal Code; however, since the informant subsequently died, Section 302 read with Section 34 of the Indian Penal Code came to be added.

4. It is to be noted that altogether 4 (four) accused persons were put on trial in the case arising out of the said SC/ST Police Station Case No. 85 of 2014, including respondent Nos. 2 and 3. The learned trial Court has convicted other 2 (two) accused persons, namely, Naresh Yadav and Bhavesh Yadav, but has acquitted respondent Nos. 2 sand 3, according them benefit of doubt. The learned trial Court convicted Naresh Yadav and Bhavesh Yadav for the offences under Section 302 read with Section 34 of the Indian Penal Code and Sections 3 (xi) (v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. Convict Naresh Yadav was also convicted for the offence under Section 379 read with Section 34 of the

Indian Penal Code.

5. The only question, which requires determination in the present appeal is as to whether the view taken by the learned trial Court, recording acquittal of respondent Nos. 2 and 3 can be said to be not a reasonably possible view and despite there being clinching evidence available on record, which were adduced at the trial, on the basis whereof, conviction of respondent Nos. 2 and 3 have been the only possible view and, learned trial Court recorded their acquittal, rendering the impugned judgment and order, to the extent it relates to acquittal of respondent Nos. 2 and 3, untenable and thereby warranting interference by this Court.

6. Briefly narrated, case of the prosecution, as set out in the First Information Report, is that the accused Naresh Yadav, on 18.12.2014, at about 03:00 PM, came at the temple, situated near the informant's house and when the informant asked as to why he had obstructed the passage of his house, he started abusing and assaulting him with *lathi*, which he was having. Co-accused Bhavesh, son of Naresh Yadav, also came and assaulted the informant with *khanti*, causing head injury, whereafter the informant became unconscious and fell down. It is further alleged that respondent Nos. 2 and 3, both sons of Naresh Yadav, also came and started assaulting him with *lathi*. The fourth son of Naresh Yadav also assaulted the informant



with *lathi*. It is the further case of the prosecution that when the son of the informant, Jaikant, and wife, Tara Devi, came to his rescue, the accused persons assaulted them also. The son of the informant, Jaikant, allegedly received injury on his head. Further, the accused persons damaged the roof of the informant's house. Co-accused Naresh Yadav took away jewellery and an amount of Rs. 6,000/-, and Chotu Yadav snatched a golden ear-ring of the informant's wife. The occurrence had taken place on 18.12.2014, for which First Information Report came to be registered on 19.12.2014. According to the informant, because he had become unconscious, he could not register the First Information Report on 18.12.2014 itself. The informant subsequently died.

7. The Police, upon completion of investigation, submitted *charge sheet*, under Sections 341/323/325/326/307/379/302/34 of the Indian Penal Code and Sections 3 (xi) (v) of the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act. Cognizance was accordingly taken and the case was committed to the Court of Sessions for trial and was placed in the file of 1st Additional Sessions Judge, Bhagalpur.

8. Upon framing of charges and denial by the accused persons of the charges framed against them, the trial commenced.

9. At the trial, altogether 9 (nine) witnesses were

examined by the prosecution, including the doctor (PW 8) and the Investigating Officer (PW 9).

10. PW 8 (Dr. Yogesh Prasad Sah), who had conducted the *post mortem* on the body of the deceased informant, had found the following *ante mortem* injuries:

"(1) Multiple bruises 2½" x ½", 2" x ½", 4" x ½" were found on the left shoulder, on the back of right fore-arm and on the back of left hand.

(2) One lacerated wound ½" x ½" x skin deep was found between left forefinger and middle finger.

(3) One stitched wound 2½" long was found on left parietal area. After cutting the stitch, lacerated injury 2½" x ½" x bone deep was found on scalp. ...was found deeply bruisedwas found on left parietal area.

(4) Small intestine was found bruised blood ... were found present in small intestine, abdominal cavity was full of puss mixed greeny liquid.

Opinion – The above noted injuries were *ante mortem* and were caused by hard blunt object.

Time of death :- within 06 hours to 12 hours prior to time of P. M. examination"

11. The learned trial Court, on the basis of evidence adduced on behalf of the prosecution at the trial, concluded that the witnesses, who claimed to have seen the occurrence, did not depose specifically that respondent Nos. 2 and 3 had assaulted the deceased. The prosecution witnesses had deposed that respondent Nos. 2 and 3 had assaulted the son of the informant, Jaikant, who had received injury on his head.

However, at the trial, no evidence was adduced to establish that said Jaikant, son of the informant, had received any injury.

12. Learned Counsel, appearing on behalf of the appellant, has submitted that there was specific allegation in the First Information Report, which has been duly substantiated in the evidence adduced at the trial, that respondent Nos. 2 and 3 had assaulted the deceased also and, therefore, they were liable to be convicted for the offences punishable under Section 302 read with Section 34 of the Indian Penal Code and other sections. According to him, ignoring clinching evidence on record, the learned trial Court has recorded acquittal of respondent Nos. 2 and 3 by the impugned judgment and order, which warrants interference by this Court.

13. We have perused the materials available on record. We have noticed that there is evident and material contradiction in the evidence of the prosecution witnesses on the point of assault made by respondent Nos. 2 and 3 on the deceased. There is no specific evidence to the effect that respondent Nos. 2 and 3 had assaulted the deceased, though some of the prosecution's witnesses had deposed that these respondents had assaulted the son of the deceased, Jaikant. Further, admittedly, no evidence was adduced, at the trial, in support of the injury caused to the son of the deceased, Jaikant.

14. Considering the above, if the learned trial Court gave the respondent Nos. 2 and 3 benefit of doubt, the said view cannot be said to be not a reasonably possible view.

15. It is well settled principle of law that if two views are possible, the view, which goes in favour of the accused, should prevail and be preferred.

16. We do not find the conclusion arrived at by the learned trial Court to be perverse or not a reasonably possible view to the extent that the same relates to acquittal of respondent Nos. 2 and 3

17. This appeal does not deserve admission and is accordingly dismissed.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, CJ.: - I agree.

(I. A. Ansari, CJ.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	06.09.2016
Uploading Date	15.09.2016
Transmission Date	15.09.2016