

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.997 of 2015

Arising Out of PS.Case No. -77 Year- 2010 Thana -MANIHARI District- KATIHAR

- =====
1. Bharat Lal Paswan son of Late Sri Lal Paswan resident of Village- Baghmara, P.S. Manihari, District Katihar.
 2. null null null

.... Appellant/s

Versus

1. The State of Bihar
2. Suroj Paswan son of Late Bishun Deo Paswan
3. Jugnu Kumar Paswan S/o Late Bishun Deo Paswan
4. Sachin Kumar Paswan S/o Late Bishun Deo Paswan
5. Ramjit Paswan S/o Late Diyali Paswan
6. Sanjiv Paswan S/o Late Diyali Paswan Respondent No. 2 to 6 are resident of village- Baghmara, P.S.- Manihari, District- Katihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh No.1, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 19-02-2016

This appeal, under the proviso to Section 372 of the Code of Criminal Procedure, 1973, is for setting aside the judgment and order, dated 26.06.2015, passed by the learned Additional District and Sessions Judge, II, Katihar, in Sessions Trial No. 395/2010, arising out of Manihari P.S. case No. 77 of 2010. By the said judgment and order, the learned trial Court, while convicting respondents No.3, 4, 5 and 6 for the offences



punishable under Sections 147, 341, 323, 324 read with Section 149 of the Indian Penal Code and respondent No.2 for the offences punishable under Sections 148, 323, 324 and 341 of the Indian Penal Code and giving them the benefit of the Probation of the Offenders Act, 1958, and releasing them from judicial custody, has recorded their acquittal of the charge framed under Section 307 read with Section 149 of the Indian Penal Code.

2. The appellant was the informant of the said Manihari P.S. Case No. 77 of 2010 and he has a grievance in the present appeal that the learned trial Court has wrongly recorded acquittal of the respondent Nos. 2 to 6, who were charged for commission of offence under Section 307 of the Indian Penal Code. The appellant is also aggrieved by the judgment of the learned trial Court, whereby the said respondents had been given benefit of the Probation of Offenders Act, 1958.

3. On the basis of *fardbeyan* given by the appellant to the police on 28.04.2010, the said First Information Report was registered alleging that the respondents, armed with *lathi*, axe and hammer, assaulted his brother, Arun Paswan, with an intention to kill him and when the informant and his wife,

Chandrika Devi, attempted to rescue Arun Paswan, the respondents assaulted the informant and his wife, Chandrika Devi, too, with intention to kill them. The Informant/Appellant's wife, Chandrika Devi, and his brother, Arun Paswan, are said to have sustained injuries.

4. Upon completion of investigation, the police submitted *charge-sheet* for offences punishable under Sections 147,148,149,323,351,341 and 307 of the Indian Penal Code, whereafter cognizance was taken by the Court of learned Chief Judicial Magistrate, Katihar, vide order, dated 14.06.2010. The case was committed to the Court of Sessions. The charges were framed for commission of the offences punishable under Sections 147, 148, 323, 241 and 307 read with Section 149 of the Indian Penal Code. The respondent Nos. 2 to 6 denied the charges and they were put on trial. Upon completion of evidence of the prosecution, statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, wherein they reiterated their innocence and, by way of defence, they pleaded that their implication was, because of previous enmity.

5. In order to establish charges against the concerned respondents, the prosecution examined altogether

eight witnesses including the appellant as (P.W.6), Bharatlal Paswan, and his wife Chandrika Devi, (P.W.3). The defence also adduced evidence through three witnesses, namely, Somesh Kumar Paswan (DW-1), Naresh Paswan (C.W.-2) and Kapil Yadav (DW-3).

6. Learned trial Court upon analyzing the evidence, concluded that the prosecution has failed to establish the charge of commission of offence against respondent Nos. 2 to 6 punishable under Section 307 read with Section 149 of the Indian Penal Code. However, learned trial Court held respondent Nos. 3, 4, 5 and 6 guilty of the offences punishable under Sections 147, 341, 323 and 324 read with Section 149 of the Indian Penal Code and respondent No.2 of the offence punishable under Sections 148, 323, 324 and 341 of the Indian Penal Code.

7. The sole question, which has arisen, in the present appeal, is as to whether the prosecution could establish the charge of commission of offence punishable under Section 307 of the Indian Penal Code against respondent Nos. 2 to 6.

8. From the impugned judgment, we find that the injury reports, prepared on the basis of their examinations, were not proved by the doctor, though such injury reports were

exhibited at the trial. Following injuries were found on the injured Bharat Lal Paswan (appellant), Chandrika Devi and Arun Paswan:-

- “1. A lacerated wound at right thumb measured- 1”x ½”x skin deep.
2. A lacerated wound at right fore-arm on back elbow- 2”x ½” skin deep
3. Abrasion on left upper arm near elbow measuring 1”x ½” on skin.
4. An abrasion 2 c.m long on fore-head.
5. An abrasion at right side of chick and nose.”

Chandrika Devi

“A lacerated would measuring- 1.5”x ½ on left cheek.”

Arun Paswan

- “1. An incised wound measured 3”x ½”x scalp deep, mid-line on head.
2. An incised wound measured 2”x ½”x scalp deep.
3. An incised wound measured 2”x ½ scalp deep at mid of scalp
4. Abrasion at black.”

9. We further find that the injuries, on the person of Bharat Lal Paswan, were found to be simple in nature and caused by hard and blunt substance. As regards injuries caused on the person of Chandrika Devi, the doctor is said to have opined that the same was caused by hard and blunt substance. It transpires that he had not given his opinion with regard to the nature of injury on her. So far as injuries on the person of Arun Paswan is concerned, it appears that the doctor

opined Injury No.4 to have been caused by hard and blunt substance, simple in nature but did not give any opinion about other injuries. Nothing was brought on record at the trial to show that any of the injuries, caused on Arun Paswan, was grievous in nature or fatal to the life.

10. We find that the learned trial Court took note of the fact that none of the eye-witnesses, including the injured witness, Arun Paswan, deposed that the person, who had assaulted him, with axe had given repeated blows. Learned trial Court has recorded that no multiple injuries caused by sharp cutting weapon were found on the injured Arun Paswan and, therefore, the prosecution failed to prove the charge of commission of offence under Section 307 of the Indian Penal Code.

11. We do not find the conclusion, arrived at by the learned trial Court, to be perverse or suffering from any infirmity, legal or factual, to the extent he has recorded, acquittal of respondent Nos. 2 to 6 of the charge punishable under Section 307 of the Indian Penal Code, because of the absence of any evidence that repeated assaults were made by the respondents with an intention to kill the informant or other injured persons and/or they were prevented from doing so due

to any intervening circumstance. The view, taken by the learned trial Court, holding that charge of the offence, punishable under Section 307 of the Indian Penal Code, could not be established against respondent Nos. 2 to 6, cannot be said to be not a reasonably possible view in the present facts and circumstance of the case. The judgment, under appeal, does not suffer from perversity or from such illegality, which would warrant interference by this Court in exercise of appellate jurisdiction under the proviso to Section 372 of the Code of Criminal Procedure, 1973.

12. We do not find any merit in this appeal. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-

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