

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.36 of 2015

Arising Out of Complaint Case No. -309(C) Year- 2008 Thana -null District- BUXAR

1. Janardan Dubey, son of late Basudev Dubey, resident of Village Nagawa, Police Station Simri, District Buxar.

.... Appellant/s

Versus

1. The State of Bihar

2. Jaki Bhar alias Jai Rai son of Ramsili Rai alias Ramsili Bhar resident of village-Parmanpur, Police Station- Simri, District- Buxar.

3. Harendra Mishra son of Late Raghunath Mishra

4. Janardan Mishra son of Late Raghunath Mishra

5. Manoj Mishra son of Shri Janardan Mishra

6. Jogindra Mishra son of Late Raghunath Mishra

7. Ram Shili Bhar alias Ramsili Ram, son of Late Dhanukdhari Bhar alias Dhanukdhari Rai resident of village- Parmanpur, Police Station- Simri, District- Buxar. Respondent No. 3 to 6 all resident of Village- Dawanpura, Police Station- Simri, District- Buxar.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. K.N.Choubey, Sr. Adv.
Mr. Ashok Kumar Garg, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-09-2016

By way of the present application preferred under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner seeks leave to appeal against the judgment and order dated 21st August, 2015 passed by the learned Additional Sessions Judge-V, Buxar in Sessions Trial No. 188 of 2013/ C.I.S. No. 555 of 2014 arising out of Complaint Case No.

309(C) of 2008, whereby and whereunder the opposite parties no.2 to 7 have been acquitted of the charges under Section 395 of the Indian Penal Code (for short 'IPC') and 27 of the Arms Act.

2. The petitioner-complainant filed a complaint petition bearing Complaint Case No. 309(C) of 2008 in the court of the learned Chief Judicial Magistrate, Buxar on 31st March, 2008. It has been alleged in the complaint petition that in the midnight of 29th February, 2008 the complainant had gone to his Boring for irrigating his land. In the meantime, the accused persons along with 15-20 unknown persons variously armed reached there and threatened him of dire consequences. The complainant recognized the named accused in the light of torch. They forcibly took away the Honda Machine of the petitioner from the Boring, the price of which was Rs.13,500/-. The accused persons resorted to firing. Several persons of the village reached there but they could not dare to chase the miscreants because of firing. It is stated that the accused persons are habitual criminals and are involved in various cases of theft and dacoity. It is further stated that the complainant had gone to the Police Station to lodge the case but the police refused to lodge the case and thus the complaint case.

3. After lodging of the complaint case, the learned Chief

Judicial Magistrate, Buxar in exercise of power under Section 192(2) of the Cr.P.C., made over the case to the court of the learned Judicial Magistrate, Buxar for inquiry and disposal.

4. The complainant was examined on solemn affirmation and on his behalf two witnesses were examined in course of inquiry conducted under Section 202 of the CrPC. Finding a prima facie case to be made out for the offences under Sections 341 and 380 of the IPC, the accused persons were summoned to face trial.

5. After appearance of the accused persons, evidences were led before charge and on the basis of evidence, charge was framed under Sections 341 and 380 of the IPC.

6. In course of trial, a petition was filed by the complainant on 13th September, 2012 to the effect that charge should be framed against the accused persons under Section 395 of the IPC.

7. After hearing the parties, the learned Judicial Magistrate vide order dated 27th May, 2013 committed the case to the court of Sessions for framing of charge under Section 395 of the IPC.

8. Learned Additional Sessions Judge framed charges under Section 395 of the IPC as well as Section 27 of the Arms Act against the accused persons to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

9. In course of trial, three witnesses were examined on behalf of the complainant. They are P.W.1 Munna Tiwary, P.W.2 Janardan Dubey, the complainant and P.W.3 Sunil Kumar Tiwary. The defence did not produce any evidence, either oral or documentary in support of the accused persons.

10. P.W.3 Sunil Kumar Tiwary is a formal witness. He has identified the cash memo produced by the complainant and the same was marked Ext.-2.

11. P.W.1 Munna Tiwary has supported the case in his examination-in-chief but in his cross-examination, he has stated that he had arrived at the place of occurrence ten minutes after the firing and he had seen the accused persons at a distance of 70-80 feet east. He stated that there were 5-6 round of firing. This witness has also stated in his cross-examination that the machine was not fitted with suction pipe and delivery pipe.

12. P.W.2 is the complainant himself. He has stated in his cross-examination that the accused Janardan Mishra unbolted the machine which took about half an hour and during this period no witness had arrived at the place of occurrence.

13. After considering the evidence adduced on behalf of the parties, the trial court acquitted the accused persons of the offences



under which they were charged. The trial court found material contradiction in the evidence of the witnesses. Though the complainant has alleged in his complaint that at the time of occurrence many witnesses, namely, Uday Narain Singh, Munna Tiwary (P.W.1), Bachchanji Mishra, Dinesh Ram and others had arrived at the place of occurrence but he has produced only Munna Tiwary (P.W.1) for evidence. He has not produced other witnesses. The trial court disbelieved the evidence of P.W.1 that he had identified the accused persons from a distance of 70-80 feet in the dark night. The trial court disbelieved the story of indiscriminate firing. It has found that though there is allegation of indiscriminate firing but not a single empty cartridge was found by the police at the place of occurrence. The trial court also found discrepancy in the evidence of the complainant. He has stated that he was irrigating his land from the machine which was taken away by the accused persons, but it has come in the evidence of P.W.1 that the machine was not connected with the suction pipe and delivery pipe. Therefore, story of irrigation of the land by the complainant was also found improbable. It was further found by the trial court that the cash memo (Ext.-2) produced by the complainant does not bear the name and signature of the shop-keeper or his agent. It is only a price list. Thus the trial court held that Ext.-2 does not prove that any machine was purchased by

the complainant. The complainant has not produced other witnesses named in the complaint petition nor has any explanation been submitted by him in that regard. Thus, the trial court acquitted the accused persons of the charges giving them benefit of doubt.

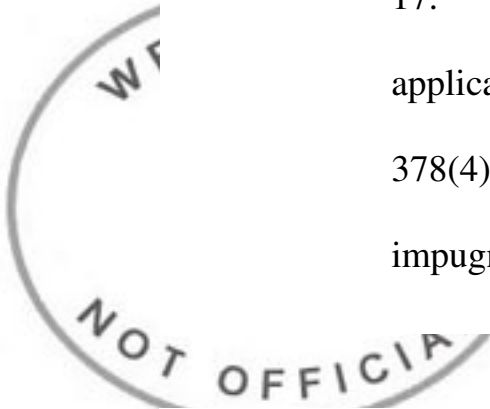
14. I have heard learned counsel for the petitioner and perused the record.

15. It would be evident that out of four witnesses named in the complaint only one was examined during trial. The prosecution has failed to explain any reason for non-examination of the remaining three witnesses. The trial court has doubted the genesis and manner of the occurrence. While appreciating the evidence of the witnesses examined in court, the trial court has come to a clear and cogent finding that they are not consistent and they have contradicted each other. The allegation of indiscriminate firing made by the accused persons has also been doubted by the trial court for the reason that no empty cartridge was found at the place of occurrence.

16. Having noticed so many discrepancies in the evidence, if the trial court has given benefit of doubt to the accused persons, no fault can be found with the order passed by it. Furthermore, the trial court has given clear, cogent and convincing reasons for recording the judgment of acquittal. The reasonings assigned by the trial court are

neither erroneous nor perverse.

17. In that view of the matter, I see no merit in this application. Accordingly, the application preferred under Section 378(4) of the Cr.P.C. seeking leave to file appeal against the impugned order is rejected.



(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	