

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Govt. Appeal (DB) No. 17 of 2017**

Arising Out of PS. Case No.-72 Year-2010 Thana- Angarghat District- Samastipur

The State of Bihar through the District Magistrate, Samastipur having his office at Collectorate Compound, Samastipur.

... .. Appellant

Versus

1. Arjun Sharma S/o Chhanu Sharma  
2. Subhash Sharma @ Subai Sharma S/o Chhanu Sharma  
3. Jhiguni Sharma S/o Chhanu Sharma  
All R/o Rewari, PS – Angarghat, District – Samastipur.

... .. Respondents

**Appearance :**

For the Appellant/s : Mr. Shyameshwar Dayal  
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**ORAL ORDER**

**(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

5. 22-11-2017 Heard Sri Shyameshwar Dayal, learned Addl. Public  
Prosecutor for the appellant/State.

2. The State has preferred the present appeal against judgment of acquittal dated 07-03-2017 passed by learned Addl. District & Sessions Judge – II, Samstipur (hereinafter referred to as the ‘Trial Judge’) in Sessions Trial No. 167 of 2011 (arising out of Angarghat P.S. Case No. 72 of 2010). By the said judgment, the learned Trial Judge has acquitted respondent no. 1 to 3 from charge under Sections 341/34, 447/34, 504, 307/34 of the Indian Penal Code.



3. The appeal against acquittal has been preferred belatedly and as such, an interlocutory application, vide I.A. No. 1782 of 2017, under Section 5 of the Limitation Act, 1963 has been filed. In filing appeal, 20 days' delay has occurred, which has appropriately been explained in the petition.

4. Accordingly, the limitation petition i.e. I.A. No. 1782 of 2017 is allowed and delay in filing appeal stands condoned.

5. Alongwith the present appeal, the appellant/State has also filed an application for grant of leave, vide I.A. No. 1783 of 2017, under Section 378(3) of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.").

6. The prosecution case in short is that the *fardbeyan* of informant Surendra Sharma was got recorded on 28-10-2010 at 8:30 AM in Sadar Hospital, Samastipur. In the *fardbeyan*, the informant alleged that the private respondents had assaulted him with *basula*. Twice *basula* blow was given on his head. While other family members tried to save the informant, they were also assaulted and in the occurrence, the accused persons had snatched golden



chain as well as *jhunka* from the lady inmates of the informant.

7. Though *fardbeyan* was got recorded on 28-10-2010 in the morning at 8:30 A.M., without any explanation of delay, the formal F.I.R. was shown to be drawn on 02-11-2010 at 10:00 A.M. Accordingly, an F.I.R., vide Angarghat P.S. Case No. 72 of 2010, was registered on 02-11-2010 for offence under Sections 447, 341, 323, 324, 307, 379, 504, 34 of the Indian Penal Code against all the three respondents. Subsequently after investigation, chargesheet was submitted and finally, the case was committed to the court of sessions and charges were framed for offence under Sections 341/34, 447/34, 504, 307/34 of the Indian Penal Code.

8. To prove the case, the prosecution examined altogether 9 witnesses. After examination of the witnesses, evidences as well as circumstances, which were collected against accused persons, were explained and statement under Section 313 of the Cr.P.C. of accused was recorded, where the accused denied the charges and alleged that they were falsely implicated in the case. During trial, the P.W.-5



(Informant) has admitted that the accused/ respondent no. 1 was his own cousin brother. The fact has also come that both the sides were residing in the same premises, however; there was a partition wall.

9. During trial, the learned Trial Judge has noticed serious contradictory stand taken by the informant. It has also been noticed by the Trial Judge that the injury report was not true. The doctor, who claimed to examine the injured, stated that on 27-10-2010 itself, he had examined the injury of the informant and found two injuries on his head and the doctor opined that injury was simple in nature. The doctor also examined lady inmate of the informant side namely Pariya Devi, but found the injury, as if, it was abrasion. However, during trial, the witnesses exaggerated the allegation. The serious infirmity was noticed by the Trial Judge in the evidence of the doctor, who was examined as P.W.-8. He stated that he examined the injury of the informant on 27-10-2010 itself, however in the injury report, he had not mentioned the time of examining the injured, but he mentioned that injury was caused on the person of the informant was within 12 hours and he opined



that the injury on the person of the informant was simple in nature. The informant in his *fardbeyan* has stated that after receiving injury he fell down. In the night of 27.10.2010 after the occurrence due to unavailability of vehicle he remained in his home and did not come to hospital for treatment, but on the next date, he reached hospital, however in contravention with his earlier statement, during evidence, he stated that due to injury he became unconscious.

10. Even the investigating officer during his evidence has accepted that for the first time, he received *fardbeyan* of 02-11-2010 and thereafter, he visited the place of occurrence. However, at the place of occurrence, no sign of blood mark was found, whereas the informant and prosecution witnesses had categorically stated that due to injury caused by the accused on the person of the informant, profuse bleeding had taken place. The cloth of the informant was soaked with the blood, but the investigating officer has not found any mark of blood either at the place of occurrence or the cloth of the injured with blood mark was never produced during investigation or during trial. The



investigating officer has not given any reason as to how for the first time, F.I.R. was lodged on 02-11-2010, whereas, *fardbeyan* was shown to be recorded on 28-10-2010 in the morning at 8:30 AM.

11. Since, there were apparent inconsistencies in the evidences of the prosecution witnesses as well as the injuries were not found corroborated, the learned Trial Judge, extending the benefit of doubt, acquitted all the accused persons, who are respondents before this Court.

12. Accordingly, we are of the view that there is no need to grant leave to appeal and as such, the leave petition i.e. I.A. No. 1783 of 2017 stands dismissed. Consequently, the appeal against acquittal too is dismissed.

**(Rakesh Kumar, J.)**

**( Mohit Kumar Shah, J.)**

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