

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.183 of 2017

Arising Out of PS.Case No. -4 Year- 1997 Thana -CHAUSA District- MADHEPURA

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Kaleshwar Mandal, son of Late Santlal Mandal, resident of village-Sadhu Tola,
P.S.- Chousa, District-Madhepura.

.... Appellant

Versus

1. The State of Bihar
2. Gajadhar Mandal, son of Late Bahadur Mandal.
3. Sukhdeo Mandal, son of Late Sipahi Mandal.
4. Lakhani Mandal, son of Late Ghunsi Mandal.
5. Bhagwat Mandal, son of Late Kuli Mandal.
6. Panchlal Mandal, son of Mithan Mandal.
7. Surya Narayan Mandal @ Jokar Mandal, son of late Bahadur Mandal.
8. Asharfi Mandal, son of Late Bhojal Mandal.
9. Dilip Mandal, son of Sikandar Mandal.
10. Sikandar Mandal, son of Late Bhaylal Mandal.
All are residents of village-Amanat Tola, Arajpur, P.S.-Chousa, District-Madhepura.
11. Sethi Chaudhary @ Ajay Kumar Chaudhary, son of Late Kamleshwari Chaudhary.
12. Upendra Chaudhary, son of Late Sheo Narain Chaudhary
Both are residents of village-Dholbazza, P.S.-Dholbazza, District-Bhagalpur.
13. Md. Gias, son of Late Medi Mian, resident of village-Arajpur, Sonbarsa, P.S.-Chausa, District-Madhepura.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Nafisuzzoha, Advocate

For the Respondent/s : Ms. S.B. Verma, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 27-03-2017

Heard parties.

The appellant is the informant of Chausa P.S. Case No. 4/1997. He has filed this appeal assailing the judgment of acquittal, dated 20.12.2016, passed by Additional Sessions Judge-1st,



Madhepura, in Sessions Trial No.97 of 2001/CIS No.1359 of 2013, by which the prosecution's case, as set out in the aforesaid Chausa P.S. Case No. 4/1997, has been disbelieved and the private respondent nos. 2 to 13 have been acquitted of the charges framed under Sections 307/149, 379 of the Indian Penal Code and Section 27 of the Arms Act.

The prosecution's case is that on 6.01.1997 at about 9.00 A.M., the informant and informant's relatives were feeding their cattle at their own Basa. In the meanwhile, indiscriminately firing started. About ten rounds were fired in the middle field near the Pipal tree. They saw that the accused Upendra Chaudhary was present armed with a gun in his hand and behind him about 150-250 persons armed with deadly weapons were coming towards their *Basa*. The accused Upendra Chaudhary ordered to kill him and, subsequently, Upendra Chaudhary and Gajendra Chaudhary opened fire from their gun upon him but he made a good escape as well as his relatives also managed to flee away from their Basa and reached *Sadhu Tola* and they saw that the persons numbering in 10-200 armed with weapons, *Kachiya*, Spade entered into the plot and on the order of accused Upendra Chaudhary, some persons started uprooting potato and turmeric and destroyed maize crops. Some persons started demolishing the *Basa* situated there. Some persons fled away with cattle stock and some



persons took away the machineries articles. It is further alleged that the informant sent a person to local police station for informing the police about the occurrence. It is claimed that the informant and his relatives/agnates have seen the entire occurrence at the behalf of the accused Upendra Chaudhary, who was having a gun in his hand and on his direction other accused, fully armed with musket and deadly weapons, participated in the criminal act and looted the standing crops. It is further alleged that they had identified some accused persons, who were armed with deadly weapons. It is also alleged that, on hearing the sound of police jeep at about 11.00 A.M., on the alleged date of occurrence, the accused persons fled away therefrom. Thereafter, he and his relatives/agnates came at their *Basa* and saw that nothing was left there as the entire articles were looted away by the accused persons. The Chausa Police recovered and seized a licensee gun of double barrel from the accused Upendra Chaudhary.

On the basis of the aforesaid *fardbeyan* of the informant, the present case was lodged as Chausa P.S. Case No. 4/1997 under Sections 144, 379, 427 of the Indian Penal Code and Section 27 of the Arms Act.

After investigation, the police submitted *charge sheet* under Sections 144, 379, 427, 307 of the Indian Penal Code and Section 27 of the Arms Act against FIR named accused including the



private respondents. Thereafter, *cognizance* was taken under the aforesaid penal provisions and the case was committed to the Court of Session, where charges were framed under Sections 307/149, 379 of the Indian Penal Code and Section 27 of the Arms Act, to which, the accused persons pleaded not guilty. Thereafter, trial started.

During trial, the prosecution has examined altogether ten witnesses in support of its case. P.W.1 is Deep Narain Yadav, P.W.2 is Amarendra Kumar, P.W.3 is Laxman Mandal, P.W.4 is Badri Mandal, P.W.5 is Lalan Mandal, P.W.6 is Mahanth Mandal, P.W.7 is Charan Mandal, P.W.8 is Kaleshwar Mandal (informant), P.W.9 is Manoj Kumar Mandal and P.W.10 is Gulden Mandal.

The trial court in paragraph 11 of its judgment has discussed the evidence of P.W.8 (informant). P.W.8, in para 7 of his cross-examination, has admitted that there is land dispute between the informant side and accused side for about 40-42 bighas of land, however, no house or *darwaja* of the informant's side is there near the land of 42 bigha rather the houses of accused persons stand situated adjacent the said land in eastern side. In paragraph 8, he has admitted that the alleged land was entered in the names of accused Upendra Chaudhary and his family members in revisional survey *khatian*. Objecting the same, a suit under Sections 106 and 108 of B.T. Act was filed by the informant's side, however, that was also decided



against them. Thereafter, T.S. No.110/2005 has been filed, which is pending in the court of Sub-Judge, Madhepura. In paragraph 12, the trial court has discussed the evidence of P.W.7. He, in para 9 of his cross-examination, has admitted that nobody had received bullet injury or sustained any injury and the alleged incident had taken place only due to land dispute which is existing since last 40-50 years.

The trial court in paragraph 23 of its judgment, after considering the facts and circumstances of the case, has come to the conclusion that there is previous enmity and litigation between parties. Though P.Ws. 3, 4, 5, 6, 7, 8, 9 and 10 have supported the prosecution case but not a single witness of nearby locality came forward to support the prosecution case whereas the previous enmity and land dispute are admitted by both the parties by filing the documents. The trial court has further found that there is already an order of the competent forum regarding the dispute in favour of the accused persons which is apparent from Exhibit B/4.

That apart, the doctor has not been examined in this case. In fact, there is no injury report to substantiate the prosecution version. Even the Investigating Officer has not been examined to prove the place of occurrence, damaged thatched house of alleged *Basa* and the loot. So far as seized gun is concerned, that has been found to be a licensed gun of the accused Upendra Chaudhary which



was renewed since 1986 up to 2015. The trial court has finally come to the conclusion that the prosecution case and charges do not appear to be proved legally against the accused beyond the shadow of reasonable doubt.

In view of the aforesaid facts duly discussed by the learned trial Court, we are of the considered opinion that the view taken by the learned trial Court is plausible one and does not require any interference by us in appeal as neither there is any injury report nor have any doctor or even the Investigating Officer been examined. This case appears to be completely lacking in legal evidence regarding commission of crime.

This appeal is, therefore, not admitted and shall, accordingly, stand dismissed.

(Dr. Ravi Ranjan, J)

(Vikash Jain, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
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