

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 215 of 2017

Arising Out of PS.Case No. -397 Year- 1986 Thana -PHULWARI District- PATNA

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Umesh Narayan, S/o of Late Laxmi Narayan Singh, resident of Village-
Suetha, P.S.- Phulwari Sharif , District- Patna at present residing at 9
MIGH, Kankarbag Colony, P.S.- Kankarbagh, Patna- 20.

.... Informant/Appellant

Versus

1. The State of Bihar Performa Respondent

2. Ram Swarath Singh S/o Late Naurangi Singh

3. Dinesh Singh S/o Ram Swarath Singh

4. Prince Singh S/o Ram Swarath Singh

All No. 2 to 4 are resident of Village- Koriyawa, P.S.- Masaurhi,
District- Patna.

5. Manoj @ Vinay Singh

6. Pardesi Singh,

Both No. 5 and 6 sons of Bijendra Singh, resident of Village-
Madarpur, P.S.- Punpun, District- Patna.

7. Rakesh Kumar @ Rakesh Kumar Singh @ Sintu S/o Ram Ashish
Singh

8. Ramashish Singh S/o Sarbanand Singh,

Both No. 7 and 8 are resident of Village- Bhatheri, P.S.- Maner,
District- Patna.

.... Accused/Respondents

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Appearance :

For the Appellant/s : Sri Devendra Kr. Sinha, Sr.Adv.

Sri Abhinay Raj, Adv.

For the Respondent/s : Sri Mayanand Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

7. 21-06-2017 Heard Sri Devendra Kumar Sinha, learned senior

counsel assisted by Sri Abhinay Raj, learned counsel for the

appellant/informant and Sri Mayanand Jha, learned Addl. Public

Prosecutor.



2. The present appeal has been preferred against judgment dated 30-06-2016 passed in Sessions Trial No. 789 of 1987 (arising out of Phulwari P.S. Case No. 397 of 1986) by the learned Additional District & Sessions Judge – IVth, Patna (Sadar) (hereinafter referred to as ‘Addl. Sessions Judge’). By the said judgment, the learned Addl. Sessions Judge has acquitted respondent no. 2 to 8 in respect of offence under Section 307 of the Indian Penal Code, however; the private respondents were held guilty for offence under Sections 323 & 379 of the Indian Penal Code. They were granted benefit under Section 3 of the Probation of Offenders Act, 1958 after admonition.

3. Short fact of the case is that the appellant had filed a complaint in the year 1986 alleging therein that while he was harvesting his field, the respondent no. 2 to 8, variously armed with deadly weapons, arrived and they roped his neck and thereafter, they tried to hang the appellant-informant with an intent to kill him. However, after raising alarm, number of villagers arrived and thereafter, the accused persons fled away. A plea was taken that informant approached the police for lodging an F.I.R., but it was not registered and thereafter, on the same date, he filed a complaint, vide Complaint Case No. 120(C) of 1986 for offence under Sections 307, 379/34 of the Indian Penal Code. The said complaint was



referred to the police for its registration and investigation under Section 156(3) of the Code of Criminal Procedure, 1973 and thereafter, an F.I.R., vide Phulwari P.S. Case No. 397 of 1986 was registered. After investigation, police submitted chargesheet. Subsequently, after commitment, charges were framed against respondent no. 2 to 8 under Sections 307, 323 & 379 of the Indian Penal Code read with Section 149 of the Indian Penal Code. After full phase of trial, the learned Trial Judge acquitted all the accused persons, vide Judgment dated 21-03-2002 in Sessions Trial No. 789 of 1987. The appellant thereafter preferred a revision before this Court, vide Criminal Revision No. 760 of 2002, which was allowed and case was remitted back to the learned Trial Judge. Thereafter, the matter was re-examined and impugned judgment & sentence was passed, which has been assailed in the present appeal. Alongwith the appeal, the appellant has filed a petition i.e. I.A. No. 1085 of 2017 under Sections 378 (3) and 389 (i) of the Code of Criminal Procedure, 1973 with a view to grant of leave.

4. Sri Devendra Kumar Sinha, learned senior counsel has argued that the learned Trial Judge, even after the case was remitted back, had not examined the evidence in appropriate manner and acquitted the accused persons for offence under Section 307 of the Indian Penal Code. He further submits that the



order regarding grant of probation to the respondent no. 2 to 8 is also not sustainable in the eye of law. He submits that after the judgment, on the same date, hearing on sentence was taken up and as such, the appellant-informant was not in a position to properly render assistance to the court below. He submits that the accused persons were having criminal antecedent, but the learned Trial Judge has granted benefit under the Probation of Offenders Act, 1958 recording therein that there was no criminal antecedent. On the aforesaid ground, a prayer has been made to grant leave for filing appeal.

5. Sri Mayanand Jha, learned Addl. Public Prosecutor submits that it is a fit case for rejection at the very outset, primarily on the ground of protracted trial. He submits that even as per complaint petition, the occurrence had taken place in the year 1986 and once the respondent no. 2 to 8 were already acquitted. Ofcourse after revisional order the matter was re-examined and thereafter judgment in question has been passed. He submits that there is no reason to pass any favourable order. By way of referring to evidence of P.W.1, who is none else but the informant appellant, he submits that on examination of his evidence, it is evident that allegation was completely improbable. He further submits that on the face of the material on record, it is evident that in a land



dispute, colour of criminal offence has been given. He has also argued that from the private respondents' side, an F.I.R. was lodged against the appellant side, which was registered, as Phulwari P.S. Case No. 384 of 1986 on 29-11-1986, however; the present F.I.R. was registered on 19-12-1986. By way of referring to the impugned judgment, he submits that the learned Trial Court had even noticed regarding the dispute in relation to land.

6. Besides hearing learned counsel for the parties, we have also perused the materials available on record, including the judgment impugned. On going through the judgment, particularly; evidence of P.W.-1, it is evident that P.W.-1 had made categorical statement that at the time of occurrence, respondent no. 2 was carrying gun, respondent no. 3, 4 & 5 were carrying country-made *pistol* and others were carrying *lathi*, *farsa* etc. It is difficult to comprehend that once accused persons were having such deadly weapons, then what was the reason for trying to hang the appellant by rope. There is no allegation that in the occurrence, any fire-arm was or even *lathi* was used. Though, the complaint was referred to the police and an F.I.R. was registered, on perusal of material on record, it is evident that no injury report was produced before the investigating officer. However, during trial, a so called injury report was brought on record, which was marked, as Ext. '1'.



On the basis of evidence of P.W.-1 i.e. appellant's evidence, which was dealt with in paragraph – 8 of the petition, it is clear that the appellant was examined by his own brother, who claimed to be a doctor, but during investigation, no such injury report was produced. The judgment in question reflects that the learned Trial Judge, after appreciating the evidence in detail, had found that prosecution had miserably failed to establish the charge under Section 307 of the Indian Penal Code. This Court is also in agreement with the view of the learned Trial Judge. In a criminal trial, presumption of innocence is always available to the accused persons and once a judgment of acquittal is passed, in normal course, there is no reason to doubt the correctness of the order, unless there is contrary material to prove that the learned Trial Judge has not examined the evidence in its right perspective and judgment is perverse. On perusal of material on record, it is evident that in judgment impugned there is no perversity. The judgment impugned suffers with no infirmity.

7. So far as submission of learned senior counsel for the appellant that the accused persons were having criminal antecedent is concerned, the Court is of the opinion that those facts were required to be brought to the notice of the Trial Judge at the time of hearing on the sentence. At the appellate stage, that too



against order of acquittal, this Court is not required to examine such material.

8. Considering the facts and circumstances, we are of the view that it is not a case for grant of leave.

9. Accordingly, the appeal stands dismissed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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