

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.803 of 2017

Arising Out of PS. Case No.-139 Year-2009 Thana- CHAKAI District- Jamui

Vijay Rai, son of Parmeshwari Rai, resident of village Batpar, P.S. Chakai
District Jamui

... .. Appellant/s

Versus

1. The State Of Bihar
2. Tahaldeo Rai, son of late Hitlal Rai
3. Dinesh Rai , son of Tahaldeo Rai
4. Murari Rai, son of Tahaldeo Rai
5. Sheonandan Kumar Rai, son of Tahaldeo Rai
All are resident of village Batpar, P.S. Chakai District -Jamui

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Kumar
For the Respondent/s : Sri Shivesh Chandra Mishra, A.P.P.

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

3 01-09-2017 Heard Sri Rajesh Kumar, learned counsel for the
appellant and Sri Shivesh Chandra Mishra, learned Additional
Public Prosecutor.

The present appeal has been preferred against the judgment of conviction and sentence dated 01.06.2017 passed in Sessions Trial No. 328 of 2010 (arising out of Chakai P.S. Case No. 139 of 2009) along with an interlocutory petition, i.e. I.A. No. 1562 of 2017 u/s 378(3) of Cr.P.C. for grant of leave. The appeal has been preferred against acquittal of respondent no. 2 to 5 from charge under Section 307 and 504 of the Indian



Penal Code 1860 (hereinafter referred to as “IPC”) . However, after trial all the four respondents were held guilty and convicted for offence under Section 341, 323, 447 / 34 of the IPC.

Short fact of the case is that on the basis of fardbyan of the appellant an F.I.R. was lodged vide Chakai P.S. Case No. 139 of 2009 for offence under section 341, 447, 323 , 504 , 307, 379 , 34 of the IPC against the private respondents and others . It was alleged that since informant's calf had entered into the 'Bari' of respondent no. 4/ Murari Rai there was altercation in between the parties and thereafter accused persons armed with lathi, danda and axe assaulted the informant's side and after registering F.I.R. case was investigated. There was counter case also filed by the respondents' side , which was numbered as Chakai P.S. Case No. 140 of 2009 in which the respondents had alleged that informant's side were aggressors and to save their skin they had falsely made out the present case. However, after investigation in the present case charge-sheet was submitted and respondents were put on trial. During trial besides examining witnesses on the point of occurrence, the prosecution side examined Dr. Deepak Kumar Bhagat as P.W. 7 , who at the relevant time was Medical Officer in



Chakai Referral Hospital , Katoriya, Banka . The injuries which were found on the informant's side were examined by the P.W. 7 and those injuries have been discussed in paragraph no. 11 of the judgment impugned. Injuries were mainly lacerated as well as abrasion. This witness has made categorical statement that all injuries were simple in nature and even he did not deny the suggestion that such injuries would have been possible by fall. The prosecution side also did not dispute the fact that there was counter case. However, considering the fact that assault on informant's side was established and since no element was brought on record to suggest commission of offence under Section 307 and 504 of the IPC, the learned trial judge giving detailed reason has acquitted the respondents from offence under Section 307 and 504 of IPC, but the respondents were held guilty and convicted for offence under Section 341, 323, 447/ 34 of the IPC. However, considering the old age as well as the fact that respondents were first offender, the learned trial judge granted benefit under Section 3 of the Probation of Offenders Act , 1958. Considering the fact that there was case and counter case as well as injuries were not sufficiently proved that those injuries were either serious / grievous or caused with intent to kill, the learned trial judge has rightly



acquitted them from the offence under Section 307 and 504 of the IPC. We have examined the materials available on record and are of the opinion that in the judgment impugned there is no perversity warranting interference . Accordingly, the leave petition i.e. I.A. No. 1562 of 2017 filed under section 378 (3) of the Code of Criminal Procedure, 1973 is rejected. Consequently the appeal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

U		T	
---	--	---	--

