

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.948 of 2017

Arising Out of PS. Case No.-74 Year-2002 Thana- BARHAT District- Jamui

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Sikandar Yadav, son of Late Kesho Yadav, resident of village – Patao, P.S. -
Jhajha, District - Jamui

... .. Appellant/s

Versus

1. The State Of Bihar
2. Budhan Yadav, son of Durga Yadav, resident of village – Patao, P.S. -
Jhajha, District – Jamui

... .. Respondent/s

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Appearance :

For the Appellant/s : Sri Rajesh Kumar Mishra

For the Respondent/s : 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)

5 04-10-2017 Heard Sri Rajesh Kumar Mishra, learned counsel for
the appellant and learned Additional Public Prosecutor.

The present Appeal has been preferred against the judgment of acquittal dated 21.03.2017 passed by Sri Sunil Kumar Sinha “Mukul”, learned A.D.J. - cum- F.T.C. IInd, Jamui in Sessions Trial No. 216 of 2007 (arising out of Barhat P.S. Case No. 74 of 2002) . By the said judgment the learned trial judge has acquitted the respondent no. 2 from the charges under Sections 323, 341 and 307 of the Indian



Penal Code, 1860 (hereinafter referred to as “I.P.C.”) and 27 of the Arms Act, 1959 (hereinafter referred to as “Arms Act”).

The appellant, is the victim, on whose fardbyan an F.I.R. was lodged in which appellant disclosed that while he was moving on a Tempo along with one Vimal Yadav, some other persons boarded the Tempo. Amongst them, the respondent no. 2 had also boarded the same. After some distance the Tempo stopped, and thereafter, the appellant was surrounded by the accused persons and thereafter, the respondent no. 2 fired from a country made pistol which hit the abdomen of the appellant. Subsequently, appellant was carried by Vimal Yadav and others to hospital and thereafter, fardbyan was recorded. Thereafter, the case was investigated and charge- sheet was submitted against only respondent no. 2. After cognizance, case was committed to the court of Sessions and charges were framed under Sections 323, 324 and 307 of the I.P.C. and 27 of the Arms Act. Since the respondent no. 2 denied charges, the prosecution to prove its case examined altogether eight witnesses. However, during trial, out of



eight witnesses three witnesses, who were cited to be eye witness to the occurrence turned hostile and only appellant, who was informant has supported his case. Besides the informant, other witnesses i.e. I.O. and one Dr. Syed Naushad Ahmad, who had examined the X- Ray report, was examined as P.W. 7 and the doctor who had examined injury of the appellant was examined as P.W. 8. P.W. 8 (Dr. Umeshwar Prasad Singh) in his deposition has stated that he found lacerated wound and in cross-examination he made categorical statement that such lacerated wound was possible only on using hard and blunt substance. Even the witness Vimal Yadav, who was cited as an eye witness to the occurrence, who had also allegedly carried the informant to hospital had turned hostile. Even the doctor who deposed on the basis of X-Ray report though had stated that after X- Ray bullet was removed from abdomen but neither such bullet was produced before the trial court nor X- Ray film was produced. During trial even Dr. Syed Naushad Ahmad who stated on the basis of X- Ray report has stated that X-Ray plant was not in working condition. In such a



situation after examining entire evidence, the learned trial judge had found that prosecution has not proved the case beyond reasonable doubt. Accordingly, the judgment of acquittal was passed.

Learned counsel for the appellant tried to persuade the court that even the evidence of the informant /appellant was sufficient for holding the respondent no. 2 guilty and the learned trial judge ignoring the entire evidence of Dr. Syed Naushad Ahmad as well as Dr. Umeshwar Prasad Singh has passed an incorrect acquittal order. Learned counsel for the appellant has further stated that P.W. 8 of course in his cross -examination in earlier version had stated that lacerated wound was only possible due to injury by hard and blunt substance like 'lathi' but further he has stated that lacerated wound of abdomen in such circumstances was not possible and it was abdomen deep also and thereafter, he submits that the learned trial judge has committed error.

Besides hearing, we have examined the materials available on record. On going through the impugned judgment, we are of the opinion that there is no apparent



perversity warranting interference and as such, there is no need to interfere with the impugned judgment. The learned trial judge has rightly noticed that there was no gun shot injury. We do not find any error.

Accordingly, we do not find any ground to grant leave to appeal, and as such, petition filed for grant of leave i.e. I.A. No. 1699 of 2017 stands dismissed. Consequently, the Appeal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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