

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.432 of 2002

Arising Out of PS.Case No. Year- Thana District- MADHUBANI

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Brahmdeo Poddar alias Bipat Poddar, son of Late Dukha Poddar, resident of Village Parba, PS Murliganj, District Madhepura

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 463 of 2002

Arising Out of PS.Case No. Year- Thana - District- MADHUBANI

- =====
1. Rajendra Paswan , aged about 45 years son of late Jadhu Paswan
 2. Sahindra Paswan, aged about 40 years, son of Late Jagdish Paswan
 3. Nagina Paswan, aged about 60 years, son of late Rajo Paswan
 4. Binda Paswan alias Bindeshwar Paswan aged about 70 years son of late RamParwesh Paswan
 5. Mahendra Paswan, aged about 50 years son of late Jagdish Paswan

-All residents of Village Rasidence Parwa, Police Station Murliganj, District Madhepura

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.432 of 2002)

For the Appellant/s : Mr. P Mehta, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CR. APP (SJ) No.463 of 2002)

For the Appellant/s : Mr. Arun Kumar Tripathi, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 07-10-2017

Appellant Brahmdeo Poddar @ Bipat Poddar in Criminal

Appeal No. 432 of 2002 and appellants Rajendra Paswan, Sahindra

Paswan, Nagina Paswan, Binda @ Bindeshwari Paswan and



Mahindra Paswan in Criminal Appeal No. 463 of 2002 have been convicted by the judgment and order rendered on 29.06.2002 by the Additional Sessions Judge, Fast Track Court, Madhepura in Sessions Trial No. 30 of 1988. The appellant Brahmdeo poddar in Cr. Appeal No. 432 of 2002 has been convicted to undergo five years rigorous imprisonment for the offence punishable under Section 307 of the Indian Penal Code and four years for the offence under Section 326, IPC and one year for the offence under Section 148, IPC. And the appellants in Cr. Appeal No. 463 of 2002 have been sentenced to undergo rigorous imprisonment for six months for offence punishable under Sections 147, 148, 149 and 307, IPC.

It is the case of the prosecution that the informant Jaikant Jha recorded a *Fardi* on 09.11.1975 at 12.15 hours at Madhepura Hospital to the effect that 12 days prior to the date when the *Fardi* was lodged, Brahmdeo Poddar had assaulted a child belonging to the informant's family and on the date of incident, i.e. on 09.11.1975, at about 7.30 hours when the informant's son Ramendra Narain Jha was coming through the village Dighi, Murliganj, through the field of Brahmdeo Poddar, the accused Brahmdeo Poddar was harvesting his paddy crops and the accused persons were also present in the field while harvesting paddy crops. When the appellant Brahmdeo Poddar and other enquired from the informant's son as to why he



does not make his father understanding that he should not insult other people in the Panchayati. It was said that son of the informant replied by saying that he (Brahmdeo poddar) has assaulted the child and a case has also been filed, on which it is said, that all them present there assaulted the informant's son in the paddy field. When the altercation was going on, the informant called his son when he saw it and thereafter the main accused Brahmdeo Poddar is said to have gave a sword blow on the neck of the informant's son.

The appellants have been prosecuted. However, in the prosecution, PW 1 Rameshwar Mandal, PW 2 Bhuvaneshwar Jha and PW 3 Kaladhar Jha have turned hostile and have not supported the case of the prosecution. PW 4 Pitambar Jha speaks that he has seen Brahmdeo Poddar with a sword in his hand while the other persons armed with lathi. He only speaks about Brahmdeo Poddar giving a sword blow over the back of the neck of Ramendra Narain Jha. PW 5 Deep Narayan Jha speaks about having seen the incident. The injured victim Ramendra Narain Jha himself PW 6 supports the case of the prosecution. PW 7 is Madan Chandh does not support the case of the prosecution. He has been declared hostile.

The medical evidence goes to show that that one incised wound over back and lateral part of the left side of the root of the neck of the victim was caused. However, interestingly, neither the



doctor who examined the injured witness and submitted the injury report Ext. 2 nor the Investigating Officer had been examined with regard to the issue in question. This is a serious lacuna in the case of the prosecution and apart from the appellant Brahmdeo Poddar in Cr. Appeal No. 432 of 2003 there is no allegation against any of the accused persons who are appellants in Cr. Appeal No. 463 of 2002 except for the fact that they were present in the field harvesting paddy along with Brahmdeo Poddar. Nothing has been indicated with regard to any overt act attributed to them.

As far as Brahmdeo Poddar is concerned, statement of witnesses who are independent witnesses like Rameshwar Mandal PW 1, Kaladhar Jha PW 3, they have turned hostile and have not supported the case of the prosecution. The witnesses who have been testified against the appellants are all family members and there are cases pending between them as is evident from the material available on record. However, the injury caused and the medical examination of the injured witness has not been proved by examining of the doctor. When the said offence is said to have been committed in the year 1976 and the judgment was pronounced in the year 2002, appellant no. 1 Brahmdeo Poddar was shown to be 65 years of age.

Taking note of all the circumstances of the case in the



absence of their being medical evidence to prove the nature of the injury, the conviction of Brahmdeo Poddar in Cr. Appeal No. 432 of 2002 is unsustainable and so far as the other appellants in Cr. Appeal No. 463 of 2002 are concerned, no specific act is attracted even to the ingredients necessary for making out a case under Sections 147 and 148, IPC against them.

Accordingly, the conviction of the appellants cannot be sustainable and both the appeals are allowed. They are acquitted of the charges levelled against them. Their bail bonds are discharged and they be set free.

(Rajendra Menon, CJ)

mrl

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