

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.603 of 2002

1. Paras Bhagat, son of Deokishun Bhagat
2. Samir Mian, son of Suleman Mian
3. Baliram Bhagat, son of Late Nageshwar Bhagat
r. Mahavir Singh, son of Nageshwar Singh
5. Sheodayal Sah, son of Jugali Sah
6. Ramashanker Bhagat, son of Khalipha Bhagat
7. Bhagwan Bhagat, son of Paras Bhagat
8. Ishwar Bhagat, son of Paras Bhagat
9. Bechu Bhagat, son of Mundrika Bhagat
10. Utim Bhagat, son of Late Nageshwar Bhagat
11. Anand Prakash Bhagat @ Anand Prakash Prasad, son of Late Ram Chander Bhagat, All are resident of village- Itwa, Police Station Pachrukhi, District- Siwan

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Raghav Prasad, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 11-11-2017

Appellants, 11 in number, have called in question the tenability of a judgment dated 10.10.2002 passed by the learned 1st Additional Sessions Judge, F.T.C., Siwan in Sessions Trial No.197 of 1989 convicting the appellants for the offences under Sections 148, 324, 149, 427 and 149 of I.P.C. and sentencing them to undergo one year's R.I. only. Even though 19 persons were prosecuted, but during the pendency of the trial, 8 have expired which includes one Shri Mundrika Bhagat who is said to have been the instigator and the main accused person who is alleged to have



fired with a Katta and caused injury on the person of the injured complainant.

It is the case of the prosecution that on 30th of January, 1988 the information was received in the Pacharukhi Police Station in village Itwa, District- Siwan with regard to a dispute going on between both the parties. The case was registered and after investigation, the prosecution has been lodged. From the material that has come on record, it is clear that there was rivalry between both the parties with regard to certain land disputes, it is alleged, the incident took place on 30th of January, 1988 and only omnibus allegations are made that under the leadership of Mundrika Bhagat firing took place and in the process of firing, injuries were sustained by various persons. From the documents and materials that have come on record, it is seen that the injured person Raghav Singh, who had sustained only a lacerated wound on his person, the Doctor has given a categorical statement that no fire-arm injury has been caused to this witness. Apart from the aforesaid, regarding other injured persons, who were examined by Dr. Baleshwar Prasad, there is no other evidence with regard to any fire-arm injury being caused on any member of the complainant party.



Having considered the facts and circumstances of the case and the fact that the incident took place in the year 1988 and the main accused persons have already died, I see no reason to uphold the conviction of the appellants against whom general allegations have been made of using firearm for causing injury on the complainant party and the medical evidence available on record does not support this theory.

The injury report of Mangal Singh speaks about his having sustained only lacerated wound, the Doctor clearly says that none of the injuries are caused by a firearm. Even though in the report he speaks about smell of gun powder coming out of the wound, but in the cross-examination, he admits that this injury cannot be caused by a firearm. The second injury report is of Raghav Singh. He has also sustained one lacerated injury. Even though in this report also smell of gun powder is mentioned, but the Doctor speaks about the injury not being caused by any firearm. The only injury caused by a firearm is again a lacerated wound on one Bankilal Singh, which is injury No.1, which is again shown as a lacerated wound, and the Doctor expresses his doubt as to whether it could be caused by a fire arm.

From the above, it is seen that in all the injury reports, the Doctor does not give any specific opinion that they



have been caused by use of a firearm. On the contrary, only he speaks about smell of gunpowder coming out of the wound and all are lacerated wound which cannot be caused by use of a fire arm. From the aforesaid, it is clear that the injury caused by use of firearm has not been proved and the medical evidence does not support the case of the prosecution.

In view of the above, this appeal is allowed. The impugned judgment is quashed. All the appellants are acquitted of the charges levelled against them. They are discharged from the liabilities of the bail-bonds.

(Rajendra Menon, CJ)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	16.11.2017
Transmission Date	16.11.2017

