

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.659 of 2002

**Against the judgment of conviction and order of sentence dated
21.11.2002 passed in Sessions Case No.82 of 1998 arising out of Alauli P.S.
59/97 by Fast Tract Court No.2, Khagaria.**

1. Girish Yadav, son of late Mahendra Yadav
2. Ravindra Yadav, son of Sri Baleshwar Yadav
3. Baleshwar Yadav, son of late Jagdeo Yadav
4. Nand Kishore Yadav, son of Sri Rameshwar Yadav
5. Rameshwar Yadav, son of late Saryug Yadav
6. Deoji Yadav, son of late Mahendra Yadav
7. Nawal Yadav, son of the late Mahendra Yadav
8. Shambhu Yadav, son of Sri Singheshwar Yadav

All resident of village Meghouna P.S. Alouli District-Khagari.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abhay Kumar Singh No. 1, Advocate
Mr. Sidharth Kumar Singh, Advocate
Mr. Bharat Bhushan, Advocate

For the Respondent/s : Mr. S. A. Ahmad, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT
Date : 09-11-2017

Challenging their conviction in Sessions Case No.82 of 1998
vide judgment dated 21st of November, 2002 by the Court of Fast
Track Court No.2, Khagaria and sentencing them to undergo
imprisonment for three years and six months respectively for



offences under Section 325/34, 342 & 323 of the Indian Penal Code, this appeal has been filed.

In the order of conviction, appellant no.3 Baleshwar Yadav, who was 70 years of age and appellant no.5 Rameshwar Yadav, who was 75 years of age, have been granted the benefit of probation and it is in all probability they would not be alive and now nobody knows about their whereabouts.

It is the case of the prosecution that on 26.05.1997 at about 9 A.M., the informant Sunil Kumar Yadav was going to his house situated in village Meghauna, P.S. Alauli, District-Khagaria for taking his meal after purchasing wheat grain from one Bhola Miyan and filling it in sack and handing it over to his brother and when he reached in front of the house of Nand Kishore Yadav, the accused persons surrounded him and dragged him inside the house of Nand Kishor Yadav and, thereafter, the appellant No.2 Ravindra Yadav assaulted him with iron rod which caused injury on his left leg. It is further stated that Shambhu Yadav and Deoji Yadav assaulted him with butt of a gun. The others are said to have assaulted by fists and blow with lathi.

Learned counsel for the appellants argued that all the witnesses are the interested witnesses and members of the family due to previous enmity between the parties it is a case of false



implication. He further took me through the defence of the appellants to say that it was a case where the informant sustained injury by fall from the tractor. He also referred to the statement of the doctor, who examined the informant, i.e. P.W.5 Dr. Ashok Kumar who speaks about all the injuries caused simple in nature, except injury no.3 said to have been caused by an iron rod, but at the same time does not deny the suggestion in the cross-examination that this injury could be caused by falling of a tractor or trailer of the tractor.

Learned counsel for the appellants took me to all the statements of the defence witnesses of D.Ws.1, 2 3, 4 and 5 and argued that the informant sustained injury by falling of the tractor and the appellants have been falsely implicated.

Even though, learned counsel for the State vehemently opposed the aforesaid prayer, but from the evidence that has come on record, it is clear that there was rivalry between the parties and the doctor testifies that all the injuries were on non-vital part of the body and they were not sufficient in ordinary course to be dangerous to life. He further admits that only one injury is a fracture injury which could be caused on a leg by assault of an iron rod. However, this Court cannot lose sight of the fact that all the witnesses to the prosecution are the relatives and family members



of the appellants' family, the incident took place in a broad day light in a public place and there is no independent eye witness to the incident in question, the evidence of the defence witnesses, namely D.Ws. 1, 2 and 3 makes out a case of the accused being injured by falling from the tractor and the statement of the doctor in cross-examination does show that the said injury can be caused if a person is run over from a moving vehicle like a tractor or a trailer.

Taking note of all the statements and the evidence of the doctor and the defence witnesses DWs 1, 2 and 3 and the facts of the case it is seen that the incident took place more than 20 years back and at best the only evidence that is available on record may be to implicate the appellant Ravindra Yadav as the author for the injury on the leg caused by a rod. As far as other appellants are concerned, they are only implicated by omnibus general allegation of causing simple injury. Even with regard to injury said to have been caused by Ravindra Yadav, if the statement of the doctor and the statements of DWs 1, 2 and 3 be taken note of, it becomes doubtful and the possibility of false implication due to inimical terms between the parties cannot be ruled out.

Taking note of all the facts and circumstances, this Court does not find any ground to reject the defence of the appellants, the



prosecution case being doubtful. In view of the circumstances expressed hereinabove, the appeal is allowed, conviction is set aside, the appellants are acquitted of the charges levelled against them, their bail bonds be discharged and they be set free.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
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