

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.284 of 2002**

Arising Out of PS.Case No. -null Year- null Thana -null District- JAMUI

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1. Kali Charan Tanti, son of Gango Tanti
 2. Baijnath Tanti
 3. Biro Tanti
 4. Ram Tanti
 5. Arjun Tanti, all sons of Gomed Tanti
 6. Bhed @ Bhede Lal Tanti
 7. Bhojo @ Bhajo Tanti
 8. Kedar Tanti
 9. Chando Tanti, all sons of Munshi Tanti
 10. Gama alias Naresh Tanti, son of Kunj Lal Tanti, all resident of Bhumi Madre, P. S. Lakshmipur, District-Munger (Now Jamui).
 11. Lalan alias Dilip Tanti, son of Jehal Tanti, resident of village Pauro (Keriya) P.S. Lakshmipur, District-Munger (now Jamui)

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Alok Kumar-Advocate
Mr. Prabhat Ranjan Singh-Advocate
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 14-07-2017

Appellants, Kali Charan Tanti, Baijnath Tanti, Biro Tanti, Ram Tanti, Arjun Tanti, Bhed @ Bhede Lal Tanti, Bhojo @ Bhajo Tanti, Kedar Tanti, Chando Tanti, Gama alias Naresh Tanti and Lalan alias Dilip Tanti along with Kunj Lal Tanti @ Kunjal Tanti (since deceased whereupon vide order dated 30.04.2015, appeal has abated) have been found guilty for an offence punishable under Section 324 of the I.P.C. and each one has been sentenced to undergo rigorous imprisonment for two years vide judgment of conviction and



sentence dated 29.04.2002 passed by the 3rd Additional Sessions Judge, Jamui in Sessions Trial No.531 of 1993.

2. Singheshwar Yadav (not examined on account of his death) gave his fard-bayan on 03.04.1990 at about 4.00 p.m. disclosing therein that all the accused armed variously made criminal trespass over his land and began to cut Mahua tree. He along with his Pattidars rushed to obstruct and after reaching at the orchard, protested whereupon accused persons became enraged and began to hurl bomb, gave arrow blow as a result of which, he sustained bomb injury while Guhan Yadav (PW-2) had sustained arrow injury.

3. On the basis of aforesaid fard-bayan, Laxmipur P.S. Case No.50 of 1990 was registered whereupon investigation commenced and concluded by way of submission of chargesheet under the offences exclusively triable by the Court of Sessions, facilitated the trial before the Court of Sessions which met with ultimate result, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that the orchard belongs to the accused persons. Because of the fact that electric wire was to pass over through the field on account thereof, N.T.P.C. had noticed, paid compensation and further, directed to remove the Mahua tree which they were cutting. The prosecution party, armed variously came over the land illegally,



forbidden them and as the accused persons protested, hurled bomb, gave arrow blow as a result of which, they sustained injuries. Members of the prosecution party have sustained self-inflicted injury. Furthermore, defence had also examined three DWs, out of whom, DW-1 Fuleshwar Prasad, DW-2 Kedar Tanti and DW-3 Kartik Prasad as well as had also exhibited bunch of documents falling under Exhibit-A to F in support thereof.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, out of whom, PW-1 Borhan Yadav, PW-2 Guhan Yadav, PW-3 Nanku Yadav, PW-4 Bijo Yadav, PW-5 Mathura Yadav, PW-6 Horil Yadav, PW-7 Dr. Subhash Chandra Ram, PW-8 Chattu Yadav and PW-9 Tirpurari Tiwary as well as had also exhibited the documents as Exhibit-1 F.I.R., Exhibit-2 series seizure list, Exhibit-3 series injury report of Singheshwar Yadav (informant) as well as Guhan Yadav (PW-2), Exhibit-4 sanction order.

6. From the judgment impugned, it is evident that learned lower Court had recorded conclusive finding with regard to place of occurrence belonging to as well as in possession of appellants/ accused. With regard thereto, the oral evidence having been adduced on behalf of prosecution has minutely been gone through in consonance with the documentary evidence having on behalf of defence and to that extent, the finding recorded by the learned trial Court appears to be just, legal and proper. Furthermore,



the learned lower Court also perceived that while legal exercise was being taken up by the appellants/ accused persons during course of cutting of Mahua tree as noticed by N.T.P.C., the prosecution party raided. The learned lower Court would have perceived that when accused persons were cutting Mahua tree and they (prosecution) were going to prevent them, then in that circumstance, they would have gone duly prepared to teach a lesson to the accused persons and under such situation, the prosecution party would have been duly armed instead of accused persons otherwise would have identified activity of each and every accused during course of aforesaid occurrence whereunder allegedly the accused persons were cutting Mahua tree, which the prosecution utterly failed.

7. Non-consideration of the probability as is visualizing from the record in consonance with an admission at the end of the prosecution witnesses with regard to presence of counter-case, PW-1 Para-6, PW-2 (injured) Para-3, PW-3 Para-3, PW-4 Para-6, PW-5 Para-2, PW-6, which has completely been ignored by the learned lower Court. In the aforesaid background, the learned lower Court should have considered that for the same occurrence, version and counter-version was there and so, probability would have been perceived by the learned lower Court, who could be aggrieved and in the aforesaid background, who could be the aggressor. Certainly, the prosecution party was aggrieved and so, they were bent upon to stop



the accused persons from cutting the tree and for that, their presence being duly arm would be a natural conduct. None of the witnesses, who are own family members have deposed that they have gone empty hand. When they had gone only to prevent accused persons then what was necessity to collect Gotias before going to place of occurrence and that indicates the intention of the prosecution party, which is found duly exposed by way of presence of counter-case. In this connection, non-presence of independent witness, though their presence have been shown, will be another factor to discredit the prosecution version.

8. Though the learned lower Court had acquitted the accused persons relating to all other charges, but convicted under Section 324 of the I.P.C. in the background of presence of injuries over the person of informant as well as PW-2 Guhan Yadav as per finding of the doctor (PW-7). While adjudicating the same, the learned lower Court failed to consider that right of private defence was available to the appellants and further, while exercising the same, cannot be weighed under golden scale, as the same happens to be subject to surrounding circumstances.

9. That being so, in the light of the finding having recorded by the learned lower Court itself in consonance with considering the evidence in its entirety, the judgment of conviction and sentence recorded by the learned lower Court did not justify its



prevalence. Consequent thereupon, the same is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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