

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.12 of 2015

Arising Out of PS.Case No. -202 Year- 1994 Thana -BAHERA District- DARBHANGA

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Ganesh Jha @ Lalan Jha, Son of Late Balakant Jha, resident of Village - Nawada,
P.S. - Bahera, District - Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manish Kumar No.13-Advocate
Mr. Rohit Kumar-Advocate

For the Respondent/s : Mrs. Abha Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 01-12-2017

Appellant, Ganesh Jha @ Lalan Jha has been found guilty for an offence punishable under Section 147 of the I.P.C. and sentenced to undergo S.I. for six months, under Section 323 of the I.P.C. and sentenced to undergo S.I. for six months, under Section 448 of the I.P.C. and sentenced to undergo S.I. for six months, under Section 427 of the I.P.C. and sentenced to undergo S.I. for three months, under Section 3(2)(iii) of the S.C./S.T. (Prevention of Atrocities) Act and sentenced to undergo R.I. for one year as well as to pay fine appertaining to Rs.5,00/- and default thereof, to undergo S.I. for one month in S.C./S.T. Case No.03 of 2014 arising out of Bahera P. S. Case No.202 of 1994 passed by the 1st Additional Sessions Judge-cum-Special Judge, S.C./S.T., Darbhanga vide



judgment of conviction and sentence dated 24.11.2014.

2. Before proceeding ahead, it looks pertinent to incorporate that trial proceeded against altogether four accused persons namely Ram Murti Jha, Ram Binod Jha @ Thakur Jha, Kari Jha and Ganesh Jha @ Lalan Jha. Save and except Ganesh Jha @ Lalan Jha, others were found guilty for an offence punishable under Section 147, 323, 448 and 427 of the I.P.C. only and in the facts and circumstances of the case, they were allowed to avail the privilege of Probation of Offenders Act and accordingly, were let off in terms of Section 4 of the Probation of Offenders Act. Because of the fact that there happens to be an allegation against the appellant to have lit fire in the house of the informant, whereupon he has additionally been found guilty under the S.C./S.T. (Prevention of Atrocities) Act, whereupon his interest has been ceased, whereupon, directed to suffer substantial sentence. It is also apparent that remaining convicts Ram Murti Jha, Ram Binod Jha @ Thakur Jha and Kari Jha have not challenged the aforesaid finding.

3. PW-3 Haulu Paswan filed written report on 10.12.1994 at about 8.15 a.m. disclosing therein that on the same day at about 6.00 a.m. Ganesh Jha @ Lalan Jha, Ram Murti Jha, Buchai Jha, Sri Thakur and Kori Jha along with other co-villagers came at his house, made house trespass and began to assault the family members.



They were also saying to remove hut from their land. They beg excused, was not accepted by them. Then thereafter, they have looted away their belongings and during course of going there from, Ganesh Jha @ Lalan Jha took out match box and lit fire in his house. They raised alarm attracting the villagers, who extinguished the fire. Manai Paswan (PW-2), Parao Paswan (not examined), Bhutu Paswan (PW-1) along with others were cited as a witness.

4. On the basis of the aforesaid written report, Bahera P. S. Case No.202 of 1994 was registered followed with an investigation and after completing the same, chargesheet was submitted which happens to be the basis for trial, which ultimately concluded in a manner, subject matter of instant appeal.

5. During course of trial, the prosecution had examined altogether three PWs viz. PW-1, Bhutu Paswan, PW-2, Manai Paswan and PW-3, Hauli Paswan having no exhibit. On the other hand, defence had produced Exhibit-A, certified copy of report of Halka Kramchari dated 17.10.1994, Exhibit-B, certified copy of report of Circle Inspector, Benipur dated 26.06.1995, Exhibit-C, certified copy of Inquiry report of Anchal Amin dated 01.12.1994 and Exhibit-D, certified copy of petition of Mangal Paswan dated 06.09.1994. Though no oral evidence has been adduced.

6. Without adverting to the merit of the case, it is



evident from the chargesheet that case was investigated by the A.S.I. Ram Babu Singh. The chargesheet happens to be dated 30.08.1995. At the relevant period in terms of **Rule-7** as was prevailing at the relevant period, the investigation of the case should not have been conducted by a police officer below the rank of Deputy Superintendent of Police. For better appreciation, same is quoted below:-

“Rule 7. Investigating Officer.- (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it alongwith right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all



investigations done by the investigating officer.”

7. Though the State Government in terms of Section 9 of the Act had relaxed the embargo so couched in terms of Rule-7, allowing A.S.I., S.I. of police to be competent to investigate the case under Notification dated 03rd June, 2002 and the same was published in official gazette of the State of Bihar dated 09th August, 2008 giving its retrospective effect since the day 31.03.1995, which happens to be the subject matter of adjudication in ***Smt. Ram Deni Devi and others vs. State of Bihar and others reported in 2011(1) P.L.J.R. 1097***, wherein it has been concluded:-

“8. It may be noted that Section 9 of the Act of 1989 confers power upon the State Government to empower any government officer to exercise the power of a police officer by notification in the Official Gazette. It is, therefore, imperative that such notification has to be published in the Official Gazette of the State. Any notification issued in exercise of the said power unless published in the Official Gazette of the State would not be effective. In the present case though the impugned Notification was issued on 3rd June 2002 it was not published in the Official Gazette until 9th August 2008. It must, therefore, be held that the impugned Notification became effective from the date of its publication in the Official Gazette i.e. on and from 9th August 2008.”

“18. For the aforesaid reasons, we declare that the impugned



Notification dated 3rd June 2002 is not ultra vires the Act of 1989 or the Rules made thereunder. It is further declared that the impugned Notification dated 3rd June 2002 has become effective from the date of its publication in the Official Gazette of the State of Bihar i.e. on and from 9th August 2008. Investigation and consequent prosecution lodged by a police officer empowered under the impugned Notification, though lower in the rank than a Deputy Superintendent of Police, on or after 9th August 2008 will be valid although the offence in question may have been committed prior to 9th August 2008. It is further declared that the investigation made by a police officer below the rank of a Deputy Superintendent of Police after the date of the Rules, i.e. 31st March 1995 and prior to 9th August 2008 and consequent prosecution will not stand validated by the impugned Notification dated 3rd June 2002 published on 9th August 2008. ”

8. That being so, the investigation conducted by the A.S.I. happens to be incompetent one. On account thereof, no prosecution could be under the S.C./S.T. (Prevention of Atrocities) Act, on the basis of chargesheet submitted by the officials below the rank of Deputy S.P., before the date of publication of notification in the official gazette i.e. 09.08.2015. That being so, the prosecution of appellant with regard to S.C./S.T. (Prevention of Atrocities) Act is found non-cognito in the eye of law. Now, coming to remaining



offences, it is apparent that after vanishing of applicability of S.C./S.T. (Prevention of Atrocities) Act, the case of the appellant stood at par with other co-accused, who had already availed the privilege of Section 4 of the Probation of Offenders Act and that being so, maintaining the conviction, sentence so inflicted by the lower Court is modified directing the appellant to avail the privilege of Section 4 of the Probation of Offenders Act in same terms and conditions as inflicted by the learned lower Court with regard to other convicts (non-appellants).

9. In terms thereof, instant appeal is partly allowed. Appellant is on bail, which is extended for next four weeks, during midst thereof, there should be presence of appellant before the learned lower Court, whereupon the learned lower Court will accept the bond having been executed at his end in accordance with Section 4 of the Probation of Offenders Act, in terms of same terms and conditions, which has been relating to co-convict.

(Aditya Kumar Trivedi, J)

Vikash/-

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