

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.394 of 2017

Arising Out of PS.Case No. -13 Year- 2006 Thana -PATORI District- SAMASTIPUR

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Raj Kishore Sharma, son of Late Ram Raji Rai, resident of village-
Chakslem, P.S. Patory, District- Samastipur

.... Appellant

Versus

1. The State of Bihar
 2. Ram Bhawan Rai, son of Late Ganga Rai
 3. Sadaib Kumar @ Sanjay Kumar, son of Ram Bhawan Rai,
Both residents of village- Chaksalem, P.S. Patory, District- Samastipur
- Respondents
- =====

Appearance :

For the Appellant/s : Mr. Pramod Kumar Singh, Adv.

For the Respondent/s : Mr. Sri Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

8 05-07-2017 Heard Sri Pramod Kumar Singh, learned counsel

for the appellant and Sri Binod Bihari Singh, learned Addl. Public

Prosecutor.

2. The present appeal has been preferred by the informant against Judgment of acquittal dated 26.09.2016 passed in Sessions Trial No.987/08/1775/2014 arising out of Patory P.S.Case No.13/2006. By the said Judgment, the learned trial Judge has acquitted respondent nos. 2 and 3 from the charges under Sections 307, 323, 324,447,504, 506/34 of the Indian Penal Code.

3. On the basis of fardbeyan of the



appellant/informant, Patory P.S. Case No.13 of 2006 was registered under Sections 447, 323, 324, 307, 504, 506/34 of the Indian Penal Code against accused persons. It was alleged that on trivial dispute, accused persons entered into the house of the informant and scuffle had taken place, in which the informant was assaulted.

4. After registering F.I.R., the police investigated the case. However, after investigation, the police exonerated accused persons for the offence under Sections 307 and 324 of the Indian Penal Code and chargesheet was submitted under Sections 447, 323, 504, 506/34 of the Indian Penal Code. Subsequently, the learned Chief Judicial Magistrate, differing with the police report took cognizance of offence under Sections 447, 323, 324, 447, 504, 506/34 of the Indian Penal Code and the case was committed to the court of Sessions and respondent nos.2 and 3 were put on trial. They denied the charges.

5. However, to prove the case, from the prosecution side six witnesses were examined, out of them three witnesses i.e. P.W.3, P.W.5 and P.W.6 were formal witnesses since they have proved F.I.R. and writing of Sub Inspector of Police. The Investigating Officer was not examined nor had even the informant/appellant appeared before the trial court for his



deposition. Jai Lal Paswan (P.W.1) though supported the case, had accepted that accused persons had also received injury. P.W.2 Vinay Kumar Sharma had claimed to be eye witness. However, in paragraph-3 of his cross-examination, he accepted that he reached the place of occurrence after the scuffle had already come to an end. Meaning thereby that he was not an eye witness. The wife of the informant, namely, Sheela was examined as P.W.4 and tried to prove the case.

6. During trial, learned trial Judge has noticed that the present case i.e. Patory P.S. Case No.13/2016 was a counter blast to Patory P.S. Case No.12/2006. Since no plausible evidence was brought on record, learned trial Judge has acquitted both the accused i.e. respondent nos.2 and 3.

7. Learned counsel for the appellant tried to persuade the court that on failure of learned counsel, the informant has not been examined. However, on perusal of paragraph-12 of the Judgment, it is evident that the learned trial Judge has noticed that P.W.4 /wife of the informant had not given any plausible explanation regarding non-production of her husband/informant, who is the appellant in the present case.

8. Considering the fact that there was case and counter case and first case was instituted from the accused side of



the present case and the fact that no plausible evidence was brought on record, we do not find any reason to consider the Judgment in question as perverse.

9. Accordingly, the petition for grant of leave i.e. I.A. No. 1323 of 2017 filed under Section 378(3) of the Code of Criminal Procedure is hereby rejected and simultaneously the appeal against acquittal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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