

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1039 of 2017

Arising Out of PS. Case No.-97 Year-2008 Thana- SIMARI District- Buxar

Murli Prasad, son of late Sudama Sah, resident of village – Gangauli, Police Station – Simari, District – Buxar

... .. Appellant/s

Versus

1. The State Of Bihar
 2. Achhai Thakur, son of Brij Bihari Thakur
 3. Sukhdeo Kamakar, son of Ramayan Kamakar
 4. Sukhan Kamakar, son of Ramayan Kamakar
 5. Amir Chandra Ram , son of late Chandrika Ram
 6. Bharat Yadava son of late Shaman Yadava @ Late Jagnath Yadava
 7. Sanjay Yadava son of Baliram Yadava
 8. Radhe Shyam Gour son of Baya Gour
 9. Bishram Yadava son of late Sipahi Yadav
 10. Motilal Kamakar son of Nawmi Kamakar
 11. Gorakh Gour son of Chhotelal Gour
 12. Awadhesh Kamakar son of Motilal Kamakar
 13. Sri Ram Kamakar son of Late Lalu Kamakar
 14. Raghunath Yadava son of Late Jaganath Yadava
 15. Ramashish Yadava son of Radha Mohan Yadava
- all residents of village – Gangauli , Police Station -Simari , District -Buxar

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Ashok Kumar Mishra
For the Respondent/s : Sri Shivesh Chandra Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5 06-12-2017 Heard Sri Ashok Kumar Mishra, learned counsel for the appellant and Sri Shivesh Chandra Mishra, learned Additional Public Prosecutor.

The appellant- informant / victim has preferred the present appeal under section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against the



judgment and order dated 13.06.2017 passed by Sri Virendra Singh, learned Presiding Officer, Fast Track Court - II, Buxar (hereinafter referred to as the “trial judge”) in Sessions Trial No. 355 of 2009 [arising out of Simari P.S. Case No. 97 of 2008, G.R. No. 1265 of 2008]. By the said judgment the learned trial judge has acquitted all the private respondents from charges under Section 506/ 188/504 and 395 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and also from charge under Section 307 / 149 of the I.P.C. The learned trial judge by the same judgment has acquitted the respondent no. 3/ Sukhdeo Kamakar and respondent no. 11/ Gorakh Gour from charge under Section 27(1) of the Arms Act, 1959 (hereinafter referred to as the “Arms Act”), however the learned trial judge instead of convicting the private respondents under section 506/ 188/ 504 and 395 of the I.P.C. rather in view of evidence on record convicted all the private respondents for offences under Sections 427, 341, 452 and 323 of the I.P.C. read with section 149 of the I.P.C.

Short fact of the case is that on the basis of written information submitted by the informant in the case a case vide Simari P.S. Case No. 97 of 2008 was registered for the offences under Sections 307/ 149, 147, 148, 452, 379, 342, 323, 427,



440, 504, 506, 109, 188 of the I.P.C. and section 27 of the Arms Act. It was alleged by the informant that dispute between the informant's side and some of the accused side regarding passage was continuing since long and a case was also pending in the court of Sub Divisional Magistrate, Dumraon. It was alleged that on 13.9.2008, seventeen F.I.R. named accused persons and others, total about 200 persons held a meeting and at 9 A.M. on the same date all the accused persons arrived and forcibly removed the boundary wall, which was allegedly made on the passage. It was alleged that in the occurrence respondent no. 3 and 11 had fired indiscriminately from country made pistol and other accused persons were carrying lethal weapons such as *bhala*, *lathi* etc. It has been alleged that in the said occurrence three persons from the informant's side received injury and their injuries were got examined by the doctor. It was alleged that the accused persons had also removed the demolished articles pertaining to the boundary wall such as bricks and iron rods. On the aforesaid allegation F.I.R. was lodged against seventeen accused persons, however it appears that three accused died, and as such, fourteen accused persons were finally tried and by the impugned judgment their conviction and sentence has been passed, which has been



assailed in the present appeal. Along with the present appeal the appellant has also filed a petition vide I.A. (Criminal) No. 1877 of 2017 under section 378 (3) of the Cr.P.C. for grant of leave.

Learned counsel for the appellant submits that there was consistent evidence that accused persons had forcibly demolished the boundary wall of the appellant - informant and they had also removed the articles, but the learned trial judge ignoring the applicability of Section 395 of the I.P.C. had held them guilty under section 427, 341, 452 of the I.P.C. read with section 149 of the I.P.C. He further submits that injury on the person of the informant's side was caused by the use of *bhala*, but still learned trial judge has acquitted them from the charge under section 307 of the I.P.C. He submits that learned trial judge ignoring the evidence has committed perversity in acquitting the accused persons from serious charges as for minor offences they were held guilty and convicted.

Learned Additional Public Prosecutor opposing the appeal and leave petition has specifically referred to paragraph no. 15 of the impugned judgment wherein evidence of Dr. Arbind Narain Singh has been discussed. By referring to paragraph no. 15 he has argued that injuries caused on Sunil Sah / P.W. 1 was found to be caused by hard and blunt substance and that too



was on the elbow of P.W. 1. He submits that in any event even had it been a case of injury by *bhala* on the elbow, there was no question of application of section 307 of the I.P.C., however, he submits that injury on his elbow was not found to be caused by *bhala*. So far injuries on other two witnesses are concerned, the doctor himself has stated that injury was due to bricks and stone pieces. He submits that it is the case of the prosecution itself that in the occurrence bricks were used. He further submits that it appears that since public land (public passage) was encroached by the informant's side which had irritated the local residents and thereafter the occurrence had taken place. He submits that the learned trial judge has committed no error in acquitting the private respondents from the serious charges.

Besides hearing learned counsel for the parties, we have perused the materials available on record particularly the impugned judgment. After going through the judgment as well as the prosecution story as spelt out in the F.I.R., which has been discussed in paragraph no. 2 of the impugned judgment, the Court is of the opinion that the learned trial judge has committed no error in passing the impugned judgment.

Considering the facts and circumstances we are satisfied that there is no perversity in the impugned judgment. In



absence of any perversity in the judgment impugned, there is no reason to grant leave. Accordingly, leave petition i.e. I.A. (Criminal) No. 1877 of 2017 stands dismissed and consequently, the appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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