

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.864 of 2017

Arising Out of PS.Case No. -200 Year- 2004 Thana -PIRPAINTI District- BHAGALPUR

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Vijay Yadav, son of Sitaram Yadav, resident of Village- Khushalpur,
Bakiya, P.S.- Pirpanti, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Sundar Yadav @ Shyam Sundar Yadav, son of Late Sohan Yadav,
3. Uddeshy Yadav @ Udesb Yadav
4. Uleshwar Yadav
- Both sons of Sundar Yadav @ Shyam Sundar Yadav
5. Hukum Yadav @ Hukumchand Yadav @ Hukumdeo Yadav, son of Sohan Yadav,
6. Kailash Yadav, son of Kusum Yadav,
7. Tuntun Yadav, son of Ramrup Yadav,
8. Manoj Yadav, son of Hukum Yadav @ Hukumchand Yadav @ Hukumdeo Yadav ,
- 2 to 8 are resident of Village- Khushalpur (Bakiya), P.S.- Barari, District- Katihar.

.... Respondent/s##

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Appearance :

For the Appellant/s : Mr. Bhola Prasad

For the Respondent/s : Sri Ganesh Prasad Jaiswal, 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)

3 21-08-2017 Heard Sri Bhola Prasad, learned counsel for the

appellant and learned Additional Public Prosecutor .

The informant, has approached this court against the

judgment and order dated 12.6.2017 passed by learned Additional

Sessions Judge –V, Bhagalpur in Sessions Trial No. 1229 of

2005 arising out of Pirpanti P.S. Case No. 200 of 2004. By the

said judgment and order the learned trial judge has convicted the



respondent no. 2 to 8 under section 323 read with section 149 of the Indian Penal Code , 1860 (hereinafter referred to as “I.P.C.”) and acquitted them from the charges under section 307 / 149 , 148 , 380 of the I.P.C. and section 27 of the Arms Act .

It was case of prosecution that informant Vijay Yadav was assaulted by the respondents. It was alleged that in the said occurrence one of the respondents had fired on informant and informant received injury where after he was examined by the doctor. After registration of the F.I.R. case was investigated and finally charges were framed against all the respondents for the offence under section 307/ 149/ 148 /323 of the I.P.C. Besides this, one of the respondents i.e. respondent no. 3 was charged for offence under section 307 of the I.P.C. and section 27 of the Arms Act whereas , Shyam Sundar Yadav @ Sundar Yadav/ respondent no. 2 was separately charged for offence under section 380 of the I.P.C.

It is evident that the informant in his fardbyan besides receiving assault has also said that in the occurrence accused persons had forcibly taken about Rs. 10,000/- from a box which was kept in his house. However , during trial since no cogent evidence was brought on record regarding fire arm injury after prosecution evidence, the learned trial judge was not satisfied



regarding proof of charge under section 148 , 307 , 149 of the I.P.C. , section 380 of the I.P.C. and section 27 of the Arms Act and learned trial judge acquitted them from aforesaid charges . However, considering the nature of injury the learned trial judge convicted the respondents for offence under section 323 read with section 149 of the I.P.C. However , considering the conduct the respondents were given benefit under section 3 of the Probation of Offenders Act , 1958.

Sri Bhola Prasad , learned counsel for the appellant submits that it was specific case of the informant (P.W. 4) that he was fired by the respondents no. 3 and he received fire arm injury but learned trial judge ignoring his oral evidence has incorrectly acquitted all the accused persons.

Besides hearing, we have examined the materials available on record particularly the evidence of doctor, who had examined the injury of the informant. The doctor Sri Ashok Rai, Medical Officer, Jawahar Lal Nehru Medical College and Hospital, Bhagalpur has been examined as P.W. 5 and his evidence has been discussed in paragraph no. 15 of the judgment. On examining the same it is evident that doctor has not at all given any opinion regarding fire arm injury but he found only one lacerated injury, regarding which he opined that it was not



dangerous to life.

Considering the evidence of the doctor, who examined the injury , the court is of the opinion that learned trial judge has committed no error in not convicting them for offence under section 307/149, 148 of the I.P.C. and Section 27 of the Arms Act and acquitting them from aforesaid charges. We don't find any perversity in the judgment and order impugned. Accordingly , the court is of the opinion that there is no need to grant leave to appeal , which has been sought for vide I.A. No. 1527 of 2017. Consequently, the appeal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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