

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 539 of 2017

Arising Out of PS. Case No.-147 Year-2002 Thana- Bagaha District- West Champaran

Lallan Yadav son of Sahdeo Yadav, Resident of Village-
Bankatwa Bani Patti, P.S.-Bagaha, District- West Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Nagina Yadav son of Sheo Shankar Yadav
3. Bishundeo Yadav son of Late Jhagru Yadav
4. Mahanth Yadav son of Late Sahdeo Yadav
5. Naresh Yadav son of Sheo Shankar Yadav
6. Kishore Yadav son of Sheo Shankar Yadav
7. Binod Yadav son of Sheo Shankar Yadav

Respondent no. 2 to 7 Res. of village Bankatwa Bani Patti P.S. Bagaha,
District – West Champaran.

... .. Accused/Respondents

Appearance :

For the Appellant/s	:	Mr. Nirmal Kumar Sinha-3, Advocate
For the Respondent/s	:	Mr. Abhay Kumar, A.P.P. Mr. Dronacharya, Advocate

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

7. 11-12-2017 Heard Sri Nirmal Kumar Sinha, learned counsel for the
appellant/informant, Sri Abhay Kumar, learned Addl. Public
Prosecutor as well as Sri Dronacharya, learned counsel, who
has appeared on behalf of respondent no. 2 to 7.

2. The present appeal under Section 372 of the Code of
Criminal Procedure, 1973 (for short “Cr.P.C.”) has been
preferred against judgment of acquittal dated 28th September,
2016 passed by Sri Deepak Kumar Singh, learned 1st Additional



Sessions Judge, Bagaha, West Champaran (hereinafter referred to as the 'Trial Judge') in Sessions Trial No. 57 of 2008 (CIS Sessions Case No. 2542 of 2015), arising out of Bagaha P.S. Case No. 147 of 2002, registered for the offence under Sections 341, 323, 324, 379, 504/34 of the Indian Penal Code. By the said judgment, the learned Trial Judge has acquitted respondent no. 2 to 7 from charge under Section 307 as well as Section 379 of the Indian Penal Code.

3. Short fact of the case is that on 27-07-2002 at about 9:45 A.M., the A.S.I. Sri Chandeshwar Ray of Bagaha Police Station recorded *fardbeyan* of Lalan Yadav (P.W.6). In the *fardbeyan*, the informant disclosed that on 27-07-2002 at 8:00 A.M. (morning) in his *Bajra* field, Nagina Yadav (respondent no. 2) and Naresh Yadav (respondent no. 5) were cutting the crop. When the informant got this information, he alongwith his brother-in-law Nandu Yadav (P.W.1) arrived his field and tried to stop Nagina Yadav and Naresh Yadav from cutting the *Bajra*. Thereafter, both the accused persons started abusing him and both started assaulting him by means of *lathi*. Thereafter, Binod Yadav (respondent no. 7), Kishore Yadav (respondent no. 6), Mahanth Yadav (respondent no. 4) and Bishundeo Yadav (respondent no. 3), all carrying *lathi* in their hands arrived there



and they started assaulting informant and his brother-in-law Nandu Yadav and brutally injured them. While assaulting them, accused Nagina Yadav took out Rs. 1100/- from the pocket of informant and also snatched his wrist watch, in the meanwhile, after hearing *hulla*, number of persons arrived there, intervened and settled the dispute. They were carried to the hospital, where the informant was treated.

4. After recording *fardbeyan*, a formal F.I.R., vide Bagaha P.S. Case No. 147 of 2002, was registered for offence under Sections 341, 323, 324, 379, 504/34 of the Indian Penal Code. After investigation and collecting the material showing involvement of the accused persons, police submitted chargesheet and thereafter, cognizance order was passed for offence under Sections 341, 344, 323, 325, 307, 427, 379, 504/34 of the Indian Penal Code. After the case was committed to the court of sessions, it was numbered as Sessions Trial No. 57 of 2008. Thereafter, on 25-08-2008, charges were framed against Nagina Yadav, Naresh Yadav, Binod Yadav, Kishore Yadav, Mahanth Yadav and Bishundeo Yadav for offence under Sections 307/34 of the Indian Penal Code and separate charge under Section 379 of the Indian Penal Code was framed against accused Nagina Yadav. Since the accused denied their charges



and claimed to be tried, the prosecution started examining witnesses and last witness i.e. informant was examined as P.W.6 on 29th March, 2010. Thereafter, the prosecution case was closed and statement of accused under Section 313 of the Cr.P.C. was recorded. Finally, by the impugned judgment, which is only in three pages, the learned Trial Judge has passed order of acquittal, primarily on the ground that in absence of examination of doctor and investigating officer, no case under Section 307 of the Indian Penal Code was made out. Similarly, accused Nagina Yadav was also acquitted from charge under Section 379 of the Indian Penal Code. After the order of acquittal, the victim/informant has preferred the present appeal.

5. In this case, by order dated 31-08-2017, while directing for issuance of notice to respondent no. 2 to 7, this Court had also summoned lower court record, which has been received and kept on record.

6. Sri Nirmal Kumar Sinha, learned counsel for the appellant, at the very outset by way of referring to three page judgment of acquittal, has argued that the learned Trial Judge has committed serious error in passing the order of acquittal. He submits that it is true that charge under Sections 307/34 and 379 of the Indian Penal Code was framed and it is also a fact that in



the case, the doctor, who examined the injury on both persons i.e. appellant/informant and his brother-in-law Nandu Yadav (P.W.1), was not examined and in absence of injury report or evidence of doctor, the learned Trial Judge would not have passed the order of acquittal under Sections 307/34 of the Indian Penal Code, but there was consistent evidence on record to suggest that the accused persons had at least committed offences, for which, chargesheet was submitted. He further submits that in the case diary, injury report was available suggesting that hand of the appellant was fractured in the occurrence, the learned Trial Judge, without taking any sincere effort to secure attendance of the investigating officer or the doctor, who examined the injuries, hurriedly has passed the order of acquittal. It has been argued that it is not only duty on the part of the prosecution to produce important witnesses, but at the same time, learned Trial Judge is also required to take appropriate step for securing attendance of witnesses. However, in the present case, no sincere effort was taken either by the prosecution or by the learned Trial Judge for securing attendance of important witnesses, such as; medical officer as well as investigating officer.

7. Sri Abhay Kumar, learned Addl. Public Prosecutor as



well as Sri Dronacharya, learned counsel for private respondents have supported the judgment impugned. It has been argued by Sri Dronacharya that in the case, even motive was not properly proved. He submits that the land, over which occurrence had allegedly taken place, was itself in dispute. It has been argued that the informant side were not having any legal right over the land in question. Such motive and manner of occurrence has not been proved by the prosecution and as such, learned Trial Judge has rightly passed the order of acquittal, which requires no interference.

8. Besides hearing learned counsel for the parties, we have also examined the material on record. After going through the evidence as well as ordersheet of the trial court, it appears that learned Trial Judge has not taken any sincere effort for securing the attendance of the investigating officer as well as the doctor, who had examined the injuries on both informant as well as his brother-in-law. Moreover, if the submission of learned counsel for the appellant is correct on the point that in the case diary, injury report was available, then in that event, it was duty on the part of the prosecution to get those documents exhibited for appropriate adjudication in the matter.

9. Without going into the merit of the case, this Court is



of the considered opinion that absence of investigating officer as well as doctor, who had examined the injuries on the person of both i.e. informant and his brother-in-law had seriously prejudiced the case of the informant and as such, it is necessary to remit back the matter to the court below after setting aside the impugned judgment.

10. Moreover, the Court is surprised to notice the casual approach of the learned Trial Judge, who has passed the order of acquittal in three pages. He has not at all bothered to discuss evidences in detail, which were brought on record. Such approach of the trial court must be deprecated.

11. In view of submission advanced by the parties, we are satisfied that it is a fit case for grant of leave. Accordingly, the leave petition i.e. I.A. No. 1670 of 2017 is, hereby, allowed and judgment impugned i.e. judgment dated 28-09-2016 passed by Sri Deepak Kumar Singh, learned 1st Additional Sessions Judge, Bagaha, West Champaran in Sessions Trial No. 57 of 2008 (CIS Sessions Case No. 2542 of 2015), arising out of Bagaha P.S. Case No. 147 of 2002, is hereby set aside and matter is remitted back to the court below, with a direction to take appropriate step for securing attendance of remaining those witnesses and re-appraise the entire evidence and pass appropriate order in



accordance with law. At the same time, it is necessary to direct the concerned Superintendent of Police to produce witnesses as and when required by the Trial Judge.

12. Let a copy of this order be sent to the concerned Superintendent of Police forthwith.

13. Lower court record is also directed to be sent back to the court below.

14. With above observation and direction, the appeal is allowed.

(Rakesh Kumar, J.)

(Mohit Kumar Shah, J.)

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