

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No. 75 of 1994

Arising Out of PS.Case No. -123 Year- 1981 Thana –UDWANT NAGAR District- BHOJPUR,
ARA

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The State of Bihar

.... Appellant

Versus

1. Sachita Rai, son of Deo Raj Rai
2. Hazari Ram, son of Chhabila Ram
3. Bazari Ram, son of Chhabila Ram
4. Sheo Mohan Ram, son of Dasaia Ram
5. Ram Kewal Rai, son of Deo Raj Rai
6. Ram Dhari Ram @ Gangu Ram, son of Dasaia Ram

All resident of village-Jetaria, P.S. Udwant Nagar, District Bhojpur

.... Respondents

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Appearance :

For the Appellant : Mr. Shyameshwar Dayal, A.P.P.

For the Respondent s : Mr. Pranav Kumar, Adv.

J/C Kumari Seema Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 03-01-2018

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Heard learned counsel for the appellant as well as
learned counsel appearing for the respondents.

2. The State has challenged the judgment of acquittal passed by learned 2nd Additional Sessions Judge, Bhojpur, Ara in Sessions Trial No. 75 of 1986 arising out of Udwant Nagar P.S. Case No. 123 of 1981 by which and whereunder he acquitted the respondents of the charges framed under Sections 148, 302/34, 324 of the Indian Penal Code and Section 27 of the Arms Act.

3. The above stated Udwant Nagar P.S. Case No. 123



of 1981 was registered on 15.11.1981 on the basis of ferdbeyan given by Khalifa Singh on the same day to S.I. K. Ram to this effect that on 15.11.1981 at about 06:00 A.M. he came out of his house and saw that one Radha Ram and his men were filling his field whereupon he forbade him to do so as he had purchased the said field but the above stated objection resulted into verbal altercation and the aforesaid Radha Ram ordered the others to assault. Thereafter, respondent no. 3, namely, Bazari Dusadh gave a bhala blow on his shoulder and Chhabila Dusadh gave lathi blow to him. Seeing this, Raghunath Singh (PW-7), Chandrama Yadav (PW-3) and Ramdeo Singh (PW-2) came to his rescue but respondent no. 2 and one Chhabila Dusadh assaulted Raghunath by means of lathi and bhala causing injury on his thigh and head. Similarly, respondent no. 6 Ramdhari Ram assaulted Ramdeo Singh by means of bhala causing injury on his arm and respondent no. 2 and 4 assaulted Rambhaju Singh by means of bhala as a result of which he fell down on the ground and became unconscious. Similarly, Radharam assaulted Chandrama Singh by means of bhala causing injury on his right hand. It is further stated that to save their life, they, too, assaulted the accused persons. After the alleged occurrence, they were brought to Sadar Hospital, Ara where they got treatment. It has been mentioned in the ferdbeyan that at the time of recording ferdbeyan of Khalifa Singh, Rambhaju Singh (deceased) was unconscious.



4. On the basis of aforesaid ferdbeyan, Udwant Nagar P.S. Case No. 123 of 1981 was registered under Sections 147, 148, 307, 324 and 323 of the Indian Penal Code. The investigating officer took charge of investigation. In course of investigation, injured, Rambhaju Singh died and subsequently, charge sheet was submitted under Section 302 and other allied sections of the Indian Penal Code. Cognizance was taken in usual course and the case was committed to the court of sessions.

5. The learned trial court framed charges against the respondents under three separate heads. All the six respondents were charged under Sections 148 and 302/34 of the I.P.C. whereas respondent no. 2, 3 and 6 were charged under Section 324 of the I.P.C. and respondent no. 1 was charged for the offence punishable under Section 27 of the Arms Act. The charges were read over and explained to the respondents but they denied charges and claimed to be tried.

6. In order to prove the charges, prosecution got examined altogether 12 witnesses and also got exhibited some documents including post mortem report and other documents. The statement of respondents were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution story and claimed their false implication by the prosecution party to save their skin from counter case. The defence also examined one witness and got



exhibited some documents in support of their defence.

7. The learned court below having examined the materials available on the record came to conclusion that prosecution miserably failed to prove the charges beyond all shadow of reasonable doubts and accordingly, acquitted all the respondents of the charges framed against them giving benefit of doubt to them.

8. The State being aggrieved by the impugned judgment of acquittal filed this appeal.

9. Learned A.P.P. Sri Shyameshwar Dayal appearing for the State challenged the impugned judgment of acquittal arguing that the learned trial court completely failed to take note of dying declaration (Exhibit-7) of Rambhaju Singh and wrongly disbelieved the dying declaration of deceased Rambhaju Singh. He further submitted that all the prosecution witnesses stated about the alleged occurrence and also proved the manner of occurrence as well as place of occurrence but the learned court below on the grounds of minor contradictions which occurred in the depositions of prosecution witnesses, passed the judgment of acquittal which is not in accordance with law. He further submitted that the impugned judgment of acquittal is not only illegal but perverse also and, therefore, this Court should interfere into the impugned judgment.

10. Having heard the contention of learned A.P.P., we went through the lower court record as well as impugned judgment. It



would appear from perusal of the impugned judgment that learned trial court passed the judgment of acquittal on two grounds. Firstly, the learned trial court found contradictions in the depositions of prosecution witnesses regarding the manner of occurrence as well as place of occurrence and secondly, the learned trial court noticed that death of deceased was not due to injury caused to him rather reason of death of deceased was infection of Peritonium.

11. It would appear from perusal of the materials available on the record that prosecution got examined altogether 12 witnesses out of them some witnesses said that respondent no. 2, namely, Hazari Dusadh and respondent no. 4, namely, Sheo Mohan Ram assaulted the deceased by means of Bhala whereas another set of witnesses stated that respondent no. 1 Sachita Rai shot fire on the deceased Rambhaju Singh. The statement of deceased Rambhaju Singh is said to have been recorded which is Exhibit-7 and in the aforesaid statement, deceased Rambhaju Singh stated that he sustained firearm injury fired by respondent no. 1, Sachita Rai but the aforesaid statement of deceased Rambhaju Singh is not corroborated by the medical evidence as it would appear from the deposition of PW-8, Dr. Ravindra Kumar Singh who examined the deceased Rambhaju Singh on the date of alleged occurrence just after the alleged occurrence. The learned trial court taking note of the aforesaid fact disbelieved the so-called dying declaration of deceased Rambhaju



Singh and we do not find any ground to interfere into the above stated findings of trial court.

12. The learned trial court doubted the depositions of prosecution witnesses on the basis of contradictions occurred in their depositions. We went through the depositions of the prosecution witnesses and came to conclusion that the court below rightly doubted about the credibility of prosecution witnesses. It is well settled principle of law that judgment of acquittal cannot be disturbed unless and until the judgment of acquittal is perverse and illegal. We do not find any perversity or illegality into the impugned judgment of acquittal and, therefore, in our view, the appeal filed on behalf of the State has no merit and liable to be dismissed.

13. Accordingly, this Government appeal stands dismissed.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
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