

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 652 of 2002

Arising Out of PS. Case No. -154 Year- 1995 Thana -BAROON District- AURANGABAD

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1. Bhandaria Yadav @ Upendra Yadav, son of late Sita Ram Singh Yadav

2. Raj Kumar Singh, son of Sri Manik Chand Singh

Both resident of village-Pararia, P.S. Barun, District Aurangabad

3. Hira Chaudhary, son of Sri Sobh Nath Chaudhary

4. Ghura Chaudhary, son of Sri Tulsi Chaudhary

Both resident of village-Dhamani, P.S. Barun, District Aurangabad

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Arun Kumar Singh No. 4, Adv.
Mr. Dharmendra Kr. Singh, Adv.

For the State : Mr. S. Ashfaq Ahmad, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL JUDGMENT

Date: 01-02-2018

1. Heard learned counsel for the appellants as well as
learned Additional Public Prosecutor for the State.

2. This criminal appeal has been preferred against the
judgment of conviction dated 26.11.2002 and sentence order dated
28.11.2002 passed by 6th Additional Sessions Judge, Aurangabad in
Sessions Trial No. 146 of 1996/ 167 of 2002 by which and where
under the learned 6th Additional Sessions Judge, Aurangabad initially
convicted the appellants for the offence punishable under Section
307/34 of the IPC but while hearing on the point of sentence



converted the conviction of the appellants under Section 324/34 of the IPC and accordingly, sentenced them to undergo rigorous imprisonment for three years and fine of Rs. 1000/- each and in default of deposit of above stated fine, one month more simple imprisonment was ordered.

3. Barun P.S. Case No. 154 of 1995 was registered against the appellants on the basis of ferdbeyan of the informant Murari Thakur but the informant Murari Thakur was not examined in course of trial. However, the informant Murari Thakur claimed in his ferdbeyan that on 04.10.1995 at about 09:00 P.M. appellants being armed with lathi came at the boring room and assaulted his father, namely, Daroga Thakur as well as to him. His father was brought to hospital where he got treatment. The reason behind the alleged occurrence is said to be previous litigation.

4. After submission of the charge sheet, cognizance was taken and accordingly, all the appellants stood charged for the offence punishable under Section 307/34 of the IPC to which they denied the charges and claimed to be tried. In course of trial, only two prosecution witnesses i.e. PW-1 Daroga Thakur, the injured as well as father of the informant and PW-2 Bhola Thakur, the brother of the informant were examined.

5. PW-2 is not an eye witness of the alleged



occurrence and he admitted that informant Murari Thakur gave information of the alleged occurrence to him.

6. So far as PW-1 Daroga Thakur is concerned, he claimed that on the alleged date of occurrence, he was assaulted by the appellants and the occurrence was witnessed by one Mukesh Choudhary. He further stated that he was taken to police station by the villagers and thereafter, he was sent to hospital where his treatment was done. Admittedly, neither investigating officer nor the doctor was examined and furthermore, no injury report of PW-1 was brought on record. Apart from this, not a single prosecution witness came forward to corroborate the claim of the PW-1 and, therefore, in my view, only on the single testimony of PW-1, it was unsafe to convict the appellants.

7. Perusal of impugned judgment goes to show that learned court below committed gross illegality while converting the conviction of the appellants from Section 307/34 of the IPC to Section 324/34 of the IPC at the time of hearing on the point of sentence because the learned trial court had no power to review its own judgment. However, it is obvious from the materials available on the record that prosecution could not succeed to prove its case beyond all shadow of reasonable doubt and the learned trial court ought to have acquitted the appellants giving benefit of doubt to them.



8. On the basis of aforesaid discussions, this criminal appeal is allowed and the impugned judgment of conviction dated 26.11.2002 and sentence order dated 28.11.2002 are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

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