

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.41 of 2011

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1. Krishnandan Prasad, Son of Late Ragho Mahto Resident of Village Parmanandpur, P.S. Katrisarai, Distt. Nalanda
 2. Damodar Prasad, Son of Late Ragho Mahto Resident of Village-Parmanandpur, P.S.- Katrisarai, Distt.- Nalanda
 3. Nathun Prasad, Son of Damodar Prasad Resident of Village-Parmanandpur, P.S.- Katrisarai, Distt.- Nalanda
 4. Manoj Prasad, Son of Late Birendra Prasad @ Kailash Prasad, Resident of Village- Parmanandpur, P.S.- Katrisarai, Distt.- Nalanda
 5. Ramanuj Prasad, Son of Late Birendra Prasad @ Kailash Prasad, Resident of Village Parmanandpur, P.S. Katrisarai, Distt. Nalanda

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr. Ranbir Singh, Amicus Curiae
For the State	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 02-04-2018

None appeared on behalf of the appellants, so Mr. Ranbir Singh, learned Advocate is appointed as Amicus Curiae in this case to assist the Court.

2. Heard the learned Amicus Curiae appearing on behalf of the appellants and the learned Additional Public Prosecutor for the State.

3. The present appeal has been preferred against the judgment of conviction dated 18.12.2010 and the order of sentence dated 21.12.2010 passed by Mr. S.C. Sinha, the learned 4th Additional Sessions Judge, Nalanda at Biharsharif in Sessions Trial No.785 of



2005, arising out of Giriak (Katrisarai) P.S. Case No.23/05 thereby the appellants have been convicted under Sections 307/34, 341/34 and 379/34 of the Indian Penal Code and sentenced to undergo 3 years of RI, 1 month of RI and 2 years of RI respectively and in addition to that the appellant no.5, Ramanuj Prasad, was further sentenced to undergo 3 years of RI under Section 27 of the Arms Act however, directed that all the sentences shall run concurrently.

4. Being aggrieved and dissatisfied with the present sentence and conviction, the appellants have preferred the present appeal.

5. The prosecution case, in brief, according to informant, Ram Anugrah Narain Singh (PW6), is that at 5.30 A.M. on 10.03.2005, he went to see his *Masoor* crop standing in his field and found that all five accused persons, namely, Krishnandan Prasad, Ramanuj Prasad, Manoj Prasad, Damodar Prasad and Nathun Prasad, co-villagers cutting *Masoor* crop and after preparing bundle, they also took it away. The informant protested, so all accused caught him and threatened of false implication in a case. Subsequently Ramanuj Prasad shot at him by a country made rifle but it did not hit him.

6. The police lodged FIR in this case on the basis of the statement given by the informant and investigated the case and on its conclusion submitted chargesheet under Sections 341, 323, 379 and 307/34 of the Indian Penal Code. The learned Chief Judicial



Magistrate, Nalanda took cognizance of the offence and committed the case after inquiry to the court of sessions for trial and on its conclusion the judgment was passed.

7. Learned Amicus Curiae for the appellants submitted that prosecution has not been able to establish the charges beyond all reasonable doubt; whereas the learned counsel for the State submits that the charge has been proved by the prosecution.

8. Having gone through the evidence on record, the Court finds that altogether prosecution has examined 7 witnesses, out of which two relevant witnesses are Ram Anugrah Narain Singh (PW6), the informant and Ehsan Ahmad Khan (PW7), the I.O. of the case. The evidence of rest other witnesses are of no relevance for the reason evidence of PW1 Rajendra Kumar Verma is formal in nature and rest others have turned hostile. It is also apparent that there is land dispute between both sides as both are descendants of common ancestor being agnates. Admittedly civil dispute pending between them as Title Suit No.116 of 2005 is still sub-judice. It is also evident that as per the prosecution case there is no other eye witness except Ram Anugrah Narain Singh (PW6), the informant. The testimony of the I.O. (PW7) does not disclose evidence in regard to theft of *Masoor* crop being cut away from the fields. Specific attention was drawn by the defence side but he admits that he failed to mention this fact in the case diary. There is complete lack of evidence that who



was in possession of the disputed land and the crop was sown by which side. Unless the possession of the informant over the land is proved, no charge of theft can be proved. The definition of theft is as such:

“378. Theft.-Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.”

9. The essential ingredient of theft is moving away the moveable property out of the possession of a person having possession over it without his consent. In the instant case there is, as earlier observed, complete absence of evidence with regard to the possession of the land in favour of the informant, PW6. Moreover, both sides are descendants of the common ancestor further with regard to the title and possession, the matter is sub-judice before the civil court as PW6 admits that Title Suit No.116 of 2005 is pending in the court. There is also counter case lodged by the appellants’ side against the informant. The further case of prosecution is that the informant was caught hold by the appellants and thereafter shot at him but missed the target, however, PW6 admits that he stayed there for sometime but no further attempt was made by the appellants to shoot him. The prosecution evidence does not disclose any intervening circumstance unenabling the accused/appellants to make further attempt on his life, so apparently there was no intention on the part of the accused persons to kill him. Moreover, as there is



property dispute and enmity in between both the sides due to land in question, so reliance on the evidence of PW6 cannot be placed as evidence is not impeccable in nature and character. Moreover, there is absence of any corroborative evidence to the testimony of PW6 (informant), so the Court is of the view that the prosecution has utterly failed to prove any of the charges against the appellants hence, giving benefit of doubt, the appellants are acquitted from all the charges.

10. In the result, the appeal is allowed and the judgment of conviction dated 18.12.2010 and the order of sentence dated 21.12.2010 passed by Mr. S.C. Sinha, the learned 4th Additional Sessions Judge, Nalanda at Biharsharif in Sessions Trial No.785 of 2005, arising out of Giriak (Katrisarai) P.S. Case No.23/05 is set aside. The appellants are already on bail. They are discharged from liabilities of their respective bail bonds.

11. Let a copy of the judgment be given to Mr. Ranbir Singh, the learned Amicus Curiae.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	AFR
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