

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.344 of 2018

Arising Out of PS. Case No.-23 Year-1989 Thana- BHAPATIYAH I District- Supaul

{Against the Judgment of acquittal dated 03.01.2018 passed by the Presiding Officer, Fast Track Court-2, Supaul, in Sessions Trial No.62 of 2002 (Supplementary)}.

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Mahabir Mehta, Son of Rasiklal Mehta, Resident of Village- Kataiya, P.S.- Bhaptiyahi, District- Supaul.

... .. Appellant.

Versus

1. The State of Bihar.
 2. Gunilal Yadav, S/o Yogan Yadav.
 3. Yogendra Singh, S/o Mishrilal Singh.
 4. Trilok Singh, S/o Dinesh Singh.
 5. Suresh Singh.
 6. Dinesh Singh.
 - Both Respondents No. 5 and 6 Sons of Jageshwar Singh.
 7. Yogendra Singh, S/o Panchi Singh.
- All Residents of Village- Kataiya, P.S. Bhaptiyahi, District- Supaul.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Parmeshwar Mehta, Advocate.
For the State	:	Mr. A.K. Sinha, A.P.P.
For the Respondent Nos.2 to 7	:	Mr. Sanjay Kumar, Advocate.
		Mr. Arun, Advocaee.

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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 : 25-06-2018

Heard learned counsel for the appellant as well as learned counsel appearing for the respondent nos.2 to 7 and also heard the learned Additional Public Prosecutor for the State.

2. The above stated appeal has been preferred against



the Judgment of acquittal dated 03.01.2018 passed by the Presiding Officer, Fast Track Court-2, Supaul, in Sessions Trial No.62 of 2002 (Supplementary), by which and whereunder the learned trial court acquitted the respondent nos.2 to 7 of the charges framed against them for the offences punishable under Section 302 and other minor Sections of the Indian Penal Code.

3. The appellant is the informant of Bhaptiahi P.S. Case No.23 of 1989 and claimed that on 03.12.1989, the respondent nos.2 to 7 and others were cutting the paddy from his field and when he as well as others including the deceased went to forbade them, the respondent nos.2 to 7 and their associates became furious and respondent no.5 ordered their associates to kill and, thereafter, he as well as his associates started fleeing and went running into the house of Ram Kishun Mehta, where they hide themselves, however, the respondent nos.2 to 7 as well as their associates encircled the house of Ram Kishun Mehta and they made attempt to enter the house by breaking the door of the said house and, thereafter, he as well as his associates came out of the house but the respondent no.6 shot arrow, which caused injury on the chest of Yugeshwar Mehta and, thereafter, the respondent no.2 shot arrow, which caused injury on the chest of Badrinarayan Singh. However, in



the meantime, having heard the noise, villagers came there and seeing the villagers, the respondent nos.2 to 7 and their associates fled away from there. The injured persons were brought to the hospital but the injured Yugeshwar Mehta died of injuries.

4. The respondent nos.2 to 7 and others were charge-sheeted by the police and cognizance of the offence was taken and, accordingly, the respondent nos.2 to 7 were put on trial before the court below and, accordingly, they stood charged for the offences punishable under Sections 147, 148, 324, 452, 307, 302 read with Section 149 and 447 of the Indian Penal Code. The charges were read over and explained to the respondent nos.2 to 7 but they denied the charges and claimed to be tried.

5. In course of trial, the prosecution examined, altogether, 6 witnesses to prove the charges levelled against the respondent nos.2 to 7 and the statements of the respondent nos.2 to 7 were recorded under Section 313 of the Code of Criminal Procedure in which they reiterated their innocence. No evidence was adduced by the respondent nos. 2 to 7 in support of their defence but in their statements recorded under Section 313 of Cr.P.C., they claimed that they were falsely implicated in the case on account of village politics.



6. The learned court below having scrutinized the evidences, available on the record, acquitted the respondent nos. 2 to 7 on the ground that the prosecution failed to prove the charges levelled against the respondent nos.2 to 7.

7. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal, arguing that the learned trial court did not properly appreciate the evidences, available on the record, as a result whereof, the learned court below came to wrong conclusion. Learned counsel for the appellant further submits that, in course of trial, the informant as well as other witnesses supported the prosecution story but, even then, the learned trial court acquitted the respondent nos. 2 to 7 only on the ground of surmises and conjunctures and, therefore, the impugned Judgment of acquittal cannot sustain in the eye of law.

8. On the other hand, learned counsel appearing for the respondent nos.2 to 7 supported the impugned Judgment of acquittal, arguing that, in course of trial, the prosecution witnesses made contradictory statements in respect of the alleged occurrence and the learned trial court having noticed the aforesaid contradictions, acquitted the respondent nos.2 to 7, giving benefit of doubt to them. He further submitted that the



so-called injured Badrinarayan Singh as well as Ram Kishun Mehta, in whose house, allegedly, the informant and others had taken shelter were not examined by the prosecution in course of trial and the non-examination of the aforesaid witnesses, created doubt about the genuineness of the prosecution story and the aforesaid fact was noticed by the trial court while writing the Judgment of acquittal. He further submitted that, moreover, neither Investigating Officer nor doctor was examined and the non-examination of Investigating Officer and doctor was fatal to the prosecution case and, therefore, the learned trial court rightly passed the Judgment of acquittal in favour of the respondent nos.2 to 7.

9. Having heard the contentions of both the parties, we went through the records along with the Lower Court Records.

10. We find that, in course of trial, the prosecution examined the appellant as P.W.5 and apart from P.W.5, the prosecution examined P.W.1 Chandeshwar Saw, P.W.2 Dasai Mehta, P.W.3 Biku Mahto, P.W.4 Anand Singh and P.W.6 Munga Lal Sardar. The learned trial court has discussed the evidences of the aforesaid prosecution witnesses and found that there was land dispute between the parties. Furthermore, we



find that the learned trial court doubted the deposition of P.W.5 on the ground that he had no talk with Ram Kishun Mehta and his wife. Furthermore, the learned trial court has noticed that P.W.4 was not an eye witness of the alleged occurrence. The learned trial court also noticed that P.W.3, namely, Biku Mahto, demolished the entire prosecution case vide parargaph-5 of his cross examination as at paragraph-5 of his cross examination, the aforesaid P.W.3 stated that the respondents Suresh, Dinesh, Umesh and Lal Singh were cutting the grass from the place of the occurrence, whereas it is specific case of the prosecution that the respondent nos.2 to 7 as well as their associates were harvesting the paddy from the field of the informant and, therefore, we are of the view that the learned trial court rightly observed that the aforesaid statements of P.W.3 created doubt about his presence over place of occurrence. Furthermore, we find that the learned trial court noticed that P.W.2 did not name those accused, who caused injuries to the deceased Yugeshwar Mehta and the injured Badrinarayan Singh and, similarly, the learned trial court noticed that P.W.1 is not an eye witness of the alleged occurrence.

11. Admittedly, the Investigating Officer and the doctor were not examined in course of trial and non-



examination of the Investigating Officer and the doctor caused serious prejudiced to the respondent nos.2 to 7. The impugned Judgment is well discussed and, therefore, we do not find any ground to interfere into the impugned Judgment of acquittal and, accordingly, this appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
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