

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.723 of 2018

Arising Out of PS. Case No.-120 Year-2000 Thana- RAFIGANJ District- Aurangabad

Awdhesh Kumar Yadav @ Awdhesh Yadav, S/o Ram Prasad Yadav, R/o
Village- Chandrahata, P.S.- Rafiganj, District- Aurangabad (Bihar).

... .. Appellant

Versus

1. The State of Bihar.
2. Chalitar Yadav, S/o Late Bholu Yadav,
3. Dinesh Yadav, S/o Chalitar Yadav,
4. Naresh Yadav, S/o Chalitar Yadav,
5. Nanhaku Yadav @ Janeshwar Yadav, S/o Indradeo Yadav,
6. Ramu Yadav @ Ramnandan Yadav, S/o Tapeswar Yadav,
7. Tapeswar Yadav, S/o Late Mato Yadav,
8. Kapildeo Yadav, S/o Alakhdeo Yadav,

All are R/o Village- Chandrahata, P.S.- Rafiganj, District- Aurangabad
(Bihar).

... .. Respondents

Appearance :

For the Appellants	:	Shri Ram Chandra Singh, Adv. Mr. Lal Bahadur Singh, Adv. Mr. Ashok Kumar, Adv.
For the Private Respondents:		Mr. Dharendra Kumar Sinha, Adv.
For the State	:	Mr. Shivesh Chandra Mishra, APP

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

Date : 19-12-2018

1. Heard learned counsel appearing for the appellant as well as learned counsel appearing for respondents no. 2 to 8 on the point of admission as well as on I. A. No. 2165 of 2018.

2. I. A. No. 2165 of 2018 has been filed on behalf of the appellant under Section 378(3) of the Cr. P. C for grant of leave to file this criminal appeal.



3. The appellant is son of injured Ram Prasad Yadav and therefore, he has right to file appeal, if the accused has been convicted for lesser offence. Accordingly, I. A. No. 2165 of 2018 stands allowed and the appellant is permitted to pursue this criminal appeal.

3. This criminal appeal has been preferred against the judgment dated 18.04.2018 passed by learned Additional Sessions Judge, III, Aurangabad in S. T. No. 407/2017/324/2018 by which and whereunder, the learned trial court acquitted the respondents no. 2 to 8 from the charge framed under Section 307/149 of the I.P.C. but convicted them for the offences punishable under Sections 147 and 148 of the I.P.C.

4. Learned counsel appearing for the appellant submits that there was sufficient material available before the trial court to convict the respondents no. 2 to 8 for the offence punishable under Section 307/149 of the I.P.C. but the learned trial court wrongly acquitted the above stated respondents from the charge framed under Section 307/149 of the I.P.C. Continuing his submission, he submitted that injured Ram Prasad Yadav sustained injury on his head and the doctor, specifically, stated in his cross examination that the aforesaid injury was dangerous to his life and, therefore, the aforesaid fact clearly goes to show that the respondents no. 2 to



8 had intention as well as knowledge that the injury caused to injured Ram Prasad Yadav may kill him and, therefore, in the aforesaid circumstance, the learned trial court has committed error in acquitting the respondents no. 2 to 8 from the charge of Section 307/149 of the I.P.C.

5. On the other hand, learned counsel appearing for the respondents no. 2 to 8 supports the impugned judgment arguing that the learned trial court has passed well thought judgment and as a matter of fact, the injured sustained simple injury and moreover, the learned trial court doubted the injury of injured on the ground of contradictory statements made by the witnesses in course of trial because the statements of witnesses were not corroborated by the injury reports.

6. Having heard the contentions of both the parties, we went through the record as well as lower court record and in our view, this criminal appeal can be disposed of on admission stage itself.

7. Rafiganj P.S. Case No. 120 of 2000 was registered against the respondents no. 2 to 8 on 05.11.2000 on the basis of ferdbeyan of PW-5 who claimed that while his father along with others were sitting at his door, the respondents no. 2 to 8 came there and started assaulting him, his father, his brother Umesh



Yadav (PW-1) as well as Guru Charan Yadav (PW-3) by means of deadly weapons.

8. The respondents no. 2 to 8 were put on trial after submission of charge sheet and they stood charged for the offences punishable under Sections 147, 307/149 of the I.P.C. whereas respondent no. 4 was separately charged for the offence punishable under Sections 148 and 307 of the I.P.C.

9. In course of trial, prosecution examined, altogether ten witnesses and got exhibited injury reports as Ext. 2 series.

10. The learned trial court doubted the testimonies of prosecution witnesses on the ground that claim of the injured witnesses do not corroborate with the injury reports as the injured witnesses claimed that fasuli was used in causing the injury but only lacerated wound was found on the person of the injureds. However, the learned trial court concluded that the prosecution succeeded to prove that the respondents no. 2 to 8 were present on the place of occurrence having formed an unlawful assembly and at that time, respondent no. 4 was carrying fasuli in his hand and that is the reason the learned trial court convicted the respondents no. 2 to 8 for the offences punishable under Sections 147 and 148 of the I.P.C.



11. It is the case of the prosecution that altogether four persons sustained injury in the aforesaid occurrence and the prosecution brought injury reports of all the injureds of the case. There is nothing on the record to disbelieve the above stated injury reports nor the learned trial court has observed that the injury reports (Ext. 2 series) were manufactured documents. Therefore, it is obvious that prosecution succeeded to prove this fact that on the alleged dated of occurrence the injureds of this case had sustained injury. The learned trial court has also admitted that respondents no. 2 to 8 were present on the place of occurrence when the occurrence had taken place and at that time they were armed with weapons because the learned trial court has convicted them for the offence punishable under Section 148 of the I.P.C. No doubt, the prosecution witnesses claimed that respondent no. 4 had given fasuli blow causing head injury to injured Ram Prasad Yadav but the doctor found lacerated wound on the parietal region of scalp of injured Ram Prasad Yadav and the doctor opined that the aforesaid injury was caused by hard and blunt substance. Therefore, it is obvious that no fasuli injury was found on the head of the injured Ram Prasad Yadav because fasuli is sharp edged weapon and if fasuli is used for causing injury to any person, the said person would receive sharp cut wound. However, it is well known fact



that the witnesses may make exaggerated statements but it is the duty of the court to find out truth from the statements of witnesses. In the present case, the presence of respondents no. 2 to 8 as well as injury on the person of injureds are proved and, therefore, it cannot be said that the respondents no. 2 to 8 had not assaulted the injureds of this case. Moreover, it is an admitted position that no X-ray report was produced in respect of injury of injured Ram Prasad Yadav and the opinion regarding nature of the aforesaid injury could not be brought by the prosecution on the record. Therefore, the injury of Ram Prasad Yadav shall be treated as simple injury. It is also an admitted position that remaining injureds, too, sustained simple injury and, therefore, we are of the view that the learned trial court rightly acquitted the respondents no. 2 to 8 from the charge framed under Section 307/149 of the I.P.C. but learned trial court committed error in not convicting the respondents no. 2 to 8, except respondent no. 4 for the offence punishable under Section 323 of the I.P.C. and similarly, in not convicting the respondent no. 4 for the offence punishable under Section 324 of the I.P.C.

12. On the basis of aforesaid discussions, we are of the opinion that this appeal does not have any merit and liable to be dismissed on admission stage itself with modification that



respondents no. 2, 3, 5, 6, 7 and 8 are convicted under Section 323 of the I.P.C. and respondent no. 4, namely, Naresh Yadav is convicted under Section 324 of the I.P.C.

13. Admittedly, the alleged occurrence took place in the year 2000 i.e. more than 18 years ago and the learned trial court released the respondents no. 2 to 8 under Section 4 of Probation of Offenders Act with condition that they shall keep good conduct for a period of one year. Admittedly, nothing has been brought on record to show that during probation period, the respondents no. 2 to 8 had repeated any offence or had violated the conditions as imposed upon them under Section 4 of Probation of Offenders Act and, therefore, in our view, there is no need to interfere into the order of sentence.

14. On the basis of aforesaid discussions, this criminal appeal stands dismissed on admission stage itself with the aforesaid modification.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-rajeev

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	03.01.2019
Transmission Date	03.01.2019

