

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.483 of 2019

In
CRIMINAL APPEAL (SJ) No.120 of 2019

Arising Out of PS. Case No.-5 Year-2009 Thana- BAIKUNTHPUR District- Gopalganj

Bishwanath Prasad Son of Nagina Prasad Resident of Village-Bhagwanpur,
P.O and P.S.-Baikunthpur, District-Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ram Narain Rai Son of Late Jamadar Rai Resident of Village-Baikunthpur, P.S-Baikunthpur, District-Gopalganj.
3. Sikandra Rai Son of Ram Narain Rai Resident of Village-Baikunthpur, P.S-Baikunthpur, District-Gopalganj.
4. Satyendra Rai Son of Ram Narain Rai Resident of Village-Baikunthpur, P.S-Baikunthpur, District-Gopalganj.
5. Kisun Rai Son of Bharat Rai Resident of Village-Baikunthpur, P.S-Baikunthpur, District-Gopalganj.
6. Bharat Rai Son of Jamadar Rai Resident of Village-Baikunthpur, P.S-Baikunthpur, District-Gopalganj.
7. Harindra Rai Son of Bharat Rai Resident of Village-Baikunthpur, P.S-Baikunthpur, District-Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Satyendra Narayan Singh, Advocate Mr.Kapil Deo Singh, Advocate
For the Respondent/s	:	Mr. S.B. Verma, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 07-05-2019

Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State on the point of admission and, in our view, this criminal appeal can be



disposed of on admission stage itself.

2. The grievance of the appellant is that the prosecution witnesses clearly proved that the private respondents no. 2 to 7 assaulted the injured with intention to kill him but the learned Trial Court did not convict the respondents no. 2 to 7 for the offences punishable under Section 307 of the Indian Penal Code and 27 of the Arms Act.

3. The respondents no. 2 to 7 faced trial in Sessions Trial No. 14 of 2010 and the learned Trial Court, after full-fledged trial, convicted the respondents no. 5, 6 and 7 for the offence punishable under Section 323 of the Indian Penal Code, whereas, acquitted the remaining respondents from the charges framed against them for the offences punishable under Sections 323/149,325/149,147,148,307/149 of the Indian Penal Code and 27 of the Arms Act.

4. Learned counsel appearing for the appellant submits that in course of trial, injured Bishwanath Prasad and Jitendra Manjhi, were examined and they, specifically, stated that respondents no. 2 to 7 assaulted them with lethal weapons i.e., farsa and lathi and in that course, respondent no. 6 opened fire but luckily, the aforesaid injured escaped unhurt and the fire hit on the tractor. He, further, submits that the Doctor, who had



examined both the injured, proved the injury report and the statement of Doctor as well as injury report goes to show that Jitendra Manjhi had sustained sharp cutting injury on his neck but the learned Trial Court did not take note of the aforesaid fact and acquitted the respondents no. 2 to 7 from the charge framed under Section 307 of the Indian Penal Code and 27 of the Arms Act.

4. On the other hand, learned Additional Public Prosecutor appearing for the State submits that the learned Trial Court has passed a well discussed judgment and also dealt with the prosecution witnesses and thereafter, came to conclusion that no case under Sections 307 of the Indian Penal Code and 27 of the Arms Act is made out and, therefore, there is no need to interfere into the impugned judgment of acquittal.

5. Having heard the contentions of both the parties, we went through the impugned judgment. We find that the respondents no. 2 to 7 were charged under different heads and the Trial Court having examined the statements of prosecution witnesses as well as the documentary evidences, came to conclusion that prosecution failed to prove charge under Section 307 of the Indian Penal Code and Section 27 of the Arms Act. The perusal of the impugned judgment, further, goes to show



that the learned Trial Court noticed the contradictions occurred in the statements of prosecution witnesses and, moreover, we find that injured Bishwanath Prasad, did not sustain any injury caused by farsa as all the injuries found on the person of the Bishwanath Prasad, were caused by hard and blunt substance and except one, all the injuries were simple in nature. Similarly, injured Jitendra Manjhi, sustained only one sharp cut injury on his neck but the learned Trial Court dealt with the aforesaid fact at para 19 of the impugned judgment and noticed that injury found on the neck of injured Jitendra Manjhi, was 1.5" x 1.4" x skin deep and the Doctor admitted in his cross-examination that the aforesaid injury might be caused by blade. The learned Trial Court also noticed that the farsa is a heavy weapon and if injury on the neck is caused by farsa that injury might be longer and width. The injury found on the neck of Jitendra Manjhi, therefore, appears to be manufactured. It is obvious from perusal of para 19 of the impugned judgment that the learned Trial Court has doubted the genuineness of injury report of Jitendra Manjhi.

6. It is well settled principle of law that if on the same set of evidence two views are possible, the view taken by the Trial Court shall prevail unless the view of the Trial Court is



found perverse and absurd. We do not find any perversity or absurdity in the view taken by the learned Trial Court and therefore, in our view, this appeal is devoid of merit and is liable to be dismissed on admission stage itself. Accordingly, this appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Prakash/Sushma

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

