

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.995 of 2018

Arising Out of PS. Case No.-21 Year-2012 Thana- NIRMALI District- Supaul

Danlal Sah, son of Ram Sundar Sah, resident of village-Dighiya P.S.
Nirmali, District-Supaul.

... .. Appellant

Versus

1. The State Of Bihar,
2. Shiv Lal Yadav,
3. Darpi Yadav, both sons of Satto Yadav,
4. Jugut Lal Yadav @ Jugut Yadav, son of Shiv Lal Yadav,
5. Satya Narayan Yadav, son of Darpi Yadav,
6. Jai Narayan Yadav, son of Darpi Yadav,
7. Ram Sagar Sah, son of Moti Sah,
8. Lalo Sada @ Lalu Sada, son of Mukar Sada and
9. Baldeo Yadav, son of Shiv Lal Yadav, 2 to 9, resident of village-Dighiya,
P.S.Nirmali, District-Supaul.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Prafull Chandra Thakur, Advocate
For the Respondent	:	Mr. Abhimanyu Sharma, APP

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

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

10 11-07-2019 Heard learned counsel for the appellant, learned
counsel for the respondent nos.2 to 9 and learned Additional
Public Prosecutor for the State in connection with I.A.No.3309
of 2018 as well as on the point of admission and in our view this
criminal appeal can be disposed of on admission stage itself.

2. I.A.No.3309 of 2018 has been filed on behalf of
appellant under Section 378(3) of the Cr.P.C. seeking leave to
file and pursue this criminal appeal. Since the appellant happens
to be injured witness and informant of the case, he has statutory



right to file appeal against the judgment of acquittal. Accordingly, I.A.No.3309 of 2018 stands disposed of.

3. This criminal appeal has been preferred by the appellant against the judgment of acquittal dated 15.05.2018 passed in Sessions Trial No.160 of 2015 by the learned Fast Track Court No.-II, Supaul whereby and whereunder the trial Court has acquitted the respondents on the charges framed against them.

4. The prosecution case as per the fardbeyan of the informant is that on 08.04.2012 his brother, Rameshwar Sah got information that Baldeo Prasad Yadav (respondent no.9) is cutting soil from Mahar to fill his Gadda upon which this appellant along with his brother Rameshwar Sah, Prabhu Sah, Indrajit Singh, Mukesh Kumar Singh and Shiv Narayan Yadav reached the place of occurrence. He further stated that he along with his brother Rameshwar Sah went on motorcycle on *Bandh* and protested the cutting of soil upon which Baldeo Yadav assaulted the informant on head with spade and thereafter Shivilal Yadav, Darpi Yadav, Yugul Lal Yadav, Lalo Yadav, Satynarayan Yadav, Jainarayan Yadav and Ram Sagar Sah variously armed with *lathi* and *danda* started assaulting the informant, his brother Rameshwar Sah and his nephew Rohit



Kumar. It is further alleged that all the accused persons also snatched his motorcycle which was containing cash of Rs.50,000/- in the dickey.

5. On the basis of aforesaid fardbeyan Nirmali P.S.Case No.21 of 2012 dated 08.04.2012 was registered against all the accused persons for offence registered under Sections 147, 341, 323, 325, 307 and 504 of the Indian Penal Code. The police after investigation submitted chargesheet and the learned trial Court after taking cognizance of the offence committed the case to the Court of Sessions for trial and disposal. After framing of the charge under the aforesaid Sections to which respondents/accused pleaded innocence and claimed to be tried.

6. The prosecution in order to prove its case examined altogether seven witnesses. PW-1 Rameshwar Sada, PW-2 Indrajit Singh, PW-3 Rohit Kumar Sah, PW-4 Prabhu Lal Sah, CW-1 Danalal Sah, CW-2 Rameshwar Sah brother of the informant and CW-3 Dr. Akhilesh Kumar Jha who examined the injured persons. The statements of the accused persons were recorded under Section 313 Cr.P.C. in which they denied the occurrence and claimed to be innocent.

7. Learned counsel appearing on behalf of the appellant challenged the impugned judgment of acquittal and



submitted that the trial Court has committed error in not appreciating the evidence in proper perspective. It was further submitted on behalf of the appellant that there is specific evidence of assault on the informant and other two persons by the accused persons which has been fully supported by PW-3 (Rohit Kumar) in his deposition. He further took us through paragraph-9 and other relevant paragraphs of the impugned judgment to fortify his contention. He further submitted that the impugned judgment of acquittal is not in accordance with facts of the case and it will amount to failure of justice and, therefore, this Court should interfere into the impugned judgment of acquittal.

8. On the other hand, learned counsel for the respondent nos.2 to 9 has supported the impugned judgment of acquittal and argued that the trial Court after taking into consideration, entire facts and circumstances of the case including vital contradictions in the deposition of witnesses has rightly passed the order of acquittal. He further referred to paragraphs-7 to 11 of the impugned judgment and submitted that the trial Court has taken note of the inconsistencies in the deposition of witnesses. He further submitted that in the aforesaid facts and circumstances, the trial Court has passed the



well discussed judgment and considered all the materials available on record and, therefore, there is no need to interfere into the impugned judgment of acquittal.

9. Learned Additional Public Prosecutor also supported the impugned judgment and adopted the submissions made on behalf of the respondents in support of the impugned judgment.

10. Having heard the rival contentions of the parties, we went through the lower court record as well as the impugned judgment and it would appear from perusal of the impugned judgment of acquittal that the trial Court after analyzing the evidence and testimonies of the witnesses and perusing the materials available on record passed the impugned judgment of acquittal which is under challenge. The trial Court has discussed the evidence of witnesses in paragraph nos.7 to 11 of the impugned judgment and after taking into consideration of the vital contradiction of the deposition witnesses has rightly doubted the credibility of the deposition of witnesses. In paragraph-7, it has been noted that the informant CW-1 Danalal Sah though supported the case of the prosecution-in-chief but in paragraph-16 of the cross-examination has stated that though he went to the police station but his statement was not recorded in



the police station. He further stated in paragraph no.21 of his cross-examination that four cases are pending between him and the accused persons. In paragraph no.8 of the impugned judgment, the statement of CW-2 Rameshwar Sah has been recorded in which he supported the prosecution case but in the entire chief and cross-examination, he has not whispered about the motorcycle which is said to have been used by the informant to reach the place of occurrence. As per the fardbeyan, in paragraph no.9 of the impugned judgment, PW-3 who is the nephew of the informant and claims to be an eye witness of the occurrence but in paragraph no.6 of the cross-examination, he has specifically stated that he went to the place of occurrence but he did not find any one injured. In paragraph no.10 of the impugned judgment, the trial court has discussed the evidence of CW-3 who is the doctor and examined the injured persons. It is important to note here that PW-2 Indrajit Singh who is the fardbeyan witness has been declared hostile. Similarly, PW-1 Rameshwar Sah has also been declared hostile. PW-4 Prabhulal Sah who according to fardbeyan went along with the informant to the place of occurrence has also been declared hostile. Apart from that in this case I.O. has not been examined as a result the place of occurrence has not been brought on record. No doubt



the non-examination of I.O. is fatal and has prejudiced the accused persons.

11. After considering the aforesaid facts and circumstances and the vital contradictions in the deposition of witnesses, the trial court has rightly doubted the credibility of the witnesses and passed the impugned judgment of acquittal. It is well settled principle of law that the finding of acquittal recorded by the learned trial Court cannot be disturbed unless the said finding appears to be absurd, perverse or without consideration of evidence but in the present case as we have already discussed and stated that the trial court after having considered the evidence in details as well as the facts and circumstances of the case passed the impugned judgment, and, therefore, we are of the opinion that there is no need to interfere into the impugned judgment. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

Brajesh Kr./-

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(Prabhat Kumar Singh, J)

