

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1086 of 2017**

Arising Out of PS. Case No.-50 Year-2007 Thana- SIMULTALLA District- Jamui

Basudeo Yadav, S/o Late Sobhi Yadav Yadav, Resident of Village Panna,
Police Station Simultalla, District- Jamui. Appellant/s

Versus

1. The State of Bihar
2. Kamli Devi, W/o Jaleshwar Yadav,
3. Nira Devi, W/o Sukhdeo Yadav,
4. Jitendra Kumar Yadav, S/o Sukhdeo Yadav,
5. Jaleshwar Yadav,
6. Sukhdeo Yadav, Both S/o Late Shobhi Yadav, All are resident of Village-
Panna, Police Station- Simultalla, District- Jamui.
7. Sokho Yadav, S/o Late Dagan Yadav, Resident of Village- Muskorwa, P.S.
Chanan, District Banka.

... .. Oppostie Parties

Appearance :

For the Appellant/s : Mr.Prabhat Ranjan Singh
For the Respondent/s : Mr. Abhimanyu Sharma

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

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

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

Date : 16-05-2019

Heard learned counsel for the appellant, learned
Additional Public Prosecutor for the State as well as learned
counsel appearing for respondents no. 2 to 7 on I.A. No. 2093 of
2017 as well as on the point of Admission.

2. I.A. No. 2093 of 2017 has been filed on behalf of
appellant for grant of Special Leave to file this appeal. Appellant
happens to be injured and, therefore, he has statutory right to file
appeal against the judgment of acquittal. Accordingly, I.A. No.
2093 of 2017 stands disposed of.



3. This criminal appeal has been preferred against the impugned judgment of acquittal dated 29.06.2017 passed by learned Additional Sessions Judge, F.T.C.-I, Jamui, in Sessions Trial No. 142 of 2009, by which and whereunder, he acquitted the respondents no. 2 to 7 from the charges framed against them for the offences punishable under Sections 307/149, 148, 324, 325, 452, 380 of the Indian Penal Code, 27 of the Arms Act and 3 and 4 of the Explosive Substance Act.

4. Simultalla P.S. Case No. 50 of 2007 for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 307, 452, 380 of the Indian Penal Code, 27 of the Arms Act as well as 3 and 4 of Explosive Substance Act was registered against respondents no. 2 to 7 on the basis of fard-e-beyan of P.W. 5 who claimed that on 29.11.2007, while he along with his family members was at his house, respondents no. 2 to 7 being armed with deadly weapons entered into his house and assaulted him by means of their respective weapons and also committed theft in his house and while leaving the place of occurrence, they not only opened fire but also exploded bomb.

5. The respondents no. 2 to 7 stood charged for the offences punishable under Sections 307/149, 324, 325, 148 and 380 of the Indian Penal Code, whereas the respondent No. 4 Jitendra Kumar Yadav stood, separately, charged for the offences punishable under Section 27 of the Arms Act and Sections 3 as



well as 4 of Explosive Substance Act and, similarly, the respondents Jaleshwar Yadav, Sukhdeo Yadav, Jitendra Kumar Yadav, Nira Devi and Kamli Devi stood, separately, charged for the offence punishable under Section 452 of the Indian Penal Code.

6. In course of trial, altogether, five prosecution witnesses including the appellant (informant-cum-injured) were examined and the prosecution got exhibited injury report as well as other documents. The learned Trial Court having analyzed the prosecution evidence, passed the judgment of acquittal doubting the claim of P.W. 5.

7. Learned counsel appearing for the appellant submits that the learned Trial Court, while passing the impugned judgment did not take note of injury report, which was marked as Ext. 3. He submits that Ext. 3 goes to show that P.W. 5 sustained, altogether, eight injuries but the learned Trial Court, while writing judgment of acquittal, mentioned only one injury in the impugned judgment and, therefore, the aforesaid fact goes to show that the learned Trial Court did not consider the prosecution evidence, while writing the judgment of acquittal. He, further, submits that the learned Trial Court based its findings only on the ground of non-examination of investigating Officer. He submits that no doubt, the Investigating Officer was not examined by the prosecution but there was nothing on the record to show that the non-examination of Investigating Officer caused prejudice to the defence and, therefore, the learned



Trial Court committed error in acquitting the respondents no. 2 to 7.

8. On the other hand, learned counsel appearing for the respondents no. 2 to 7 supports the impugned judgment of acquittal arguing that the learned Trial Court passed a well thought and well discussed judgment. He submits that the appellant and the respondents no. 2 to 7 are agnates and the prosecution witnesses admitted that at the time of alleged occurrence, appellant as well as respondents no. 2 to 7 were residing in the same house. He further submits that the learned Trial Court noted that prior to institution of the present case, there were several litigations between the parties and taking note of the aforesaid fact, the learned Trial Court gave benefit of doubt to respondents no. 2 to 7.

9. As we have already stated that the prosecution examined, altogether, 5 witnesses to bring the respondents no. 2 to 7 guilty home. Out of the aforesaid 5 prosecution witnesses, the appellant (injured) was examined as P.W.5. P.W. 5, specifically, stated the name of assailants in his examination-in-chief and he also narrated the manner of occurrence. The Doctor, who had examined the P.W. 5 after the alleged occurrence, was examined as P.W. 4 and he found that P.W. 5 had sustained, altogether, eight injuries which are as follows :

- “i) Lacerated wound 2.1/2” x 1/5” x muscle deep on head.
- ii) Lacerated wound 1” x 1/5” x skin deep on right shoulder.



- iii) Lacerated wound 1" x 1/4" x skin deep left leg.
- iv) Swelling 4" x 2" on left elbow.
- v) Swelling right elbow 4" x 1"
- vi) Incised wound 1" x 1/5" x skin deep on right palm.
- vii) Swelling on left leg 3" x 2"
- viii) Swelling on right leg with foot 6" x 1" with marked tenderness.

10. P.W. 4 also found that all the above stated injuries, except injury no. (viii), were simple in nature and all the aforesaid injuries except injury no. (vi) were caused by hard and blunt substance.

11. From conjoint perusal of statements of P.Ws 4 and 5, we find that P.W. 5 sustained eight injuries but the learned Trial Court did not take note of the aforesaid fact and only mentioned about injury no. (viii) in the impugned judgment.

12. Admittedly, the respondents no. 2 to 7 were charged for the offences punishable under Sections 380, 452 of the Indian Penal Code, 27 of the Arms Act and 3 and 4 of Explosive Substance Act but it has come in prosecution evidence that the appellant and respondents no. 2 to 7 were residing in a joint house at the time of alleged occurrence and, therefore, the offence of Section 452 of the Indian Penal Code is not, at all, attracted. So far as Section 380 of the Indian Penal Code is concerned, the prosecution could not succeed to prove the aforesaid charge of Section 380 of the Indian Penal Code beyond all shadow of



reasonable doubts. Similar position is in respect of Section 27 of the Arms Act and so far as Sections 3 and 4 of Explosive Substance Act are concerned, admittedly, no sanction was obtained by the prosecution and taking note of the aforesaid fact, the learned Trial Court acquitted the respondents no. 2 to 7 from the charges framed against them for the offences punishable under Sections 3 and 4 of the Explosive Substance Act. Therefore, in our view, the learned Trial Court rightly acquitted the respondents no. 2 to 7 from the charges framed under Sections 452, 380 of the Indian Penal Code, 27 of the Arms Act and 3 and 4 of the Explosive Substance Act.

13. Learned Trial Court has acquitted the respondents no. 2 to 7 from the charges framed under Sections 307 read with Section 149, 324, 325 and 148 of the Indian Penal Code only on the ground of previous litigations as well as non-examination of the Investigating Officer but, in our view, the learned Trial Court committed error in acquitting the respondents no. 2 to 7 from the aforesaid charges on the above stated ground. However, Ext. 3 as well as testimony of P.W. 4 goes to show that P.W. 5 sustained simple injuries except injury no. (viii) which is not on the vital part of the body. Therefore, it is obvious that the respondents no. 2 to 7 had no intention to commit the murder of P.W.5 and, furthermore, they had no knowledge that the injuries caused by them to P.W. 5 might cause the death of P.W. 5. Therefore, in our view, the



prosecution could not succeed to prove the charge framed under Section 307 read with Section 149 of the Indian Penal Code against the respondents no. 2 to 7.

14. It is admitted position that X-ray plate and X-ray report of injury no. (viii) of P.W. 5 was not exhibited by the prosecution and, therefore, in absence of X-ray plate and X-ray report of injury no. (viii) of P.W. 5, it is very difficult to believe that P.W. 5 had sustained grievous injury, and, therefore, in our view, the offence of Section 325 of the Indian Penal Code is also not made out and, at best, it can be said that the respondents no. 2 to 7 committed the offence of Section 323 of the Indian Penal Code.

15. No doubt, the learned Trial Court has not dealt with the prosecution evidence properly, while writing the judgment of acquittal, but taking note of the fact that alleged occurrence took place in the year 2007 and prosecution could only succeed to prove the offence under Section 323 of the Indian Penal Code, there is no need to remand the matter to the learned lower court for passing afresh judgment and, accordingly, this criminal appeal is partly allowed and the impugned judgment of acquittal is altered to this extent that respondents no. 2 to 7 are, hereby, found guilty for the offence punishable under Section 323 of the Indian Penal Code and, accordingly, they are convicted thereunder.



16. Since the parties are agnates and the occurrence took place in the year 2007 on account of land dispute, we think it proper to sentence and release the respondents no. 2 to 7 for the offence under Section 323 of Indian Penal Code after due condemnation and, accordingly, the respondents no. 2 to 7 are sentenced in the above stated manner.

17. In the aforesaid manner, this criminal appeal stands disposed of.

(Hemant Kumar Srivastava, J)

(Partha Sarthy, J)

Sushma/Prakash

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

