

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1077 of 2019**

**In
CRIMINAL APPEAL (SJ) No.1761 of 2019**

Arising Out of PS. Case No.-115 Year-2002 Thana- FATUA District- Patna

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Uday Kumar Singh, aged about 44 years, Male, son of Harendra Singh,
Resident of Village - Kansari, P.S.- Gaurichak, Distt - Patna, Bihar.

... .. Appellant

Versus

1. The State of Bihar
2. Braj Kishore Singh @ Bhola Singh, son of Late Janak Singh, Resident of Village - Kansari, P.S.- Gaurichak, Distt - Patna, Bihar.
3. Ravi Ranjan Singh @ Munna Singh, Son of Balmiki Singh, Resident of Village - Kansari, P.S.- Kansari, P.S.- Gaurichak, Distt - Patna, Bihar.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Anirudh Kumar Singh, Advocate
For the State	:	Mr. Bipin Kumar, APP
For the Resp. No. 2 & 3	:	Mr. Rakesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 09-01-2020

Heard learned counsel for the appellant, learned
APP for the State as well as learned counsel for the respondent
nos. 2 and 3.

2. The appellant is aggrieved by the impugned
judgment of acquittal dated 07.03.2019 passed by the Additional
District and Sessions Judge-IV, Patna City, in Sessions Trial No.
672 of 2003, arising out of Fatuha (Gaurichak) P.S. Case No.



115 of 2002, whereby and whereunder, he acquitted the respondent nos. 2 and 3 from the charges framed against them for the offence punishable under Sections 341, 337, 338, 307 and 427/34 of the Indian Penal Code.

3. The prosecution case moves in the manner that informant namely, Uday Kumar Singh, filed a written report to the S.H.O., Gaurichak Police Station on 23.08.2002, alleging therein that on 22.08.2002 at about 3:00 P.M. when he was looking after his garden, the accused persons and one Subhash Kumar came there and asked him not to sow plant. When the informant resisted, the accused persons became agitated and one Raj Kumar Singh and Deepak Kumar ran to kill the informant holding *farsa* in their hands. Upon which the informant ran to his house, but the accused persons followed him and broke open the door of the house of the informant and started brick-batting. It is also alleged that brick of accused - Rajiv Ranjan hit on his forehead and brick of accused - Brij Kishore Singh hit on his left eye, as a result of which he fell down. When his elder brother namely, Ajit Kumar, Banshi Bihari Singh and others came there, the accused persons fled away and they cut down four trees of his garden and they also restrained the informant from going to the Police Station by threatening that if he goes to



Police Station, he would be killed.

4. After investigation, the charge-sheet was submitted only against the two accused persons and the allegation against the other accused persons was found untrue. Out of 12 charge-sheet witnesses, the prosecution has produced altogether six charge-sheet witnesses in support of the case and all have been examined. The Court below after examining the record found that they have failed to prove the charges.

5. The Court below has considered the evidence of P.W.-1 namely, Harendra Singh, who is the father of the informant. This witness has stated that the stone thrown by Ravi Singh hit the eye of the informant but, in the cross-examination he has stated after his eye operated 10 years ago, he could barely see and the occurrence has taken place at two places and he gave the boundary of the same. P.W.-2 namely Ramvati Devi is the mother of the informant. She has stated in her evidence that while she was watching T.V., the informant came and shut the door but, the accused persons pushed open the door and started brick-batting, which hit the informant's forehead. The accused broke Khapra and cut three Sheesham and two wild trees. This witness also stated that the informant was treated in the village and next day, they went to Police Station and then



went to PMCH for treatment and whereafter the informant went to Delhi for treatment. This witness in her cross-examination has stated that she cannot say whose brick hit the informant. She also stated that the accused persons are her Pattidar, accused Brijkishore Singh @ Bhola Singh is her brother-in-law and accused Ravi Singh is her nephew.

6. P.W.-3-Uday Kumar Singh is the informant of this case. He supported the prosecution story and stated that on hearing noise, his brother Ajit Singh and his father and co-villager Banshi Bihari Singh came to help him, then the accused persons came outside the house and brick-batted, which broke Khapra and when his brother scolded them, they ran away. P.W.-4 namely, Ajit Kumar Singh, is the brother of the informant, has supported the prosecution case and stated that when he was returning from market he saw that the accused persons were pelting stones on his house and the ladies of the house was crying for help, when other co-villager came there, the accused persons fled away.

7. The Doctor has been examined as P.W.-5, who stated to have examined the victim Uday Kumar on 23.08.2002 and he has given the report on 05.10.2002 i.e. after about one and half month. In the cross-examination, this witness has stated



that such type of injury can happen due to motorcycle accident or falling on the door or other hard objects. He further stated that forehead injury was stitched but, not grievous in nature and no person could died due to such injury. P.W.-6 is the Investigating Officer of this case, who in his evidence has stated that he has visited the place of occurrence and found that bricks were scattered. In the cross-examination, he has stated that no material was found against other accused persons, so they were not sent for trial.

8. In the present case, on thing is there that only one person, who has received the injury, is the witness to the incident. Neither the family members is the witness to the incident nor any independent witness has come forward to support the prosecution case. Further, the eye of the victim is weak for last 10 yeas. At the same time, the occurrence is alleged to have taken place on 22.08.2002 whereas the F.I.R. has been lodged on 26.08.2002, there is a delay of about four days. The explanation has been given that on account of fear the victim could not move for lodging the F.I.R., whereas, the accused persons are the cousin brother of the informant and it has come in the evidence of the informant and another that when his brother scolded the accused persons, they ran away, so



the question of fear does not arise at all, inasmuch as, the doctor has given report after lapse of about one month and fifteen days, itself creates doubt about the story of the appellant. Moreover, the P.W.-2-Ramvati Devi, is claiming to be the eye witness but, she in her cross-examination has stated that she can not say whose brick hit the informant.

9. In such view of the matter, we do not find any ground to interfere with the impugned judgment of acquittal as because the findings given by the learned trial court are neither perverse nor absurd and therefore, in the aforesaid circumstance, we are of the opinion that this criminal appeal is liable to be dismissed.

10. Accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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