

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 859 of 2022

Arising Out of PS. Case No.-267 Year-2013 Thana- BIBHUTIPUR District- Samastipur

RAM PADARATH SAH Son of Nunu Sah Resident of village - Diyanathpur,
P.S.- Bibhutipur, District - Samastipur.

... .. Appellant

Versus

1. The State of Bihar
2. Birendra Sah Son of Shibu Sah Resident of village - Diyanathpur, P.S.-
Bibhutipur, District - Samastipur.
3. Kailu Sah Son of Late Anup Sah Resident of village - Diyanathpur, P.S.-
Bibhutipur, District - Samastipur.
4. Dayanand Sah @ Jaganand Sah Son of Late Chhathu Sah Resident of village
- Diyanathpur, P.S.- Bibhutipur, District - Samastipur.
5. Shibu Sah Son of Late Anup Sah Resident of village - Diyanathpur, P.S.-
Bibhutipur, District - Samastipur.

... .. Respondents

Appearance :

For the Appellant : Mr. Binod Kumar Sinha, Advocate

For the Respondent State: Mr. Parmeshwar Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 05-12-2022

This appeal has been filed under Section 372 of the Cr.P.C., putting to challenge a judgment and order dated 10.08.2022 passed by the learned Additional Sessions Judge-I, Rosera, Samastipur, in Sessions Trial No. 402 of 2014, arising out of Bibhutipur P.S. Case No. 267 of 2013, whereby the trial court has acquitted respondents No. 2 to 5 of the charges punishable under Sections 147, 148, 342/149, 307/149 of the IPC and Section 27(1) of the Arms Act and it has held the respondents no. 2 to 5



guilty of the offence punishable under Section 323/149 of the Indian Penal Code. The said respondents, however, have been directed to be released invoking Section 3 of the Probation of Offenders Act, 1958.

2. The prosecution's case, as unfolded in the *fardbeyan* of the informant (appellant), recorded by the Sub-Inspector of Agamkuan Police Station on 04.10.2013 at Mithila Emergency Hospital, Patna, is that on 29.09.2013 at about 09:15 P.M., the respondents entered into his house. Respondent no. 2 is said to have ordered one Pappu Sah to shoot the appellant dead, whereupon Pappu Sah fired a bullet, which hit the informant in his right shoulder. The bullet came out from his right chest. He was rushed to hospital and for better treatment he was admitted in Mithila Emergency Hospital, where he was undergoing treatment when his *fardbeyan* was recorded. A charge-sheet was submitted thereafter. Pappu Sah was declared juvenile as on the date of occurrence and, accordingly, his case was sent to the Juvenile Justice Board.

3. Charges were framed for commission the offences punishable under Sections 147, 148, 342/149, 307/149 of the IPC and Section 27(1) of the Arms Act. At the trial, altogether seven



witnesses were examined including the Investigating Officer (PW-6). PW-7 happened to be a formal witness.

4. The trial court, after having analyzed the evidence of the prosecutions witnesses reached a conclusion that there were certain discrepancies in the evidence of witnesses, but not such, as would render the entire case of the prosecutions doubtful. The court further reached the conclusion that the charges for commission of the offences punishable under Sections 147 and 323 read with 149 of the IPC stood proved beyond all reasonable doubts, but the remaining charges could not be established by the prosecution at the trial. The said conclusion is based on the reasoning that the injury, said to have been sustained by the informant, was not proved inasmuch as the doctor, who had given a certificate, was not produced at the trial despite several opportunities granted for the prosecution to examine him. Accordingly, the trial court reached a conclusion that the offence under Section 307 could not be said to have been proved.

5. The trial court has noted the evidence of prosecutions witnesses. It is not the case of the appellant that depositions of the witnesses have not been accurately described in the impugned judgment and order of the trial court. We have,



therefore, considered this appeal based on the evidence as mentioned in the judgment and order of the trial court.

6. Upon careful scrutiny of the evidence on record, we find that the trial court has rightly held that the charge under Section 307 of the Indian Penal Code could not be established beyond all reasonable doubts. Further, considering contradictions and absence of evidence, the charges under Section 147, 148, 342 of the Indian Penal Code and Section 27(1) of the Arms Act could also not be established. The said finding, in our opinion, is based on due appreciation and evaluation of the evidence adduced at the trial. We, at this juncture, note that after having convicted, the respondents of the offence punishable under Section 323 read with 34 of the IPC, the trial court has directed them to be released under Section 3 of the Probation of Offenders Act, 1958 after due admonition and with a direction that they would maintain peace and harmony in the society.

7. In the facts and circumstances of the case, the order, whereby the trial court has exercised its power under Section 3 of the Probation of Offenders Act, does not appear to be unreasonable. Learned counsel for the appellant has not been able to make out a case of undue exercise of power by the trial court under Section 3 of the Probation of Offenders Act.



8. Accordingly, we do not find any legal infirmity in the impugn judgment and order of the trial court. The appeal has no merit and is accordingly dismissed.

9. We make it clear that the finding recorded in the present judgment and order is confined to the appellant’s challenge to the impugned judgment and order of the trial court in an appeal under Section 372 of the Cr.P.C. This order shall in no manner prejudice the case of respondents no. 2 to 5 in any proceeding, should they seek to question the legality of the impugned judgment of their conviction.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

Pawan/-

AFR/NAFR	NAFR
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