

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.410 of 2022**

Arising Out of PS. Case No.-106 Year-2011 Thana- SALAKHUA District- Saharsa

=====

YOGENDRA YADAV ALIAS YOGENDRA KUMAR YADAV ALIAS
YOGENDRA KUMAR SON OF RAM KISHUN YADAV @ JAI KISHUN
YADAV RESIDENT OF VILLAGE- SITUWAHA DIH PS - SALKHUA
DISTRICT- SAHARSA

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. ARUN YADAV ALIAS ARUN KUMAR SON OF RAGHUNI YADAV
RESIDENT OF VILLAGE- SITUWAHA DIH P.S- SALKHUA DIST-
SAHARSA
3. NIRANJAN YADAV SON OF SATYANARAYAN YADAV RESIDENT OF
VILLAGE- SITUWAHA DIH P.S- SALKHUA DIST- SAHARSA
4. BRAHAMDEV YADAV SON OF CHHOTELAL YADAV RESIDENT OF
VILLAGE- SITUWAHA DIH P.S- SALKHUA DIST- SAHARSA
5. SANJAY ALIAS SANJEEV YADAV SON OF NIRANJAN YADAV
RESIDENT OF VILLAGE- SITUWAHA DIH P.S- SALKHUA DIST-
SAHARSA

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Diwakar Prasad Singh
For the Respondent/s : Dr. Sujit Kumar Singh

=====

**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)**

Date : 20-12-2023

1. Heard learned counsel for the appellant and
learned Additional Public Prosecutor appearing on behalf of the
respondents.



2. This appeal has been filed against the judgment of acquittal dated 17.03.2021 passed by the learned Presiding Officer, F.T.C., Saharsa in Sessions Trial No. 211 of 2012 and 05 of 2014/1427 of 2014 arising out of Salkhua P.S. Case No. 106 of 2011, whereby and whereunder the respondent nos. 2 to 5 have been acquitted from the charges framed under Sections 307/149, 302, 302/149, 147, 148, 504 and 506 of the Indian Penal Code and Section 27 of the Arms Act.

3. The prosecution case, in brief, is that the informant gave a *Fardbeyan* on 08.07.2011 at about 11:00 AM. stating therein that when the cattle of the informant was grazing in *Bahiyar* in the morning, at the same time Niranjana Kumar started sowing in his field, in the meantime, the informant came and stopped him from sowing seeds in the field. Thereafter, the respondent nos. 2 to 5 and twelve others came with arms in their hand and started beating the informant by *lathi* and *danda*. It is further alleged that on raising *hulla*, when brother of the informant Bijendra Yadav came, all the accused persons started assaulting him by *lathi* and *danda*, as a result of which, he died. The informant has claimed that he and his brother was assaulted by the all accused persons due to which his brother died.

4. Learned counsel for the appellant submits that



the judgment of the learned Trial Court is erroneous and grossly unjust in the facts and circumstances of the case. Further he submits that the learned Trial Court has failed to appreciate that when the evidence was closed in the case at that very time there was corona pandemic. He further contended that out of fifteen witnesses, only eight witnesses were examined. Therefore, learned counsel for the appellant submits that the judgment of acquittal passed by the learned Trial Court is fit to be set aside.

5. Leaned Additional Public Prosecutor appearing on behalf of the State submits that in the instant appeal, the first information report is lodged on 08.07.2011. The police after investigation submitted first charge sheet on 30.09.2011 against the accused person namely Niranjana Yadav. Thereafter, the investigation officer submitted second charge sheet on 09.01.2012 against the accused namely Arun Yadav. Subsequent thereto, the learned Trial Court has taken cognizance for the offence under Sections 147, 148, 149, 323, 307, 302, 504 and 506 of the Indian Penal Code on 29.02.2012 against the accused persons. Thereafter, the case was committed to the Court of Sessions for trial. The charges against all the accused persons were framed on 25.09.2012.

6. After framing of the charge, the learned



Sessions Judge on 25.09.2012 directed the office to issue summons for production of the witnesses for evidence. Thereafter, on 06.01.2014 another Sessions Trial No. 05 of 2014 was amalgamated and again the learned Trial Court has directed to issue summons upon the witnesses. However, on 16.07.2016 bailable warrant was issued against the witnesses. Thereafter, on 18.02.2021 the case was transferred in the Court of Fast Track Court. On 02.03.2021 last chance was given to the prosecution to produce the witnesses. Thereafter, on 17.03.2021, the evidence was closed recording that the charges were framed on 25.09.2012.

7. Learned Additional Public Prosecution further contended that Premlal Yadav (P.W. 1) was examined on 19.12.2014 and the last witness Wakeel Yadav (P.W.7) was examined on 14.09.2020, which shows that the evidence continued from 2014 to 2020, but despite issuance of process, the remaining witnesses did not turn up. Out of eight examined witnesses, seven witnesses were declared hostile. Learned counsel, therefore, submits that the learned Trial Court has rightly passed the judgment of acquittal.

8. Considering the facts and circumstances of the case and the submissions advanced on behalf of the parties,



we do not find any perversity in the impugned judgment passed by the learned Trial Court. The appeal is, accordingly, dismissed being devoid of any merit, at the stage of admission itself.

(Arvind Srivastava, J)

(Sunil Dutta Mishra, J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2024
Transmission Date	08.01.2024

