

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4395 of 2021

Arising Out of PS. Case No.-284 Year-2016 Thana- HAJIPUR SADAR District- Vaishali

Panchu Rai, S/o Late Kaali Rai @ Late Kalicharan Rai, R/o village-
Lalpokhar Dighi @ Dighi Kalan, P.S.- Hajipur Sadar, District- Vaishali

... .. Appellant/s

Versus

1. The State of Bihar
2. Veer Chandra Rai, S/o Ram Ekbal Rai
3. Shambhoo Rai, S/o Ram Ekbal Rai
4. Mithlesh Rai, S/o Ram Ekbal Rai

Respondent nos. 2 to 4 are R/o village- Lal Pokhar Dighi, P.S.- Hajipur
Sadar, District- Vaishali.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manish Chandra Gandhi, Advocate
For the Respondent/s	:	None.
For the State	:	Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 12-09-2023

1. Mr. Manish Chandra Gandhi, learned
counsel for the appellant, Mr. A. M. P. Mehta, learned
APP for the State are present who are heard but nobody
appears on behalf of the respondent nos. 2 to 4.

2. The instant appeal has been filed against the
judgment dated 19.09.2020 passed by the learned
Sessions Judge, Vaishali at Hajipur, in connection with



Sessions Trial Case No. 569 of 2017 arising out of Hajipur Sadar P.S. Case No. 284 of 2016 whereby the respondent nos. 2 to 4 have been acquitted of the charges under Sections 308, 341, 447, 323, 504 read with Section 34 and respondent no.2 has further been acquitted from charges under Sections 308 and 324 of the Indian Penal Code (hereinafter referred to as “IPC”).

3. The prosecution’s case in brief is that on 06.08.2016, when the informant (appellant) reached near his old house at 7:30 p.m. then respondent nos. 2 to 4 along with five unknown persons armed with traditional weapons who were already present there first made a statement to kill him thereafter the respondent no. 2, Veer Chandra Rai inflicted a *Hasua* blow at left leg of the informant, due to that attack informant fell down and then respondent no. 3, Shambhoo Rai assaulted him repeatedly on his leg and hand by means of a *lathi*, which resulted in fracture to his hand and leg and upon hearing his cry his son and wife rushed to the spot but they were also assaulted by the respondents by means of *lathi* and in that course the respondent no.2, Veer Chandra Rai



assaulted the informant's son by means of *lathi* who also fell down owing to that assault and thereafter the respondent no. 4, Mithlesh Rai armed with a country made pistol (*katta*), entered into the house of the informant which was objected by informant's daughter-in-law but she was pushed down by the accused and in that course her *Mangalsutra* and gold chain were snatched by the accused and then neighbours of the informant gathered and thereafter the accused persons fled away from the place of occurrence.

4. The informant (appellant) filed a written report describing the above allegations before the Station House Officer (S.H.O.) of Sadar P.S. Hajipur, on that basis a formal FIR bearing Hajipur Sadar P.S. Case No. 284 of 2016 was registered under Sections 308, 341, 447, 323, 504 read with Section 34 of the IPC which set the criminal law in motion.

5. After the completion of investigation, the cognizance of the alleged offences was taken by the concerned Judicial Magistrate and thereafter the case of the appellant was committed to the Court of Sessions.



6. The respondent nos. 2 to 4 stood charged jointly for the offences punishable under Sections 308, 341, 447, 323, 504 read with Section 34 of the IPC. The respondent no. 2, Veer Chandra Rai stood charged separately for the offences punishable under Sections 308 and 324 of the IPC.

7. It has been argued by the learned counsel for the appellant that the learned trial court wrongly acquitted the respondent nos. 2 to 4 mainly on this ground that the prosecution failed to produce any witness to prove the offences charged despite several opportunities having been given to produce the witnesses and merely on account of said reason, the learned trial court concluded that the prosecution failed to prove its case and the respondent nos. 2 to 4 were given the benefit of doubt and consequently, they were acquitted of the charges levelled and framed against them. The further submission is that the learned trial court's finding as to the prosecution having remained unsuccessful to prove its case by not producing even a single witness is completely not proper, though during the trial of the respondents, no



prosecution witness could be examined but there were several inevitable circumstances leading to non-appearance and non-production of the prosecution's witnesses and the same have been narrated in the paragraph nos. 15 to 18 of the memo of appeal. Further submission is that in view of the allegations levelled by the informant (appellant) in the FIR which get support from the medical opinion given in the injury reports of the injured persons, a fair case attracting the penal provisions of the IPC is made out against the respondent nos. 2 to 4 and if the trial court's conclusion as to acquitting the respondent nos. 2 to 4 without any merit and without taking evidence of the prosecution remains unchanged then an irreparable loss will cause to the appellant.

8. Though, learned APP has opposed the appeal but fairly accepted that from the grounds taken by the appellant which have been mentioned in the memo of appeal, it appears that due to inevitable circumstances the prosecution could not produce and examine the prosecution's witnesses before the trial court.



9. Heard the learned counsel for the appellant as well as learned APP for the State and also have perused the judgment impugned and L.C.R. In the present matter, during the trial of the respondent nos. 2 to 4, the charges were framed on 10.01.2018 and on the same date of framing of charge the summons were issued to get the appearance of the prosecution's witnesses but the order-sheets of the trial court do not show any service of the said summons upon any of the prosecution's witnesses and after the issuance of summons the learned trial court did not take any attempt to issue further process to get the appearance of the prosecution's witnesses. Between 07.08.2018 and 22.01.2019, the trial court remained vacant on account of the transfer of the Presiding Judge. Thereafter, as per the statement made in paragraph no. 15 of the memo of appeal, the Government of India declared nationwide complete lock down in the evening of 24th March, 2020 and the unlock- 04 started since 01.09.2020 and during the said period four dates of the case of the appellant passed and thereafter most of the Courts in Bihar resumed their functioning in virtual mode and after



some months started functioning in both physical and virtual mode and during that period the functioning of the courts remained hampered and the trial courts did not get their full strength of working capacity till the date of passing of the impugned judgment.

10. Considering the above discussed facts, I am of the view that the trial court passed the impugned judgment in haste manner without going on the merit of the prosecution's case, hence the judgment is not sustainable in the eye of law. Accordingly, it stands set aside and the appeal stands allowed.

11. The trial court is directed to start the trial of the respondent nos. 2 to 4 afresh from the stage of framing of charges and give sufficient opportunities to the prosecution to produce the prosecution's witnesses and take efforts to conclude the trial within one year from the date of receipt/production of a copy of this judgment.

12. Respondent nos. 2 to 4 are directed to appear in person before the trial court within 20 days from the date of receipt/production of a copy of this judgment and



after their appearance, the learned trial court shall permit them to remain on bail on the same bail bonds which were taken earlier by the trial court during the trial in which the impugned judgment was passed.

13. Let the L.C.R. be sent back to the trial court forthwith.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

