

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1202 of 2019**

Arising Out of PS. Case No.-88 Year-2009 Thana- BAUNSI District- Banka

Rajesh Kumar Sah Son of Jay Narayan Sah Resident of Village- Serai, Police
Station- Bounsi, District- Banka.

... .. Appellant/s

Versus

1. The State of Bihar
2. Madhavanand Mishra Son of Kalikanand Mishra Resident of Village-
Dahua, Police Station- Bounsi, District- Banka.
3. Navinanand Mishra Son of Kalikanand Mishra Resident of Village- Dahua,
Police Station- Bounsi, District- Banka.
4. Sumit Kumar Mishra Son of Banke Bihari Resident of Alwahta Maheshpur,
Police Station- Pathargama, District- Godda (Jharkhand).
5. Akhilesh Kumar Mishra Son of Banke Bihari Resident of Alwahta
Maheshpur, Police Station- Pathargama, District- Godda (Jharkhand).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Praveen Kumar, Advocate
For the Respondent/s : Mrs. Km. Shashi Bala Verma, APP

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

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL ORDER

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

7 09-01-2023 This appeal under the proviso to Section 372 of the

Code of Criminal Procedure, 1973 was filed on 11.10.2019. The
appellant has put to challenge, the judgment dated 05.07.2019
passed by the learned District and Sessions Judge, Banka, in
Sessions Case No. 857 of 2013, whereby respondent nos. 2 to 5
have been acquitted of the charges for commission of the
offence punishable under Sections 307, 323, 354, 380, 427 and



452 read with Section 34 of the IPC.

After filing of this appeal on 11.10.2019 it was taken up for admission on 17.09.2021. The appellant was granted opportunity to file a supplementary affidavit annexing certified/xerox/true copy of the deposition of the witness and the documents exhibited during the trial. The said order dated 17.09.2021 has not been complied with. Today, when the matter has been taken up, learned counsel for the appellant is seeking adjournment. We are not inclined to grant adjournment in view of the fact that the appeal has remained pending for last three years and we have deemed it apt to consider the correctness of the impugned finding, for the purpose of admission of this appeal.

It is to be noted that no ground has been taken in the memo of appeal that the evidence of the prosecution's witnesses have been incorrectly noted by the learned trial court in the impugned judgment. It is the prosecution's case, as disclosed in the written report of the appellant/informant addressed to the Officer Incharge of Bounsi Police Station, that on 17.07.2009 at 11:00 am, 8-10 persons including the private respondent nos. 2 to 5 had come at the informant's shop and had started assaulting him, his father as well as his mother. The informant also alleged



that the miscreants attempted to molest his mother, whose blouse was torn by them. As the appellant attempted to protect his mother, he was assaulted in his head. His father was also assaulted. Further, the miscreants had looted certain articles.

From the impugned judgment, it transpires that altogether seven prosecution's witnesses were examined including the Investigation Officer (PW-2) and the doctor (PW-7). The doctor had examined the informant/appellant and his father. The injury report of the informant/appellant and reports of the informant and his father were exhibited as exhibit 2/1 at the trial. PWs 5 and 6 came to be declared as hostile. PWs 3 and 4 were apparently hearsay witnesses. The informant/appellant, who was examined as PW-1, was the only witness in support of the prosecution's case. It is noted that the injuries on the person of informant and his father were found to be superficial and simple in nature.

Considering the circumstances that no independent witness came to support the prosecution's case and the nature of injuries on the person of the informant and his father, which could have been caused by fall, the trial court reached a conclusion that the prosecution failed to establish its case beyond all reasonable doubts. After having held so, the trial



court has acquitted respondent nos. 2 to 5 of the charges punishable under Sections 307, 323, 354, 380, 427, 452 and 34 of Indian Penal Code.

Upon perusal of the impugned judgment and order, which contains discussions referring to the evidence adduced at the trial, we are of the opinion that the view taken by the trial court while acquitting the respondent nos. 2 to 5 appears to be a reasonably possible view, which does not require interference. We do not find any merit in this appeal.

This appeal is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

prabhat/-

U		T	
---	--	---	--

