

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.143 of 2023

Arising Out of PS. Case No.-139 Year-2013 Thana- MAKHDUMPUR District- Jehanabad

RANBIR YADAV @ RANVIR KUMAR Son of Rajdeo Yadav @ Rajdeo Prasad Singh Resident of village - Dhira Bigha, P.S.- Makhdumpur, District - Jehanabad.

... .. Petitioner

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Petitioner	:	Mr. Vijay Kumar, Advocate
	:	Mr. Kuber Pathak, Advocate
	:	Mr. Devendra Kumar, Advocate
For the Respondent	:	Mr. Syed Mojibur Rahman, APP

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL ORDER

5 02-12-2024 With the consent of the both the counsel heard finally.

2. This revision has been preferred by the applicant/accused being aggrieved with the judgment dated 17.12.2022 passed by District and Sessions Judge, Jehanabad in Criminal Appeal No. 10 of 2020 whereby and whereunder the learned Sessions Judge allowed the appeal preferred by Munna Kumar (Victim of the case) and reversed the order of acquittal dated 29.01.2018 passed by S.D.J.M. Jehanabad in Trial No. 767 of 2017 arising out of Madkhdumpur P.S. Case No. 139 of 2013, G.R. No. 1061 of 2013 and convicted the applicant for the offences punishable under Sections 323, 325 and 504 of the I.P.C. and given benefit under Sections 360 and 361 of Cr.P.C.



as well as Section 3/4 of the Probation Of Offenders Act, 1958 released him on probation for a period of two years.

3. According to the case of prosecution, the complainant-Munna Kumar (P.W.-7) submitted his written application before the concerned S.H.O. alleging therein that on 10.05.2013, about 07:15 AM, he was returning from the School of his children on motorcycle and reached near *Bajrangbali More*, there P.W.-2, Sarpanch Manjhi met him. There he was talking with him. It is alleged that at that time, present applicant along with the co-accused persons, namely, Babloo and Rajdeo Yadav came there and due to some previous dispute all of them started abusing the complainant grabbed his left hand due to which he sustained grievous injuries on his left hand. On the basis said written report, offence has been register against all the accused persons and after completion of investigation charge-sheet has been filed. The Trial Court take cognizance against all the accused persons and framed the charges under Sections 341/34, 323/34 325/34 and 504/34 of the I.P.C. The prosecution to established its case examined eight witnesses before the learned Trial Court.

4. The applicant as well as the other accused persons in their statement, recorded under Section 313 of the Cr.P.C.



taken the plea of their innocence. However, no defence witness were examined by them.

5. After hearing both the parties, the learned Trial Court *vide* its judgment dated 29.01.2018 acquitted all the accused persons from the charges as mentioned hereinabove. Against the said acquittal, the complainant/victim Munna Kumar preferred the appeal before the Learned District and Sessions Judge, Jehanabad. The Learned District Judge, Jehanabad *vide* impugned order dated 17.12.2022 allowed the appeal and reversed the judgment of acquittal of present applicant and convicted him for the offences punishable under Sections 323, 325 and 504 of the I.P.C.

6. Learned counsel for the petitioner would submit that the learned Appellate Court without appreciating the evidence available on record wrongly reversed the judgment of acquittal passed by the learned Trial Court. He submits that before the learned Trial Court, except the complainant, none of the witnesses supported the case of prosecution and on this ground only the learned Trial Court has acquitted all the accused persons from all the charges. However, the learned Appellate Court without considering this aspect wrongly arrived on the conclusion that the alleged offence has been committed by the



present applicant. According to the counsel, on the same fact of evidence, other accused persons Rajdeo Yadav and Babloo were acquitted by the learned Trial Court and the learned Appellate Court also affirmed their acquittal but relying on the same evidence, the learned Appellate Court convicted the present applicant which is not permissible. Therefore, it is prayed that the impugned order passed by the learned Appellate Court may be set aside and the applicant may be acquitted for all the charges as mentioned hereinabove.

7. Learned State counsel opposes the arguments made by the counsel for the applicant and submitted that since there is sufficient evidence available on record against the applicant, therefore, the learned Appellate Court rightly reversed the finding of acquittal of the learned Trial Court and rightly convicted the applicant.

8. Heard both the counsel, perused the evidence adduced by the prosecution before the learned Trial Court as well as gone through the judgment passed by learned Trial Court as well as learned Appellate Court.

9. Perusal of the evidence, it is clear that except P.W. -7 i.e. complainant, Munna Kumar none of the prosecution witness supported the case of prosecution. According to the



statement of P.W.-7, at the time of alleged incident, P.W.-2 Sarpanch Manjhi was present and was seen the incident. However, Sarpanch Manjhi not supported the case of prosecution.

10. Further, perusal of the statement of P.W.-8 Dr. Hemand Kumar, it transpires that though this witness opined that the injury sustained by the complainant was of the grievous in nature but on what basis he made his opinion is not stated by him. During the cross-examination, he admitted that he has neither seen the X-Ray report of the injured nor he obtained any X-Ray report from the Radiologist, therefore, the opinion given by him regarding the nature of injuries of the complainant is also not acceptable.

11. On perusal of the statement of P.W.-7, Munna Kumar, further shows that in Paragraph No. 19 of his cross-examination, this witness categorically admitted the fact that at the time of incident, the present applicant along with Babloo caught hold him from his behind and he was not able to see both of them. While appreciating the evidence of this witness, the learned Appellate Court did not consider this fact.

12. Perusal of the order passed by the Learned Sessions Judge further shows that on the same sets of evidence,



the learned Appellate Court arrived on the conclusion that the statement of P.W.-7 is not trustworthy with regard to the other acquitted co-accused persons. However, same evidence has been accepted by him regarding the present applicant/accused.

13. Considering the above, I am of the considered view that the finding recorded by the learned Appellate Court is perverse and not accordance with the evidence available on record, therefore, on this ground only the impugned order passed by the learned Appellate Court is set aside.

14. The applicant is acquitted from all the charges for which he has been convicted by the learned Appellate Court.

15. Accordingly, the revision is allowed.

(Arvind Singh Chandel , J)

Shanu/-

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

