

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.62 of 2014

Arising Out of PS. Case No.-38 Year-1995 Thana- NAUGACHIA District- Bhagalpur

1. Bindi Mandal and Ors. Son Of Late Jangli Mandal
2. Naresh Mandal Son Of Bindi Mandal
3. Prakash Mandal Son Of Bindi Mandal All Resident Of Village-Nagrah Tola Jouniya, P.S.-Naugachia, District-Bhagalpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Smriti Singh, Adv (Amicus Curiae)
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date : 13-11-2024

Heard Smriti Singh, learned *Amicus Curiae*, and Bipin Kumar, learned APP for the State.

2. The appellants have preferred the present appeal filed against the Judgment of conviction dated 31.10.2013, passed in Sessions Trial No. 99/2006 (arising out of G.R. No. 75/1995, Naugachachia P.S. Case No.38/1995) passed by the 4th Additional & Session Judge, Naugachia whereby and whereunder the appellant has been convicted for the offences under section 147 and 323 of the Indian Penal code and after conviction they were given benefit of Section 4 of probation of offenders act and released from custody.



3. As per *fardbeyan* of the informant, the prosecution case is that, the informant purchased a piece of land through Kevala about 5 to 6 months before the date of incident, and such piece of land was cultivated by him. The accused/appellant, Bindi Mandal had a verbal altercation with the informant regarding the purchase of said piece of land. Further in the morning on 26.02.1995, the appellants started forcibly cutting the maize crop, which was in growing stage. When the informant asked the accused person/appellant as to why they were cutting the maize from the field of the informant, the accused persons threatened to kill him and fired gunshot, which did not hit him. The accused person later on destroyed the maize crop of the informant.

4. On the written report of informant, this instant case was registered, and thereafter, investigation was taken up. After the completion of investigation, charge-sheet was submitted against the accused person for the offence punishable under Section 147,148,149,307 and 323 of the Indian Penal Code and 27 of the Arms Act.

5. On the basis of the *fardbeyan* of the informant, Naugachiya P.S. Case No. 38/1995 u/s 147,148,149,307 and 323 Indian Penal Code and 27 of the Arms Act was registered



against accused namely, accused persons and after completion of the Investigation, charge-sheet has been submitted against the accused persons, and the case was then committed to the to the Court of Session. Moreover, Bhothri Mandal and Kamli Mandal died during the Trial so the names of the above two accused was removed vide order dated 09.12.2006 but the other three accused persons (appellants in this present appeal) were convicted.

6. Learned Amicus-Curaie submitted that the prosecution has not been able to prove its case beyond all reasonable doubts. Learned Amicus-Curaie representing the appellants submits that the accused persons are innocent and they have not committed any offence. The names of the female members who were present at the place of incident were not mentioned in the F.I.R. But during the trial, the names of the female members were also included. Learned amicus-curaie for appellants submitted that there is no injury on the victim or his wife to substitute the case under section 307 of the I.P.C. The learned amicus-curaie further submitted that the genesis of the case is a land dispute, which was already decided by the Panchayati in favour of the accused persons/appellants, but the informant states to have been the legal owner of the said land which was purchased from



a person, namely, Subodh Babu in the year 1994. Learned amicus-curaie further submits that gunshot was fired, but it did not hit the informant or his wife, the Investigating Officer did not examine the place of occurrence and it has not been proved before the learned trial Court. The learned Amicus-curaie further submitted that only two witnesses were examined by the learned trial Court, the first one is the informant and second one is the wife of the informant. No other witnesses or any other independent witness was named or examined in the entire prosecution story, and therefore, the conviction of the appellants is bad and not sustainable in the eyes of law.

7. Before the Trial Court, prosecution examined two witnesses. P.W. 1, Kailash Mandal (informant) and P.W.-2 Baba Dai (wife of the informant)

8. PW1, who is the informant has stated in his examination-in-chief that the occurrence is of about 16 to 17 years ago in the morning when he was going to his field which was purchased by him from one Subodh Babu in the year 1994, wherein maize plant was cultivated. He further states that appellants and other co-accused persons came at the maze field and started to cut the said maize plants which was at growing stage, but when the informant stopped them, all the accused



person started assaulting the informant and one accused/appellant fired gun shot at the informant which did not hit him. He further stated that he suffered a loss of ₹20,000 due to the destruction of the plantation. He further states Panchayati was being organized with regard to the land in dispute which is the place of occurrence, and the Panchayat has come into conclusion that the land was in possession of appellant, Bindi Mandal. PW1 further stated that the land is under his legal ownership.

9. PW2, who is the wife of the informant has stated that the occurrence is of about 16 to 17 years ago where in the accused/appellants and other co-accused persons came with *lathi* and other arms and started cutting maize crops from the farm of her husband and further during that altercation appellant/accused Prakash Mandal fired gun shot upon the informant and later destroyed the crop of the informant.

10. After going through the entire evidence and materials available on record, it appears that the place of occurrence which is the farm land of the informant is the main cause of the dispute. Panchayati was also held with regard to the land between the informant and the accused persons, Bindi Mandal, and his family members. Panchayati had held that the land in



question is under the possession of the accused/appellants, but the informant stated to have been the legal owner of the said land which was bought by him from one Subodh Babu in the year 1994. The land in question is said to have been planted with maize crops which was being cut by the accused person and his family members, when the informant and his wife protested, accused/appellants started assaulting the informant and also fired gunshot. Considering the point that a gunshot was fired, the learned trial Court has failed to establish the charges under section 27 of the Arms Act. Considering this fact and also the fact that no injury was there on the body of the informant or his wife, the charge-sheet have been submitted against the accused persons under section 147, 148, 149, 307, 323 of IPC and 27 of the Arms Act, but the learned trial court has only convicted present applicants under section 147 and 323 of the IPC against the accused persons, but in this present case, the doctor was also not examined. Neither there was any injuries found nor he was treated at any hospital or clinic. Further, it is evident from the records that there are no independent witnesses or new eye witness, other than the informant and his wife who were already having a dispute with regards to the land in question and Panchayati had held that the land is under the



possession of Bindi Mandal.

11. Considering the fact that only the informant and his wife were made the witnesses and Investigating Officer was also not examined and furthermore there was no independent witness or any witness who has seen the occurrence of the incident other than the informant and the wife of the informant, whereas, the time of occurrence of the incident is at 9 AM in the morning so this case is not proved beyond all reasonable doubts. It creates a cloud of doubt with regards to the whole incident as there was already a dispute with regards to the said land, therefore, the order of conviction and order of sentence against the present appellants is fit to be set aside.

12. In the facts and circumstances of the case, I find and hold that the prosecution has failed to substantiate the prosecution case. Hence, the impugned judgment of conviction dated 31.10.2013, passed in Sessions Trial No. 99/2006 (arising out of G.R. No. 75/1995, Naugachachia P.S. Case No.38/1995) passed by the 4th Additional & Session Judge, Naugachia is hereby set aside and the appellant is acquitted from the charge levelled against him. As the appellant is on bail, he is discharged from the liability of bail bond.

13. Before parting with this appeal, let this be put on



record that the assistance provided by learned *Amicus-Curiae* Ms. Smriti Singh on behalf of the appellants is much appreciated. Secretary, Patna High Court Legal Services committee is directed to pay the Rs. 10,000/- to learned Amicus-Curiae towards honorarium.

14. Let a copy of the first and last page of this judgment be handed over to the Advocate Ms. Smriti Sinha, learned Amicus-Curiae and Office is directed to proceed further in granting honorarium to her which is to be paid by Patna High Court legal services committee.

(Ramesh Chand Malviya, J)

Sunnykr/-

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CAV DATE	
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