

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.92 of 2016

Arising Out of PS. Case No.-101 Year-2005 Thana- GORADIH District- Bhagalpur

1. Nageshwar Mandal Son of Late Abhimanyu Mandal
2. Naresh Mandal Son of Late Abhimanyu Mandal
3. Kapildeo Mandal, Son of Late Abhimanyu Mandal All residents of Village Hemra, P.S. Goradih, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Mr. Praveen Kumar, Advocate
For the State : Mr. Chandra Sen Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 21-10-2024

The present appeal has been preferred by the appellants against the impugned judgment of conviction and order of sentence dated 08.02.2016 passed by learned Additional District & Sessions Judge-II, Bhagalpur, whereby the appellants have been acquitted of the charge framed under Section 307 of the Indian Penal Code, but found guilty for the offence punishable under Section 323 read with Section 34 of the Indian Penal Code and sentenced to R.I. for one year and directed to pay a fine of Rs. 700 each and in case of default to pay the fine, to further undergo S.I. for two months.

Prosecution case.

2. The prosecution case as emerging from the *fard-e-bayan* of the informant/Bajrangi Mandal is that at 12:30 PM on 06.05.2005, the informant was carrying bricks in Tractor from



Ghogha to his home. When he reached crossing near his house, accused/Brajesh Mandal prohibited him from proceeding further on that path. Appellant/Kapildeo Mandal started abusing him. When the informant asked why he was abusing him, appellants/Nageshwar Mandal and Naresh Mandal carrying khanti and lathi in their hands declared that at any cost, they would not allow his Tractor to move further. Thereafter, the informant argued with them stating that the path was a public one and they could not prohibit him from moving on that path. Thereafter, Nageshwar Mandal exhorted them to kill the informant. He also attacked him with Khanti causing injury on his head. Kapildeo Mahto also attacked him causing injury to right eye. Accused Brajesh Mandal attacked him by spade causing injury to his right hand. In the meantime, younger brother of the informant, namely, Angad Mandal came to protect him. Then Naresh Mandal attacked him also causing injury to his hand. The cause of the occurrence was dispute in regard to public path. The appellants had stored household waste there which was being removed by the informant resulting into the occurrence.

Factual background.

3. On the basis of the *fard-e-bayan*, Jagdishpur P.S.



Case No. 101 of 2005 dated 06.05.2005 was registered against the appellants and co-accused Brajesh Mandal for the offence punishable under Sections 341, 323, 324, 307, 504 read with Section 34 of the Indian Penal Code. After investigation, charge-sheet was submitted for the offence punishable under Section 341, 323, 307, 504 read with Section 34 of the Indian Penal Code against all the accused. After cognizance, the case was committed to the Court of Sessions and charge was framed under Section 307 read with Section 34 of the Indian Penal Code. The charges were read over and explained to the accused to which they pleaded not guilty and claimed to be tried. Hence, the trial commenced.

4. During trial, altogether six prosecution witnesses were examined on behalf of the prosecution. P.W.-1, Bajrangi Mandal, is informant himself. P.W.-2, Anirudha Mandal, is cousin of the informant. P.W.-3, Angad Kumar Singh, is brother of the informant. P.W.-4, Kanhaiya Mandal, knows nothing about the case. P.W.-5, Sitaram Mandal, knows nothing about the case. P.W.-6, Rajesh Kumar Mandal, has not witnessed the occurrence as per his own testimony.

Statement under Section 313 Cr.PC

5. After closure of the prosecution evidence, the



accused persons were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, they admitted that they had heard the evidence of prosecution witnesses against them. But they did not explain any circumstance, though they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated. They have also stated that the occurrence had taken place on account of land dispute.

Findings of the Trial Court.

6. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence whereby the appellants have been found guilty and sentenced accordingly.

7. I have heard learned counsel for the appellants and learned APP for the State.

Submissions of the parties.

8. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence passed by learned Trial Court are not sustainable in the eyes of law or



on facts. Learned Trial Court has failed to appreciate the evidence on record and erroneously passed the impugned judgment of conviction and order of sentence.

9. He further submits that all the eye-witnesses are close family members and they are interested witnesses and not reliable. He also submits that the statements of the prosecution witnesses projected as eye-witnesses are full of contradictions and discrepancies. He also submits that most importantly, the injury allegedly caused by the appellants has not been proved by the prosecution because the doctor, who examined the alleged victims, has not been examined by the prosecution. Hence, the injury could not be proved and for want of any proof regarding injury, the whole case of the prosecution fails not only under Section 307 but even under Section 323 of the Indian Penal Code. He also submits that even Investigating Officer of the case has not been examined causing prejudice to the appellants. Hence, whole case of the prosecution is doubtful and the appellants are entitled to get benefit of doubt.

10. However, learned A.P.P. for the State defends the impugned judgment of conviction and order of sentence submitting that there is no illegality or infirmity in the impugned judgment of conviction and order of sentence because the



prosecution has proved its case against the appellants beyond all reasonable doubts and they have been appropriately sentenced.

11. I have thoroughly perused the relevant materials on record and given thoughtful consideration to the submissions advanced by both the parties.

Appreciation of the evidences and finding of this Court

12. From the perusal of the evidence on record, I find that altogether six witnesses have been examined on behalf of the prosecution and all of them are private witnesses and close family members of the informant and there is always propensity of family members to exaggerate the statements and make embellishment in their testimonies. Most importantly, I find that the injury allegedly caused by the appellants has not been proved because the doctor, who examined the alleged victim, has not been examined. Hence, for want of any injury on record, the prosecution case fails even under Section 323 of the Indian Penal Code.

13. Learned Trial Court himself has found that for want of proof of injury on record, charge under Section 307 IPC fails. But surprisingly, learned Trial Court held that charge under Section 323 IPC stands proved. In my considered view, such finding of the learned Trial Court is erroneous. Without the



injury, allegedly caused by the appellants, being proved, charge under Section 323 IPC also fails.

14. Moreover, even Investigating Officer has not been examined by the prosecution causing prejudice to the appellants.

15. Considering the aforesaid facts and circumstances, reasonable doubt is created in the prosecution case against the appellants and hence, the appellants are entitled to get benefit of doubt.

16. Accordingly, the impugned judgment of conviction and order of sentence are set aside. The appellants stand acquitted of the charge leveled against them.

17. The appeal stands allowed.

18. The appellants are already on bail. They are discharged from their liabilities under their bail bonds.

19. The record of the case be returned to the Trial Court forthwith.

20. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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