

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 1183 of 2023**

Arising Out of PS. Case No.-48 Year-2017 Thana- SC/ST District- Gopalganj

Sarda Ram @ Sardha Ram, Son of Late Ramrup Ram, R/o Village- Baijalha,
P.S.- Gopalpur, District- Gopalganj

... .. Appellant

Versus

1. The State of Bihar
2. Ashok Mishra, Son of Late Vidya Sagar Mishra, R/o village- Baijalaha, P.S.-
Gopalpur, District- Gopalganj
3. Jai Prakash Mishra, Son of Kashi Mishra, R/o village- Baijalaha, P.S.-
Gopalpur, District- Gopalganj
4. Kashi Mishra, Son of Late Chanar Mishra, R/o village- Baijalaha, P.S.-
Gopalpur, District- Gopalganj

... .. Respondents

Appearance :

For the Appellant	:	Mr. Satish Kumar Sinha, Advocate Mr. Javed Aslam, Advocate
For the State	:	Mr. Ajay Mishra, Addl PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 24-09-2024

Heard learned counsel for the informant-appellant and
learned Additional Public Prosecutor for the State.

2. The present appeal has been preferred for setting aside the judgment of acquittal passed by learned Additional Session Judge-III-cum-Special Judge, SC/ST Act, Gopalganj (hereinafter referred to as the 'learned trial court') on 14.07.2023 in Gopalganj SC/ST Case No. 48 of 2017, Registration No. 270 of 2017. By the judgment under appeal, the three accused-respondent

nos. 2 to 4 who were facing trial for the charges under Sections 341/34, 323/34, 504/34 of the Indian Penal Code, Section 3(i)(r) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act (in short 'SC/ST Act') and Section 3(i)(w) of the SC/ST Act have been acquitted.

Prosecution Case

3. As per the prosecution story which is based on the written application submitted by the informant, namely, Sarda Ram (PW-4), on 01.11.2017 in the evening hour, at about 04:00 PM, Ashok Mishra, Kashi Mishra and Jai Prakash Mishra, all of village- Baijalaha, Post- Ratanpur, P.S.- Gopalpur, District- Gopalganj along with other unknown persons came armed with lathi, danda and they started destroying the residential house of the informant. It is alleged in the written report that when he and his wife asked the accused persons not to do so, Ashok Mishra abused him in his caste name saying that he had defeated his father in the case, therefore, he and his family would not be left alive. The informant further alleged that the accused started assaulting him, his wife and children and on protest, he abused him and threatened to destroy him, as he had got connection to the highest level. Kashi Mishra and Jai Prakash Mishra also assaulted and abused them. Lastly, the informant alleged that in public view, he and his family

members were abused and they were asked to vacate the land within two days, failing which he and his entire family would be sent to jail.

4. On the basis of this written application (undated), the police registered SC/ST P.S. Case No. 48 of 2017 dated 08.11.2017 under Sections 341, 323, 504/34 IPC and Section 3(i)(r)(w) of the SC/ST Act. From the formal FIR, it would appear that though the occurrence took place on 01.11.2017, information in this regard was received in the police station on 08.11.2017 at 11:00 AM and the case was registered. The FIR was received in the court of learned Special Court of A.D.J.-1st on 13.11.2017. Therefore, it is an admitted position in this case that while the occurrence was reported after seven days, the FIR was received in the learned court after five days of the occurrence.

5. After investigation, the police submitted a chargesheet against all the three accused persons. In the chargesheet, altogether five witnesses were mentioned as prosecution witnesses, one of them is Lakshman Bind who is the Sub-Inspector of Police. Four of them are the informant, his brother and close family members. One of the witnesses named in the chargesheet, namely, Hirdaya Mishra died before his deposition, so he could not be examined in this case.

6. After taking cognizance of the offences as per the chargesheet, the learned Special Judge explained the charges to the accused persons who denied them and claimed to be tried. Charges were framed under the various provisions of the IPC and the SC/ST Act as stated hereinabove.

Analysis of the Evidences

7. In course of trial, the informant was examined as PW-4. In his examination-in-chief, he has stated that the accused persons came armed with lathi and they started destroying the '*palani*' (hut) in which the informant was residing. He has further stated that when he asked the accused persons not to do so, they abused him in his caste name and threatened to kill the whole family and they started destroying the '*palani*'. He has stated that the accused persons had also assaulted him, his wife and his sons Shyam Babu and Ram Babu. In his cross-examination, this witness has stated that in between his house and the house of the accused, there is a canal, on the one side of the canal, his house is situated whereas on the other side of the canal, the house of the accused persons is situated. He has stated in paragraphs '9' and '10' of his deposition that there is an old land dispute between him and the accused persons and his house is situated on the said disputed land. He has further stated that a proceeding under Section 144 Cr.P.C.

was also started in respect of the said land and in paragraph '11' of his cross-examination, he has stated that prior to this case, the accused Ashok Mishra had lodged a case against him alleging assault and in the said case, this witness and others ('*humlog*') were found guilty. He has stated in paragraph '18' of his cross-examination that at the time of occurrence, the neighbours to his house were standing there. He had given name of Hirdaya Mishra as a witness for him to police. He had shown the destroyed '*palani*' to police. He has stated that he had not received any treatment in hospital. This witness was suggested that the land on which his '*palani*' is situated is the '*rayati*' land of the accused. He was also suggested that accused persons had not destroyed the '*palani*' and had not abused him or had assaulted him and that the accused persons have been falsely implicated in this case because of prior enmity.

8. The other three witnesses who are Ramji Ram (PW-1), Parma Ram (PW-2) and Gunjan Kumari (PW-3) are the close family members of the informant. PW-1 is the cousin brother of the informant who has stated that police had come to the place of occurrence after 2-3 days and had recorded his statement. He has stated that when the occurrence was taking place, nobody had

come to pacify the quarrel. This witness has also stated about the previous enmity between the parties.

9. Parma Ram (PW-2) is the full brother of the informant who has supported the prosecution case. He was suggested in paragraph '10' of his deposition that in Trial No. 124/16C, Case No. 2105/11, he has been convicted. This witness has denied the suggestion but he has stated that this case has been lodged because of the land dispute and both the parties claim their right over the said land. According to him, police had reached to the place of occurrence four hours after the occurrence and his statement was recorded at the place of occurrence on the date of occurrence itself. He was suggested that no such occurrence as alleged by him had taken place and he was falsely deposing on behalf of his brother.

10. Gunjan Kumari (PW-3) is the daughter of PW-2 who has supported the prosecution case. She has stated that police had recorded her statement after four days. Her uncle had told her that he had lodged a case on 01.11.2017. She has stated in paragraph '8' of her cross-examination that a dispute between the family of her uncle and Ashok Mishra is going on since beginning and Ashok Mishra had lodged a case against her uncle prior to this case. In paragraph '11' of her deposition, she has stated that when the occurrence took place, no one was there. This witness has

claimed that in the occurrence, she had received injury and was also treated in the hospital. The informant who has been examined as PW-4 has stated in his examination-in-chief that the accused persons had indulged in beating him, his wife and his sons Shyam Babu and Ram Babu. He has not stated about any assault upon PW-3. No injury report or document of his admission in any hospital has been brought in evidence.

11. The I.O. (PW-5) has stated in his examination-in-chief that on 08.11.2017, he was posted as Sub-Inspector of Police in Harijan Thana, Gopalganj and on the said date, on the application of Sarda Ram (PW-4), the then Officer-in-Charge Sanjay Ram had registered the FIR. He identified the handwriting and signature of the Officer-in-Charge and at his instance, the said application has been marked Exhibit 'P-2/PW5'. The formal FIR has been proved by him as Exhibit 'P-3/PW5'. In paragraph '3' of his deposition, he has stated to have verified the place of occurrence and according to him, the place of occurrence is the '*parati*' land (vacant land). East to the said place of occurrence is the straw made hut of the informant-appellant. In his cross-examination, the I.O. has once again stated that the said place of occurrence is a '*parati*' land and he had not mentioned in the case diary that at the place of occurrence, there was a '*palani*'. In

paragraph '8' of his deposition, he has stated that the injured persons had told him that they had not suffered any injury. In paragraph '9', he has stated that in course of investigation, he had not recorded statement of any independent witness. He had not obtained any certificate showing that the informant or his family members belong to Scheduled Caste.

Findings of the Learned Trial Court

12. After analyzing the evidences available on the record, the learned trial court has found that out of five witnesses, all witnesses are interested witnesses. There is no independent witness in this case because no independent witness was examined by the I.O. The I.O. has admitted that he had not noted the fact in the case diary whether there was any '*palani*' at the place of occurrence. He has also admitted the fact that no one had told him about getting injury or getting treatment. In view of these evidences, the learned trial court has concluded that there might be some verbal scuffle for the alleged land dispute between the parties and no assault has actually taken place between the parties. The informant has not supported his case by saying anything specific against any of the accused persons regarding the manner of alleged assault. The learned trial court held that it appears that

this case has been given color of atrocities whereas there is land dispute involved in the case between the parties.

Submissions on behalf of the Appellant

13. Learned counsel for the appellant has submitted before this Court that the learned trial court has fallen in error while appreciating the evidences of the prosecution witnesses. The learned trial court could not appreciate that PW-1 to PW-4 all had supported the prosecution case and they have stated that the accused persons came armed with lathi, danda and destroyed the '*palani*' of the informant, they had also abused and assaulted the informant side.

Submissions on behalf of the State

14. Mr. Ajay Mishra, learned Additional Public Prosecutor for the State has submitted that in this case, the learned trial court has rightly appreciated the evidences available on the record. The I.O. had not mentioned about presence of any '*palani*' at the place of occurrence and in this case according to the I.O., the place of occurrence is a vacant land. The information with regard to the occurrence was given seven days after the occurrence but prosecution witnesses who are close family members have made false statement in course of their depositions differently. While PW-1 has stated that police came after 2-3 days, PW-2 states that

police came on the said day and his statement was recorded whereas PW-3 has stated that the police had recorded her statement after four days.

15. Learned Additional Public Prosecution further submits that it is evident from the materials on the record that in this case, none of the prosecution witnesses had received any treatment, no injury report has been proved, rather they stated to the I.O. (PW-5) that they had not suffered any injury.

16. It is further submitted that PW-3 has stated that when the occurrence took place, there was no one. The informant (PW-4) has not stated in his examination-in-chief that at the time of occurrence, the prosecution witnesses such as PW-1, PW-2 and PW-3 had seen the occurrence. None of the prosecution witnesses and the informant has stated that the occurrence had taken place in public view.

17. Relying upon the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in **(2023) 9 SCC 581**, learned Additional Public Prosecutor submits that the Hon'ble Supreme Court has while dealing with an appeal against acquittal reiterated its views that a judgment of acquittal should not be interfered with lightly. The broad principles which have been laid down by the Hon'ble

Supreme Court which would governed the appeal against acquittal have been provided under paragraph '8' and its various sub-paragraphs in the case of **H.D. Sundara** (Supra).

18. Learned Additional PP, therefore, submits that there is no merit in this appeal and it is liable to be dismissed at this stage.

Consideration

19. Having heard learned counsel for the appellant and learned Additional PP for the State as also on perusal of the learned trial court's records, we find much force in the submissions of learned Additional Public Prosecutor for the State. This Court has already taken note of the deposition of the prosecution witnesses hereinabove. It is evident that in this case, an undated written application was submitted by the informant (PW-4) in the SC/ST Police Station at Gopalganj which has been registered as a police case on 08.11.2017. On perusal of the written application, it would appear that it has not been written on the same day because in the opening lines of the written application itself, the informant refers to the date 01.11.2017 at about 4:00 PM being the date and time of occurrence. From the tenor of the language of the written application itself, it would appear that he is referring to an occurrence which had taken place on 01.11.2017.

Had it been an application submitted on the same date, the informant must have mentioned that the occurrence has taken place 'today'. The FIR has been registered on 08.11.2017 and it has been sent to the jurisdictional court on 13.11.2017. In such circumstance, the veracity and authenticity of the allegations made in the written application would come under cloud and it would require a careful scrutiny.

20. Keeping in view the aforesaid aspects of the matter, when this Court examines the evidence of the prosecution witness, it appears that the informant (PW-4) has, in the written application, not mentioned name of any of the witnesses. Although, the informant seems to be conscious that he has to allege that the occurrence has taken place in public view but in his examination-in-chief, PW-4 has not stated that the occurrence took place in public view.

21. The informant alleged that the accused persons assaulted him and his family members who are his wife and two sons but neither his wife nor his two sons have been made chargesheet witnesses in this case and they have not been examined. The I.O. (PW-5) has stated, as noted above that none of the injured witnesses told him to have received any injury. In such circumstance, this Court would come to a conclusion that the

prosecution case as alleged by the informant with regard to the assault caused upon him and his family members has no basis to stand.

22. As regards, the place of occurrence, while the informant states in the written application repeatedly that the accused persons had started destroying his residential house, the I.O. (PW-5) has stated in his examination-in-chief that the place of occurrence is a '*parti*' land. He has stated that in his case diary, he has not mentioned that at the place of occurrence there was a '*palani*' (straw hut). No evidence has come in this case showing that the hut of the appellant was destroyed or damaged. The evidence of the prosecution witnesses PW-1, PW-2, PW-3 and the informant as regards the place of occurrence and the damage to the straw hut of the informant would not inspire confidence of this Court.

23. It is evident from the deposition of the prosecution witnesses that the informant's family and the family of Ashok Mishra were having old land dispute. The defence has suggested to the prosecution witness no. 2 that the disputed land is registered in the name of Mahashray Mishra who is the ancestor of Ashok Mishra in the *Khatian*. PW-1, PW-2, PW-3 and PW-4 all have stated that the occurrence took place on account of land dispute and there is an old land dispute between the parties. PW-4 has admitted

in paragraph '11' of his deposition that the accused Ashok Mishra had lodged a case against him for causing assault prior to this case and in the said case, he had been found guilty.

24. In the case of **Anil Rai v. State of Bihar** reported in **(2001) 7 SCC 318**, the Hon'ble Supreme Court has taken a view that enmity is a double-edged weapon which can be a motive for the crime as also the ground for false implication of the accused person. In case of inimical witnesses, the Courts are required to scrutinise their testimony with anxious care to find out whether testimonies inspire confidence to be acceptable notwithstanding enmity.

25. In view of what has transpired from the evidences available on the record, this Court finds no reason to take a different view from what has been held by the learned trial court. The witnesses are inimical and interested witnesses and their oral testimonies are not getting corroborated by any other independent material particulars. Their evidences are required to be appreciated with all circumspection and care. In this case, the place of occurrence as stated by the informant has not been duly proved, no evidence of the damage/destruction to the straw house of the informant has come in course of trial and the allegation of causing assault stands falsified because the so-called injured witnesses did not claim any injury in course of investigation before the I.O. and

no injury report of any of the witnesses has been brought on the record. PW-3 has gone to the extent of saying that when the occurrence took place, no one was there. It has also not been proved that the occurrence took place in public view and there is no independent witness in this case.

26. In the case of **H.D. Sundara (Supra)**, while dealing with an appeal against acquittal, the Hon'ble Supreme Court has laid down the broad principles in paragraphs '8.1' to '8.5' which are to be kept in mind and we reproduce the same hereunder for a ready reference:-

“**8.** In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

“**8.1.** The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

¹ *State of Karnataka v. H.K. Mariyappa*, 2010 SCC OnLine Kar 5591

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

27. Having regard to the entire discussions made hereinabove, we find no merit in this appeal. It is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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