

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.978 of 2024

In
CRIMINAL APPEAL (SJ) No.2152 of 2024

Arising Out of PS. Case No.-26 Year-2002 Thana- LAXMIPUR District- Jamui

Nivash Kumar Singh, S/o Late Dipa Singh @ Late Deep Narayan Singh, R/o
Sanctoria No. 9, Colliery, P.S. - Kulti, District- Bardhaman, State - W.B

... .. Appellant

Versus

1. The State of Bihar
2. Kamleshwari Singh, S/o Late Hriday Narain Singh, R/o village- Gudiya,
P.S.- Laxmipur, District- Jamui
3. Basant Singh, S/o Late Hriday Narain Singh, R/o village- Gudiya, P.S.-
Laxmipur, District- Jamui
4. Puran Singh, S/o Late Biraja Singh, R/o village- Gudiya, P.S. - Laxmipur,
Distt. - Jamui

... .. Respondents

Appearance :

For the Appellant	:	Ms. Meena Singh, Advocate
For the State	:	Mr. Dilip Kumar Sinha, Addl PP
For the Resp Nos. 2 to 4	:	Mr. Prabhat Ranjan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-04-2025

Heard Ms. Meena Singh, learned counsel for the
appellant, Mr. Prabhat Ranjan Singh, learned counsel for the
Respondent Nos. 2 to 4 and Mr. Dilip Kumar Sinha, learned
Additional Public Prosecutor for the State of Bihar.

2. The present appeal has been preferred by the
informant-appellant under proviso to Section 372 of the Code of
Criminal Procedure (now Section 413 of the Bhartiya Nagarik



Suraksha Sanhita) seeking to set aside the judgment dated 26.06.2019 (hereinafter referred to as the 'impugned judgment') passed by learned Additional Sessions Judge-I, Jamui (hereinafter referred to as the 'learned Appellate Court') in Criminal Appeal No. 53 of 2009. By the impugned judgment, the Appellate Court has been pleased to set aside the judgment dated 12.08.2009 passed by learned A.C.J.M.-cum-Assistant Sessions Judge-I, Jamui (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 361 of 2002 arising out of Laxmipur P.S. Case No. 26 of 2002 whereby and whereunder, the learned trial court had been pleased to convict Respondent Nos. 2 to 4 for the offence punishable under Section 307/34 of the Indian Penal Code (in short 'IPC').

3. The learned Appellate Court has allowed the appeal against conviction of Respondent Nos. 2 to 4. Being aggrieved by and dissatisfied with the said judgment of acquittal passed by the learned Appellate Court, the present appeal has been preferred.

4. We have heard learned counsel for the parties and also perused the trial court's records as also the judgment of the learned Appellate Court.

5. It appears that the prosecution case is based on the fardbeyan of one Varun Devi (PW-7) recorded on 06.03.2002 at 08:30 PM at Sadar Hospital, Jamui. In her fardbeyan, the



informant has alleged that on the same day at about 01:00 PM when she was at her home, her neighbours, namely, (1) Kameshwari Singh, (2) Basant Singh, (3) Ranju Devi and (4) Puran Singh started extracting soil from *parti* land in front of her house due to which there was every possibility of damage to her house. When the informant stopped them from doing so, they became furious and Kameshwari Singh who was carrying a '*kudal*' assaulted her with the same on her head due to which she became injured and when she fell down, then Basant Singh assaulted her on her head by the butt of the '*kudal*'. Ranju Devi assaulted her on her hand by a knife. Puran Singh was instigating the other accused persons to kill the informant. The accused persons also snatched about Rs.200-300/- which she was carrying in her '*aanchal*'. When the informant raised *hulla*, the nearby people, namely, Santosh Singh, Jogendra Singh, Santu Singh and others came and saved the informant from being further assaulted. They also took her to the hospital to get her treated.

6. On the basis of the said fardbeyan, Laxmipur P.S. Case No. 26 of 2002 was registered on 07.03.2002 for the offences under Sections 341, 323, 324, 307, 379 and 504/34 IPC. The chargesheet was filed whereupon cognizance of the offences were taken. The charges were explained to the accused persons, they



denied the charges and claimed to be tried whereafter the learned trial court framed charge under Section 307/34 IPC against four named accused persons including these three respondents.

7. In course of trial, the prosecution examined altogether seven witnesses and exhibited certain documentary evidences. The defence also exhibited one documentary evidence. These are being reproduced hereunder for a ready reference:-

List of Prosecution Witnesses

PW-1	Santosh Kumar Singh
PW-2	Santu Singh
PW-3	Ram Narayan Singh
PW-4	Vakil Singh
PW-5	Ratish Devi
PW-6	Dr. Suchi Pd Singh
PW-7	Varun Devi

Exhibit on behalf of the Prosecution

Exhibit-1	Injury report of PW-7
-----------	-----------------------

Exhibit on behalf of the Defence

Exhibit-A	Certified copy of Complaint Petition No. 252C/2002
-----------	--

Findings of the Learned Trial Court

8. The informant changed her version with regard to the kind of weapon held by Ranju Devi who was one of the accused. The learned trial court having examined the evidences on the



record, held that the accusation against said Ranju Devi has not been proved by the prosecution beyond all reasonable doubt, hence, she was acquitted. At the same time, the learned trial court found that the informant (PW-7) has been supported by PW-1, PW-2 and PW-5. The informant (PW-7) has supported her case in the examination-in-chief but in her cross-examination, she has only stated that she had received assault from the edge-side of the spade whereafter she had fallen down and become senseless. The learned trial court found that the evidences with regard to the accusation of Ranju Devi were not challenged. PW-1 and PW-2 had made self-contradictory statements whereas PW-3 had been declared hostile. In ultimate analysis, the learned trial court convicted Respondent Nos. 2 to 4 for the offence punishable under Section 307/34 IPC and sentenced them to undergo rigorous imprisonment for five years.

Findings of the Learned Appellate Court

9. Respondent Nos. 2 to 4 preferred an appeal before the learned Appellate Court. The learned Appellate Court has re-appreciated the entire evidences available on the records of the learned trial court. The learned Appellate Court found that Santosh Kumar Singh (PW-1) who claims to be an eye witness to the occurrence had reached the place of occurrence only after the



informant (PW-7) had raised *hulla*. Similarly, PW-2 Santu Singh had also reached the place of occurrence after hearing *hulla*. PW-1 was unable to say that the land from where the soil was being extracted belonged to the informant. PW-2 has stated that when he reached the place of occurrence, he found that the informant had received injury on her forehead and blood was falling down. The informant was lying on the earth and there was no villager when he reached there, later on, the villagers and the persons who are residing there, namely, Santosh Kumar Singh, Ratan Devi etc., reached there. The learned Appellate Court, therefore, held that at the time of occurrence, there was no eye witness and PW-1 had not seen the occurrence while taking place.

10. The learned Appellate Court found that the informant (PW-7) has stated in her evidence that there is a land of the accused person beside her house. She could not say that in how much area the soil was cut/extracted. She claimed that she had received injury from the edge-side of the spade whereafter she had fallen down and became unconscious. When she regained consciousness in her house, then she was taken to a Doctor at Laxmipur but she was not admitted because the hospital was found locked. The informant has admitted that both the parties are *gotiyas* and they had an old house. The informant had made her



own house but the accused persons had constructed a new house at the old place but she claimed that both the parties have got their share in the old house. She claimed that the accused persons were cutting soil from the wall of the house. The learned Appellate Court, therefore, found that in paragraph '2' of her deposition, the informant had admitted that the said land was allotted to the accused in partition.

11. This Court further finds that the learned Appellate Court has taken note of the injuries mentioned in the injury report (Exhibit-1). We reproduce the injuries noticed on the body of the informant hereunder for a ready reference:-

- “(1) Lacerated wound $\frac{1}{2}$ ” x $\frac{1}{4}$ on the skin of the frontal area of the forehead
- (2) Swelling and tender on the right side of parietal region of the head.
- (3) Pain in the chest of whole body”

12. The learned Appellate Court found that the injury report (Exhibit-1) completely rules out the case of the informant that she was assaulted from the edge-side of the spade. The Doctor had also contradicted the claim of the prosecution that the informant was assaulted from the blunt side of the spade as according to the Doctor, if assault would be given from the blunt side of the spade on the upper part of the head, there would be a



sign of trample/crushing of the hairs but no such sign has been found by the Doctor. The injury no. 1 has been found superficial and according to the Doctor, the kind of injury may occur due to fall on the ground. The learned Appellate Court having noticed that there are material discrepancies in the evidence of the prosecution witnesses and contradictions in the ocular and medical evidence, held that it would not be appropriate to convict the Respondent Nos. 2 to 4 for the offence under Section 307/34 IPC. Accordingly, they have been acquitted.

Submissions on behalf of the Appellant

13. Ms. Meena Singh, learned counsel for the appellant has assailed the impugned appellate order on the ground that the Appellate Court has not given proper appreciation to the evidence of the informant who sustained serious injuries on her person. According to her, the learned Appellate Court failed to appreciate that the evidence of the informant (PW-7) was fully corroborated by PW-1 and PW-5 as also by the Doctor who had noticed the injuries on the body of the informant.

Submissions on behalf of the Respondents

14. On the other hand, learned counsel for the Respondent Nos. 2 to 4 as well as learned Additional Public Prosecutor for the State have jointly supported the judgment of the



learned Appellate Court. It is submitted that so far as PW-1 and PW-2 are concerned, even though they claimed to be eye witnesses to the occurrence but the learned Appellate Court has rightly held after analyzing the evidence of the informant that PW-1 and PW-2 both reached at the place of occurrence only after the occurrence had already taken place. It is submitted that the informant has stated in her evidence that she was given an assault from the edge-side of the spade by Kameshwari Singh whereafter she had fallen down and had become unconscious. If it is so, she could not have seen that Basant Singh had given a blow on her head from the blunt side of the spade and that Puran Singh was giving order to the accused persons to assault her. Thus, these are only concocted and baseless story. It is pointed out that the informant changed her statement from that of her fardbeyan when she came to depose in course of trial. In course of trial, she has stated in her examination-in-chief that when she became senseless, she was assaulted by Puran Singh and Ranju Devi by lathi and then on *hulla*, Santosh Singh, Santu Singh, Mithilesh Singh and Arvind Singh came. The learned trial court disbelieved her with regard to her statement against Ranju Devi and acquitted Ranju Devi. The informant did not prefer any appeal against the acquittal of Ranju Devi. It is submitted that in this case, the occurrence has taken place on the



plot/land which belonged to the accused persons where they were allegedly cutting soil. The informant failed to produce any documentary evidence to show that the said land belonged to her, moreover, the kind of weapon said to have been used by the accused persons would show that these weapons are normally kept in the house of the farmers, the occurrence had taken place in the spur of moment, there was no pre-meditation of mind and there was no repetition of blow either by Kameshwari Singh or Basant Singh.

15. Under these circumstances, if the learned Appellate Court has acquitted Respondent Nos. 2 to 4 of the charges under Section 307/34 IPC, no fault may be found with the same. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara vs. State of Karnataka** reported in **(2023) 9 SCC 581** (Paragraphs '8', '8.1' to '8.5') to submit that the principles governing an appeal against acquittal would not permit any interference with the impugned judgment.

Consideration

16. Having taken note of the aforementioned submissions and after going through the entire materials available on the record of the learned trial court, we are persuaded to take a view that the learned Appellate Court has not committed any error in appreciation of evidences on the record. We find that PW-1 and PW-2 are not eye



witnesses to the occurrence. PW-3 has been declared hostile and so far as PW-4 is concerned, he is a hearsay witness.

17. We find that the informant has changed her statement in course of trial. In her examination-in-chief, she has stated that after she had fallen down and became unconscious, Puran Singh and Ranju Devi had assaulted her by lathi which was not her case in her fardbeyan. In her cross-examination, she has stated that after receiving injury from the edge-side of the spade due to assault given by Kameshwari Singh, she had fallen down and became unconscious, if it is so, then her statement that Puran Singh had assaulted her after she had fallen down from the blunt side of the spade cannot be believed. She could not have seen the occurrence after she had become unconscious and had fallen down on the earth. The informant (PW-7) cannot be put in the category of a wholly reliable witness.

18. We have also noticed from the injury report which has been proved by the Doctor (PW-6) that the informant had lacerated wound on the skin of frontal area of forehead which was found to be simple in nature. So far as the injury no. 2 is concerned, that is swelling and tenderness on the right side of parietal region of the head and the Doctor has opined in course of his cross-examination that injury no. 1 is superficial injury which may be caused by fall on some hard substance. About the second injury also, it is stated that such injury may be caused by fall. From the kind of weapon



allegedly used by the Respondent Nos. 2 and 3, the place of occurrence where the occurrence had taken place and the kind of dispute between the parties which the informant has shown in her evidence, it is crystal clear that the occurrence had taken place over a dispute on cutting of soil from the land beside the mud made wall of the old house in which informant also claims her right. She was apprehensive that the wall would get damaged. The quarrel took place in the spur of moment, there was no pre-meditation of mind and there was no repetition of blow with an intention to kill the informant.

19. This being the position, we are of the considered opinion that the learned Appellate Court has not committed any error in appreciation of the evidences.

20. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

lekhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2025
Transmission Date	08.04.2025

