

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.37 of 2016

Arising Out of PS. Case No.-21 Year-2006 Thana- SHRI NAGAR District- Madhepura

1. Md. Jamaluddin Son of Late Md. Ludaiuddin
2. Md. Salmuddin Son of Late Md. Rabiduddin Both residents of Village - Pokharia South Tola, Police Station - Srinagar - 8, District - Madhepura.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Uday Chand Prasad, Advocate
For the State	:	Mr. Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

7 01-04-2026 Heard learned counsel appearing for the appellants and learned Additional Public Prosecutors appearing for the State.

2. This appeal has been filed challenging the judgment of conviction and order of sentence 09.12.2015 passed by the learned Additional District and Sessions Judge, 3rd, Madhepura in Sessions Trial No. 291A of 2006 in connection with G.R. No. 693 of 2006 arising out of Srinagar P.S. Case No. 21 of 2006 whereby and whereunder these appellants have been convicted for committing offence under Sections 147, 341 and 323 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 500/- each for committing offence under Section 147 of the



Indian Penal Code and in case of default of fine, to further undergo imprisonment for two months; one month of imprisonment for committing offence under Section 341 of the Indian Penal Code and one year of imprisonment for committing offence under Section 323 of the Indian Penal Code. All sentences have been directed to run concurrently.

3. The prosecution case, in brief, is that on 13.08.2006, when the informant along with his brother was returning after agricultural work, in the meantime, all the named accused persons, including these appellants, forming an unlawful assembly and armed with *lathi* and *fatta*, intercepted them and assaulted them causing multiple injuries.

4. In this case, on the basis of the *Fardbeyan* of the informant, Sri Nagar P.S. Case No. 21 of 2006 was registered for the offence punishable under Section 147, 148, 341, 342, 323 and 307 of the Indian Penal Code against seven named accused persons, including these appellants and after completion of the investigating, charge-sheet was submitted under Sections 147, 148, 149, 323, 325, 307 and 504 of the Indian Penal Code against five accused persons and thereafter, cognizance was taken vide order dated 07.10.2006 against all seven F.I.R. named accused persons and thereafter, the case of these



appellants was separated and was committed to the learned Sessions Court. Accordingly, charges were framed under Sections 147, 341, 323 and 307 against both these appellants.

5. In this case, in order to bring home guilt of these two appellants, the prosecution has examined altogether four witnesses. P.W. 1, namely Md. Masroouddin and P.W. 2, namely Md. Mustakib, are independent witnesses. P.W. 3, namely Md. Kaisar, is brother of the informant and also an injured witness. P.W. 4, namely Md. Istafaque, is the informant. On the other hand, the defence has not produced any oral or documentary evidence.

6. After hearing the parties, the learned trial court convicted these appellants and sentenced them, as indicated in the opening paragraph of this order.

7. Learned counsel appearing for the appellants assails the order of conviction and sentence on various grounds. He contends that the impugned order of sentence and conviction are fit to be quashed and set aside on the basis of facts and circumstances. The learned trial court has committed grave illegality in facts and law both. He submits that in this case, allegation of assault is general and omnibus and no specific accusation of overt act has been alleged against these appellants.



P.W. 1 and P.W. 2, who are independent witnesses, have only corroborated that these appellants were present at the place of occurrence armed with *lathi* but have not disclosed as to who assaulted the injured. It is further contended that in this case, the Investigating Officer has not been examined. Non-examination of the Investigating Officer has caused great prejudice to the defence of these appellants as they were not able to contradict the evidence of the witnesses and the place and manner of occurrence could not be proved. It is further contended that the doctor was also not examined and the injury report has also not been exhibited and as such, there is no injury report on record in support of the allegations levelled against the accused persons. Thus, the prosecution has failed to prove the case beyond reasonable doubts and thus, the trial court has wrongfully convicted these appellants ignoring material contradictions and hence, the appellants are fit to be acquitted.

8. On the other hand, learned Additional Public Prosecutor for the State has submitted that there is no need of any interference in this appeal since the prosecution witnesses have supported the corroborated the prosecution story and there is no reason to differ with the findings of the learned trial court and the judgement of conviction and order of sentence are



justified and legal.

9. From going through the rival submissions, evidences and upon perusal of the records, this Court finds that the impugned order of conviction and sentence suffers from material infirmity. In this case, the Investigating Officer has not been examined, which has caused great prejudice to the defence as the defence could not get documentary evidence, explain the material discrepancy and contradict the witnesses. Neither the doctor was examined nor the injury report was exhibited and as such, there is no injury report on record to substantiate the allegation of assault as levelled in the F.I.R. and thus, the allegation of assault could not be corroborated. Moreover, from bare perusal of the impugned order of conviction and sentence, this Court finds that there is material contradiction in the deposition of the witnesses.

10. Thus, in view of the facts and circumstances of the case, as discussed above, it is evident that the prosecution has failed to prove the guilt of these appellants beyond reasonable doubt and thus, the appellants are entitled to be given the benefit of doubt.

11. In that view of the matter, the impugned judgment of conviction and order of sentence dated 09.12.2015 passed by



the learned Additional District and Sessions Judge, 3rd,
Madhepura in Sessions Trial No. 291A of 2006 in connection
with G.R. No. 693 of 2006 arising out of Srinagar P.S. Case No.
21 of 2006 are hereby set aside with respect to these appellants
only.

12. Appellants, above named, are acquitted of all the
charges and are discharged from the liability of the bail bonds in
connection with this case.

13. Accordingly, this appeal stands allowed.

14. Interlocutory application/s, if any, also stands
disposed off.

(Prabhat Kumar Singh, J)

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