

(2002) 02 PAT CK 0108

In the Patna High Court

Case No : Criminal Appeal No. 14 of 1991

Bajnath Mishra @ Baidyanath Mishra

APPELLANT

Vs

Bijeshwar Mishra, Daya Nand Mishra, Surendra Mishra and
Harendra Mishra

RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 147, 148, 322, 379

Citation : (2002) 2 PLJR 443

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

**Advocate : Krishnanand Singh, for the Appellant; Ashok Kumar Mishra, No. 2,
R.P. Gupta, for the Respondent**

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—The Respondents suffered conviction under Sections 322 and 379 of the Indian Penal Code on being tried by Shri Kant Roy, Judicial Magistrate, 1st Class, Chapra and were sentenced to suffer simple imprisonment for a term of three months and six months respectively on these counts. Respondent No. 1 suffered conviction also u/s 148 of the Indian Penal Code and was sentenced to suffer simple imprisonment for a term of three months. Likewise rest three Respondents suffered conviction also u/s 147 of the Indian Penal Code and were sentenced to suffer simple imprisonment for three months. However, all the sentences were directed to run concurrently.

2. The aggrieved Respondents carried the matter in appeal before 1st Additional Sessions Judge, Chapra in Cr. Appeal No. 71 of 1989 when the learned Additional Sessions Judge on consideration of evidences placed on the record while negating the contentions raised at bar on behalf of the State acquitted the Respondents, and now in his turn aggrieved complainant has moved this Court.

3. Shorn of details, factual matrix for appreciation of evidences was that a

petition of complaint, on behest of Baijnath Mishra (P.W. 4) was filed in the Court of Sub divisional Judicial Magistrate, Chapra against the Respondents and two others with accusation that on 10th April, 1986 he noticed them cutting wheat crops from his field and on resistance they assaulted him and also removed wheat crops valued at Rs. 400/-. In the eventual trial that commenced the State examined altogether seven witnesses including Baijnath Mishra, his brother and other witnesses including P.Ws. 6 and 7 who are formal and had brought on record, the sale deeds. The defence too examined two witnesses and as has been stated, the trial Court finding the Respondents guilty of the charges, rendered verdict of guilt and sentenced them in the manner stated above which was eventually reversed by the lower Appellate Court.

4. Contention raised at bar on behalf of the Appellant was that though the lower Appellate Court on appreciation of evidence came to the conclusion that the land in question belongs to the Appellant, notwithstanding such finding, rushed to erroneous conclusion for acquitting the Respondents on premises that the charges framed under Sections 147 and 148 of the Indian Penal Code were not properly framed and hence Respondents had not been saddled with any common object to commit offence. It is sought to be urged that the credibility of P.Ws. 1 and 2 was questioned by the lower appellate Court only on premises that they were professional witnesses which did not sound well. Learned Counsel appearing for the Respondents resisted contentions raised on behalf of the Appellant. Learned Counsel appearing for the Appellant and also the Respondents have taken me to the evidences placed on the record and I find that certain facts emerging from the evidences cannot remain unnoticed. It may be stated that even the trial Court had not placed reliance on evidence of P.W. 3 who happens to be none else but the brother of the Appellant in view of infirmity appearing in his evidences which rendered him unreliable. P.W. 1 hails from different village and he has not even land in the P.O. village and if he is to be considered credible by the time he happened to reach at the place of occurrence, almost from entire field wheat crop had been removed by the Respondents. This fact cannot be lost sight of that the genesis of the prosecution case had been that while P.W. 4 noticed Respondents cutting wheat crops from the field, he resisted them, pursuant to which he was assaulted and on accomplishment of that, wheat crop was cut and removed. Baijnath Mishra and Jagannath Mishra were full brothers. This witness would admit a dispute with regard to a Mahua tree. Though P.W. 12 claimed to be a labourer, but he did not claim to have even seen harvesting of wheat crop in the field. Jagannath Mishra P.W. 3 who happens to be full brother of the Appellant would state that he has no concern with the land of his brother. He does not know even the situation of the land and even the boundary, and that apart, he had reached the land in question after cutting was almost over. Taking into evidences of Baijnath Mishra P.W. 4, though he claimed to have purchased the land in question, neither the deed of sale to suggest the title and possession over the disputed land was placed on the record, nor its details was disclosed in evidence. Even the petition of complaint would not disclose the identity of the

land, and that apart, this witness could admit litigation with the Respondents, as proceeding u/s 107 Code of Criminal Procedure was pending between them, with regard to Mahua tree. This witness was not in a position to say as to in which year the land in question was purchased by him. Though a member of witnesses had seen the occurrence but he did not disclose their names. Though the doctor who stated to have noticed examined him at his residence, this witness would state about his examination at Sadar Hospital Chapra, which was admittedly not the case of the complainant. Though P.W. 4 only was the injured and the assailants were four in numbers, he could not state about sustaining injury on particular part on his person. The lower appellate Court also has taken into consideration the fact that while going to Chapra he must would have crossed Mashrakh where there is hospital and also Police station, but he did not choose to take recourse to public authority there and in the backdrop of P.Ws. 1 and 2 having deposed in a number of judicial proceeding, the lower appellate Court has rightly chosen to disbelieve them. This fact cannot be lost sight of that the prosecution was launched against the Respondents in the year 1986 and after lapse of about 16 years, the matter has come up again before this Court. The basic concept for reversal of judgment of acquittal cannot be lost sight of that unless the finding recorded by the Court below appear to be unreasonable, perverse and contrary to weight of mass evidence, the finding did not merit interference and on these premise I do not feel persuaded to reverse the findings recorded by the lower appellate Court and the appeal being meritless, is dismissed.