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**(2024) 10 JH CK 0049**

**Jharkhand High Court**

**Case No:** Criminal Appeal (DB) No. 388 Of 2002

Lalu Yadav

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

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**Date of Decision:** Oct. 29, 2024

**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 313
- Indian Penal Code, 1860 - Section 34, 148, 149, 201, 302

**Hon'ble Judges:** Ananda Sen, J; Gautam Kumar Choudhary, J

**Bench:** Division Bench

**Advocate:** B.M. Tripathy, Naveen Kumar Jaiswal, Nutan Kumari Sharma, Sanjay Kr. Srivastava

**Final Decision:** Allowed

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**Judgement**

2. The learned senior counsel for the appellants submitted that the Trial Court has wrongly appreciated the evidence, led by the prosecution as P.W. 5

did not identify any of the assailants. He further submitted that only 3-4 assailants were there, thus the prosecution version that more than ten persons

were present in committing the offence is absolutely false. He also contended that the evidence of P.W.5 cannot be brushed aside, as he has not been

declared hostile. It has also been contended that from the evidence of this prosecution witness, it is quite clear that just because of grudge and enmity,

all the accused persons have falsely been implicated in this case. He also submitted that to bring home the charge under Section 302 IPC, th

prosecution has to prove the homicidal death, but in this case, the doctor, who conducted the postmortem of the deceased, has not been examined, thus

it can be held that there is no material to prove the homicidal death. It has also been contended that the Investigating Officer of this case has also not been examined, which caused great prejudice to the defence as the place of occurrence has not been proved. It has also been contended that the appellants have been convicted under Section 302/149/201 IPC only and there is no charge framed either under the Arms Act or under the Explosive Substance Act, which would clearly suggest that the prosecution case as narrated in the FIR that there was firing from gun and pistol and there was hurling of bomb is false. On these grounds, learned senior counsel for the appellants has prayed for acquittal of the appellants.

15. In view of what I found and I have noted above, I hold that the prosecution has not been able to prove homicidal death of the deceased nor could prove the prosecution story of using of bomb as well as fire arms in commission of the offence nor the place of occurrence has been proved by the prosecution. Thus I have no other alternative than to acquit the appellants from the charge. The Judgment of conviction dated 16.7.2002 and order of sentence dated 17.7.2002 passed by the learned Addl. Sessions Judge-, FTC-II, Hazaribagh in Sessions Trial No. 512 of 1993 is set aside.

Accordingly, this appeal is allowed.