

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.242 of 2015

Arising Out of PS.Case No. -58 Year- 2002 Thana -NAYAGAON District- BEGUSARAI

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Dhamendra Singh @ Dharwa, Son of Late Bino Singh, resident of Village:
Balahpur, P.S. : Nayagaon, District : Begusarai.

.... Appellant

Versus

The State of Bihar.

.... Respondent

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Appearance :

For the Appellant/s : Mr. Sada Nand Rai, Advocate

Mr. Ashok Kumar, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-08-2015

In this appeal preferred under sub-section (2) of Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”), the sole appellant calls in question the judgment of conviction and order of sentence dated 31st March, 2015 passed by the learned Additional Sessions Judge-VII, Begusarai in Sessions Trial No. 89 of 2003 by which the learned Judge has convicted the appellant under Section 307 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for the period of ten years with fine of Rs. 10,000/- and in default, to undergo simple imprisonment for a further period of one year.



2. The facts which are essential to be stated for adjudication of this appeal are that an FIR was lodged by one Lutar Jha @ Upendra Jha @ Umesh Jha (P.W. 5), alleging that on 18.09.2002 at about 8.30 p.m., a buffalo of one Bino Singh was grazing in the field of one Khakhar Rajak on which wife of the informant stated that since the buffalo belongs to Bino Singh, he was raising no objection, but if it would have been her buffalo, he would have abused and assaulted her. On hearing these words, the son of Bino Singh, namely, Dharmendra Singh @ Dharwa (appellant) who was standing there started abusing her. In the meantime, the informant also arrived there and asked the appellant no to abuse his wife. Thereafter, Bino Singh, Dwarika Singh and Dharmendra Singh @ Dharwa started beating his wife with fists and slaps. When he intervened in order to rescue his wife, Dharmendra Singh @ Dharwa went to his house and came back with *bhala* and assaulted him with *bhala* repeatedly with an intention to kill him causing injuries on his person.

3. After the criminal law was set in motion, the investigating officer of the case recorded the statements of witnesses under Section 161(3) of the Code and eventually on completion of investigation, submitted charge sheet under Sections 341, 323, 324, 307 and 504 read with 34 of the Indian Penal Code before the



learned Magistrate against the accused Bino Singh, Raman Kumar Pathak and Dharmendra Singh @ Dharwa. The learned Magistrate, in turn, after complying with the requirements of Section 207 of the Code, committed the case to the court of sessions for trial. The learned Sessions Judge framed charges under Sections 307 and 323 of the Indian Penal Code against the three accused persons named above who were sent up for trial.

4. The accused persons have denied their guilt and pleaded false implication. Be it stated during pendency of the trial, Bino Singh expired as a consequence of which, the trial against Bino Singh got abated. Thereafter, the trial proceeded against the accused persons, namely, Raman Kumar Pathak and Dharmendra Singh @ Dharwa.

5. The prosecution, in order to substantiate the charges framed against the accused persons, examined six witnesses, namely, P.W. 1, the doctor, who examined the injured informant, Dr. Gopal Mishra, P.W. 2, a chance witness, Muksh Singh, P.W. 3, brother of informant, Gore Lal Jha, P.W. 4, Tipu Jha, P.W. 5, the informant-cum-injured of the case, Lutar Jha and P.W. 6, investigating officer of the case, Ugra Nath Jha and got exhibited injury report and formal FIR which were marked as Exts. 1 and 2 respectively. The defence chose not to adduce any evidence in

support of the plea taken.

6. The learned Additional Sessions Judge, on the basis of the materials brought on record acquitted the accused Raman Kumar Pathak of both the charges. However, he convicted the accused Dharmendra Singh @ Dharwa under Section 307 of the Indian Penal Code giving credence to the testimony of the prosecution witnesses and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/-. The accused Dharmendra Singh @ Dharwa was, however, acquitted of the charge under Section 323 of the Indian Penal Code.

7. Aggrieved by the aforesaid conviction and sentence, the accused appellant has filed the instant appeal before this Court.

8. Heard Mr. Sada Nand Rai, learned counsel for the appellant and Mr. Bipin Kumar, learned Additional Public Prosecutor for the State and carefully perused the record.

9. Mr. Sada Nand Rai, learned counsel for the appellant has contended that though the allegation is that the appellant repeatedly assaulted with *bhala* on the person of the informant with an intention to kill him, the injuries sustained by the informant are simple and superficial in nature. He further contended that according to the medical evidence, the injuries were caused by sharp cutting object and not by sharp pointed object. The witnesses,

who adduced their evidence during trial, are wholly inconsistent with each other and the trial court has erred in appreciating the evidence led on behalf of the prosecution.

10. *Per contra*, Mr. Bipin Kumar, learned APP for the State, supporting the judgment of conviction as well as order of sentence, submitted that the learned Additional Sessions Judge has correctly analyzed the testimony of the witnesses examined during trial, who have deposed about the occurrence and further taken note of the fact that the medical evidence fully corroborates the prosecution case. According to him, the conclusion arrived at by the trial court cannot be found fault with.

11. Coming to the evidence on record, it is noticeable that the informant (P.W. 5) had clearly stated that the accused Dharmendra Singh @ Dharwa had assaulted repeatedly with *bhala* in order to kill him. He has stated that his wife was also beaten by the accused persons. He further stated that serious injuries were caused to him and on hulla, his co-villagers had arrived there. In the cross-examination, he has stated that his wife was assaulted by the accused persons with fists and slaps. He stated that after sustaining repeated *bhala* blows, he sustained serious injuries as a result of which, he became unconscious. According to him, huge quantity of blood had fallen on the ground. In cross-examination he states that

he regained consciousness after 2 hours of the occurrence. He further stated that he was first taken to the police station and from there to the hospital for treatment. He admits that he had simply put his left thumb impression on the written report which was written by someone else.

12. P.W. 2 Mukesh Singh has supported the prosecution case as narrated in the FIR. In examination-in-chief, he deposed that the accused appellant brought a *bhala* from his house and assaulted the informant repeatedly with it, as a result of which, he was profusely bleeding on the place of occurrence. He further stated that he had carried the injured to Begusarai for treatment. According to him, after assault, the injured Lutar Jha @ Upendra Jha @ Umesh Jha was unconscious for about ten days. In cross-examination, he admits that he reached at the place of occurrence on hulla and that time, there were 10-15 persons. He further stated that he had carried the informant to Begusarai where he was under treatment for ten days. He further stated that the quarrel between the parties had continued for one hour and, thereafter, accused persons fled away from the place of occurrence. He has also stated that the persons, who were present at the place of occurrence, were trying to pacify the matter.

13. P.W. 3, Gore Lal Jha, brother of the informant,



has also corroborated the prosecution case as narrated in the FIR as far as assault upon the informant by the accused appellant with *bhala* is concerned. In cross-examination, he admits that in the night while he was taking dinner at his own house, he heard hulla and reached to the house of his brother Lutar Jha @ Upendra Jha @ Umesh Jha where he had sustained *bhala* injury. According to him, 3-4 persons carried the injured to the police station first. At that time, he was unconscious. The police station was at a distance of 3 kms from the place of occurrence. He stated that since the injured was profusely bleeding, blood had fallen not only at the place of occurrence, but also while he was being carried to the police station and hospital. According to him, at the police station one Baidya Jee was called who made treatment and, thereafter, the victim was taken to Begusarai Hospital. He has stated that after sustaining injuries, his brother had become unconscious and regained his consciousness after eight days of the occurrence.

14. P.W. 4, Tipu Jha, has also corroborated the prosecution case as narrated in the first information report. In his examination-in-chief, he has also stated that the victim was lying in pool of blood and the injured was first taken to police station and, thereafter to the hospital. In cross-examination, he admits that he reached at the place of occurrence where Lutar Jha @ Upendra Jha

@ Umesh Jha was lying on the ground.

15. P.W. 1, Dr. Gopal Mishra, who examined the informant Lutar Jha @ Upendra Jha @ Umesh Jha, has stated in his deposition that on 19.09.2002 he was posted at Sadar Hospital, Begusarai as Civil Surgeon. On that day, he examined the injured and found the following injuries on his person:-

“(i) Incised wound 1½” x 1”x 6” deep and communicating c injury no. (2) over antromedial aspect of right arm upper 3rd vertebra bleeds on touch;

(ii) Incised wound, ¾” x ½” x communicating c injury No.(1) over Posterior border of right Axilla, bleeds on touch.

(iii) Incised wound ½” x ¼” x ¼” over the eminence of left palm.”

In cross-examination, he admits that *bhala* is primarily a sharp cutting weapon, but pointed one, and the nature of injury caused by *bhala* and any other sharp object will be different.

16. P.W. 6, Ugranath Jha, the investigating officer of the case, has stated that on 18th September, 2002, he was posted as Station House Officer of Nayagaon Police Station. On that day, he received the written report of the informant, pursuant to which, he registered the FIR and took investigation of the case. He inspected the place of occurrence, recorded the statements of the witnesses



and on completion of investigation, finding the allegations made in the FIR to be true, submitted charge sheet against the accused persons. He has proved the formal FIR which has been marked as Ext. 2. In cross-examination, he stated that he went to the place of occurrence at about 11.00 p.m. on the date of occurrence itself. He admits that the injury report dated 19.09.2001 issued under the signature of P.W.-1 Dr. Gopal Mishra was supplied to him on 6.2.2002. He admits that though he inspected the place of occurrence on the date of occurrence itself, but neither seizure of any blood-stained earth nor blood-stained clothe of the victim was ever collected or seized by him.

17. In the case at hand, it is seen that the prosecution witnesses such as P.Ws. 2, 3 & 4 have stated that they reached at the place of occurrence when the victim was lying on the ground. The victim has stated in his deposition that after receiving repeated *bhala* blows at the hands of the accused appellants, he fell down and raised hulla. This would mean that the witnesses arrived at the place of occurrence after the assault had already taken place and the victim had fallen on the ground. I further find that P.W. 4 Tipu Jha has clearly admitted in cross-examination that when he reached at the place of occurrence, the victim was lying on the ground. Under such circumstance, it would be evident that P.Ws. 2, 3 and 4 had not

witnessed the actual incident of assault upon the informant.

18. It is to be noted here that the prosecution has not disclosed who scribed the written statement. The informant has categorically stated that he had simply put his left thumb impression on the written report. P.W. 2 Mukesh Singh and P.W. 3 Gore Lal Jha have deposed that the victim was unconscious for more than a week after the assault. Under such circumstance, the content of the written report becomes doubtful. If the informant was unconscious for over a week after sustaining injuries, it is beyond imagination how a written report by someone else could have been understood by the informant who is said to have put his thumb impression over it.

19. It would be pertinent to note here that P.W. 2 Mukesh Singh has stated that the victim regained consciousness after ten days after the occurrence, whereas P.W. 3 Gore Lal Jha has stated in his deposition that the victim regained consciousness after eight days of the occurrence, and P.W. 5, the informant of the case has stated in his cross-examination that he regained consciousness after 2 hours of the alleged occurrence. Thus, I find that there are serious contradictions in the statements of witnesses examined on behalf of the prosecution during trial. I further find that the most important witness in the present case was wife of the informant who

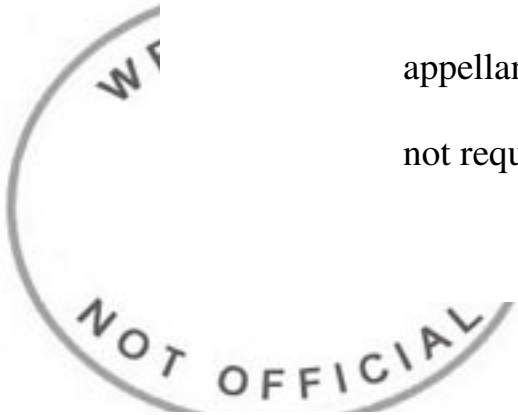
was also one of the injured in the alleged occurrence. The prosecution has failed to examine her during trial and no reason has been explained for the same. This Court would draw an adverse inference against the prosecution for non-examination of the wife of the informant.

20. Further, according to the evidence led during trial after sustaining injuries, the informant was profusely bleeding and blood had spread all around the ground but the investigating officer, who investigated the place of occurrence, had neither seized the blood-stained earth nor he seized blood-stained clothe of the informant. The investigating officer did not recover the *bhala* supposed to have been used in committing offence.

21. At this juncture, I may repeat at the cost of repetition that the doctor has stated that the injury found on the person of the informant was simple in nature caused by sharp cut object. He has stated in cross-examination that *bhala* is a sharp pointed object and the nature of injury by *bhala* and sharp cut object would be different. Thus, I am of the opinion that the medical report does not align with the ocular allegation made in the FIR

22. Regard being had to the totality of the facts and circumstances of the case; I am of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. Accordingly,

the appeal is allowed. The impugned judgment of conviction and order of sentence passed by the court below are set aside. The appellant, who is in custody, is directed to be released forthwith, if not required in connection with any other case.



(Ashwani Kumar Singh, J.)

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