

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.51 of 2015

Arising Out of PS.Case No. -45 Year- 2009 Thana -KHIJARSARAI District- GAYA

Rabindra Sharma, son of Sri Kishori Mistri, resident of village-Simrouka, P.S.-
Khizar Sarai, District-Gaya

.... (Informant)/Appellant

Versus

1. The State of Bihar.
 2. Ram Dahin Mahto.
 3. Pyare Chandra Mahto, both sons of Late Lakhan Mahto.
 4. Asha Devi, wife of Ram Dahin Mahto.
- All residents of village-Simrouka, P.S.-Khizarsarai, District-Gaya.

.... Respondents

Appearance :

For the Appellant/s : Mr. Samir Kumar Sinha, Advocate

Mr. Bachcha Pandey, Advocate

For the Respondent/s : Mr. S. N. Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-01-2015

The instant appeal filed under the proviso to Section 372 of the Indian Penal Code is directed against the judgment and order dated 28th October, 2014 passed by the learned *Ad hoc* District & Sessions Judge-2nd, Gaya in Sessions Trial No. 179 of 2010/132 of 2010 whereby the learned trial Court has acquitted the respondent nos. 2 to 4 of the charges under Section 307 and 504 of the Indian Penal Code. However, the trial court has found the charges under Sections 341 and 323 of the Indian Penal Code to be proved but released the accused respondent nos. 2 to 4 after due admonition extending them benefit of Section 3 of the Probation of Offenders Act, 1958.

2. According to the FIR, on 4.4.2009 at about 2 p.m. the accused persons (Respondent nos. 2 to 4) came to the “khalihan” of the informant Rabindra Sharma and started abusing him as he had purchased land from brother of the accused Ram Dahin Mahto. It has been alleged that Ram Dahin Mahto armed with an iron rod assaulted the informant with intention to kill him on his head as a result of which he sustained serious injuries and fell on the ground. The accused Pyare Mahto armed with *lathi* and Asha Devi armed with bricks and stones also assaulted the informant. Upon *hulla* being raised by the informant, his brother and father arrived at the place of occurrence and they were also assaulted by the accused persons.

3. On the basis of written report of the informant, Khizarsarai P.S. Case No. 45 of 2009 dated 5.4.2009 was registered for the offences punishable under Sections 341, 323, 307 and 504 read with 34 of the Indian Penal Code against respondent nos. 2 to 4.

4. On conclusion of investigation, the police submitted charge sheet in the Court. The Court of Magistrate took cognizance of the offence and since the offence punishable under Section 307 of the Indian Penal Code is exclusively triable by the Court of Sessions it committed the case to the Court of Sessions for trial



after complying with the mandatory provisions prescribed under Section 207 of the Code of Criminal Procedure. The Sessions Court explained the charges to the accused persons to which they pleaded not guilty and claimed to be tried and accordingly, charges were framed against the accused persons for the offences punishable under Sections 341, 323, 504 and 307 of the Indian Penal Code.

5. In course of trial, altogether ten witnesses were examined on behalf of the prosecution. Out of them, P.W.8 Ramratan Prasad, P.W.9 Sukhdeo Prasad and P.W.6 Krishna Prasad were declared hostile by the prosecution. P.W. 7 Basgit Prasad Singh is the investigating officer of the case and P.W. 10 Dr. Shyamendra Prasad Sinha is the medical officer who had examined the victim Rabindra Sharma on the relevant date of occurrence on 5th April, 2009 in the Primary Health Centre at Khizarsarai. P.W. 5 Rabindra Sharma is the informant of the case and other four witnesses examined in course of trial are his relatives.

6. I have heard Mr. Samir Kumar Sinha, learned counsel for the appellant and Mr. S. N. Prasad, learned A.P.P. for the State.

7. I find that P.W. 1 Geeta Devi, Sister-in-law of the informant (Bhabhi) and P.W. 2 Mahendra Sharma, elder brother of the informant, were confronted with their previous statements made

before police and the investigating officer of the case has contradicted them in material particular.

8. P.W. 3 Kishori Mistri, father of the informant is not a witness to the occurrence. He has admitted in his deposition that due to darkness of night, he could not identify any one.

9. P.W. 4 Bijendra Sharma had also reached at the place of occurrence after the occurrence had already taken place. He has stated that several persons of the village had assembled immediately after the occurrence. He has also stated that since the informant was profusely bleeding due to the injury caused to him blood had fallen on the ground at the place of occurrence. According to him, the police had inspected the place of occurrence and prepared seizure list in course of investigation.

10. P.W. 10 Dr. Shyamendra Prasad Sinha had examined the informant on the date of occurrence and had found the following injuries on his person:

“(1) A cut over scalp of about 6 c.m. long covered with bandage. Stitch already given by the local doctor. Approximate depth of the wound at about ½” inch

(2) Mild swelling with tenderness over left hand x-ray shows no bone injury.

(3) Mild tenderness over back.”

11. According to him, injury no. 1 was grievous in



nature whereas other injuries were simple. He has further stated that injury no. 1 appears to have been caused by some sharp cutting weapon. In cross-examination, he has admitted that before he examined the injured informant of the case at about 11 a.m., some other doctor had already treated him. When the informant was brought before him, the wound were already bandaged. He has further admitted that since the cut wound (injury no. 1) was already stitched from before, he could not measure depth of the injury. In respect of injury nos. 2 and 3, he has admitted that those injuries could have been caused due to fall on some hard surface.

12. The informant of the case was examined as P.W. 4. He has stated that on 4th April, 2009 while he was in his “khalihan” all the three accused persons attacked upon him. The accused Pyare Chandra Mahto assaulted him with *lathi*, the accused Asha Devi assaulted him with bricks whereas the accused Ram Dahin Mahto assaulted him with an iron rod on his head. He has stated that on hue and cry raised by him, Mahendra Sharma, Kishori Mistri, Bijendra and Geeta Devi came at the place of occurrence. After that he lost his consciousness. He has stated that he was first taken to the police out-post and from there he was taken to the hospital. He has identified his signature on the written report which has been marked as Ext. 1. In cross-examination, he has stated that the



accused persons indiscriminately assaulted him with *lathi*, iron rod and bricks for about 10-15 minutes. He has also admitted that prior to the assault an altercation had taken place between the parties for about 20-25 minutes. The informant has also stated that firstly, he went to Sarbdaha Police Station outpost and from there he was taken to Khizarsarai Hospital where his treatment was made. He was admitted in the hospital for one day.

13. P.W. 7, Basgit Prasad Singh, the investigating officer of the case, has stated that on 4th April, 2009, he received a written report of the informant at about 11.45 a.m. which was referred by him to the Khizarsarai Police station. At the relevant time, he was posted at Sarbdaha police outpost as Assistant Sub-Inspector of Police. He has stated that when the informant had submitted his written report to him, his wounds were already bandaged. According to him, prior to the submission of the written report, the informant had already got himself treated by some doctor. He has further stated that he could not find any mark of blood near the place of occurrence during the inspection of the place of occurrence.

14. Considering the evidence on record, the trial court held that the prosecution had failed to prove its case beyond reasonable doubts regarding the charges framed under Section 504



and 307 of the Indian Penal Code. The trial Court in its findings held that no witness had deposed in the Court that the accused persons had intentionally insulted and thereby given provocation to the informant intending or knowing it to be likely that such provocation will cause him to break the public peace or to commit any other offence. It further opined that though the allegation is of causing injury by iron rod, *lathi* and bricks but the medical officer examined on behalf of the prosecution has opined that injury no. 1 might have been caused by some sharp cutting weapon. The Court below was also of the opinion that there was no such bodily injury on the person of the informant which can be called to be capable of causing death so as to convict the accused persons of the charge under Section 307 of the Indian Penal Code.

15. Be that as it may, I find from the record that the witnesses examined in course of trial have not only been contradicted the investigating officer on vital points but they have contradicted each other too. I further find that though the informant claims that he was indiscriminately assaulted by the accused persons with *lathi*, iron rod and bricks for about 10-15 minutes but the injuries found on his person do not corroborate the aforesaid fact. He had sustained only one injury which is said to be grievous and that too, in the opinion of the doctor was caused by some sharp

cutting weapon. Admittedly, the accused persons were not armed with any sharp cutting weapon. The other two injuries mild swelling with tenderness over left hand and mild tenderness over back are simple and superficial injuries.

16. Apart from the above, I find from the evidence on record that though the informant claims that he first went to the Sarbadaha Police Station outpost and then went to Khizarsarai for treatment but the investigating officer says when the informant had come to submit the written report, his wounds were already bandaged. This would mean that the informant had gone to the police station after getting himself treated. The doctor who examined the informant has also stated that the informant had come to the hospital after receiving the treatment by some other doctor. Injury no. 1 which is said to be a grievous injury was already stitched from before and P.W. 10 Dr. Shyamendra Prasad Singh has clearly admitted in cross-examination that he could not measure the depth of injury no. 1 as it was stitched from before. These facts do suggest that the informant has not stated the correct facts regarding the incident in the Court. The non-examination of the doctor who initially treated the petitioner and suppression of vital facts while deposing in the Court makes the entire case doubtful.

17. Such being the quality of evidence, in my opinion,

the Court below has rightly acquitted the respondent nos. 2 to 4 of the charges under Sections 307 and 504 of the Indian Penal Code.

18. For the reasons assigned, hereinabove, I find no merit in this appeal. Accordingly, the appeal is dismissed.

(Ashwani Kumar Singh, J.)

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