

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.501 of 2002

Arising Out of P.S.Case No. 199 Year- 1999 Thana –Balua District- BEGUSARAI

1. Arjun Sah
2. Sahdeo sah

Both sons of Late Genhari Sah, both residents of village-Lakhminia,
P.S.Balua , District- Begusarai

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr.Patanjali Rishi, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 05-01-2015

Heard learned counsel for the appellants as well as learned

Additional P.P.

2. Appellants Arjun Sah and Sahdeo Sah, who have been found guilty for an offence punishable under section 304 part- II/34 of the I.P.C. vide judgment dated 12.8.2002 and each one has been sentenced to undergo rigorous imprisonment for 5 years as well as has also been directed to pay Rs. 2000/- by way of compensation in terms of Section 357 of the Criminal Procedure Code vide order dated 16.8.2002 passed by 4th Additional Sessions Judge, Begusarai in Sessions Trial No. 315 of 2000, have challenged the same by preferring the instant appeal.

3. P.W. 8 Channia Devi had recorded her fardbeyan on



20.10.99 at about 11 A.M. before A.S.I. Sabhapati Singh of Balia P.S. at P.H.C. Balia, where her husband Yogendra Sah (since deceased) was admitted for treatment of his injuries, divulging that on the same date at about 8 A.M. while she alongwith her husband was engaged in scraping grass from her kitchen garden, her co- villager Arjun Sah, Sahdeo Sah and Ram Rati Devi came and began to abuse and also claimed the garden. On their protest, Sahdeo Sah ordered where upon Arjun Sah gave lathi blow over head of her husband on account thereof, he fell down and became unconscious. Sahdeo Sah also assaulted with lathi over his back as well as over his both hands and legs. Ram Rati Devi assaulted her (the informant) with brick on her right elbow. The motive for occurrence has been shown as to coerce them to withdraw case, already pending before the Court as well as to grab the land. Dinesh Prasad, Umesh Prasad Yadav, Rinku Kumari, Baby and Dahoo Sah were cited as eye witnesses.

4. It is apparent from the record that the deceased Yogendra Sah was subsequently shifted to Sadar Hospital, Begusarai where he died during course of treatment and on account thereof, there was addition of Section at the initial stage itself and on the basis thereof, after conclusion of the investigation, charge sheet was submitted under section 304/34 of the I.P.C. whereunder the accused/appellants faced trial after having the case committed to the Court of Sessions

and met with ultimate result, the subject matter of the instant appeal.

5. The defence case as is evident from mode of cross examination as well as statement recorded under section 313 of the Cr. P. C. is that of complete denial of occurrence. It has also been pleaded that whatever version of the prosecution happens to be is an after thought story in order to save their skin as the deceased alongwith the informant and others, arms variously raided house of appellant, brutally assaulted the appellant Arjun Sah and for that, Arjun Sah had recorded his fardbeyan on the basis of which Balia P. S. Case No. 200/99 was registered (Exhibit 'D'). It has also been pleaded that the prosecution party were engaged advancing their claim illegally and on account thereof, the parties were of strain relationship and for that series of documents have been exhibited.

6. It has been submitted on behalf of the appellants that learned lower Court has rightly approached to the conclusion after scrutinizing the evidences adduced on behalf of the prosecution that the prosecution has not been able to substantiate their claim over the disputed land as well as recording the finding that PW-9, an Advocate Clerk crabbedly commanded the chariot and at whose behest, the whole prosecution case sailed, and on account thereof, discard testimony of P.W.1, P.W.2, P.W.4, P.W.6 and P.W.9, however wrongly and illegally convicted and sentenced the appellants for an

offence punishable under section 304 part/II/34 of the I.P.C.

7. In order to justify his submission, learned counsel further submitted that when the Court came to the conclusion that P.O. land lies under exclusive possession of appellants then in that circumstance, the narration of the prosecution case has got a windfall and on account thereof, neither the manner of occurrence nor the genesis of occurrence could have been relied upon and in likewise manner, even accepting the finding of the learned lower Court (though not admitted) that the appellants have exceeded right of private defence, could not have taken into account in the back ground of fact that

- i) On account of absence of respective injury report of alleged deceased from Balia P.S. as well as Sadar Hospital, Begusarai to suggest that deceased had sustained the same number of injuries whatsoever been found during course of post mortem, moreover, when presence of P.W.9 has been perceived by the learned lower Court hazardous.
- ii) As per evidence of I.O., P.W. 10 he had not received the O.D. Slip from the hospital although, he had gone to hospital where

Fardbeyan of PW.8 was taken while PW.8, informant had stated that she had gone to P.S. alongwith the injured first and then shifted to hospital and in that event, absence of injury report issued by the police.

- iii) The prosecution has not advanced their plea that injured sustained injury when they intruded over land of Appellant nor claimed the appellants as aggressor nay a case of free fight.
- iv) The appellant Arjun Sah was found in injured condition, admitted to hospital by P.W. 10 (I.O) for which fardbeyan (Exhibit 'D') was recorded.
- v) As the case of the prosecution has been disbelieved so far as possession over land is concerned, then the version of prosecution regarding manner as well as genesis of occurrence found completely crimped.

8. It has also been submitted that in ordinary course of nature, injuries over the person of accused, even if unexplained at the end of prosecution, should not be considered as a wreckage in



prosecution case in case there happens to be consistent evidence available on the record deposed by reliable, trust worthy witnesses. However, so far present case is concerned, it is apparent from the judgment impugned itself, that the learned lower Court had doubted the whole prosecution case as well as discarded the evidence of the majority of the witnesses on account of suffering from undue influence along with the fact that P.O. land happens to be under the possession of the appellants. As such, the prosecution version lost its identity, reliability. Consequent thereupon, the finding recorded by the learned Trial Court is found only hypothetical one, without being corroborated with the materials available on the record.

9. At the other hand, learned Additional P.P. refuted the submission raised on behalf of the appellants and submitted that the death on account of external injuries found over person of the deceased as held by P.W. 3, Doctor Ajad Hind Prasad is found conclusively proved because of the fact that appellants could not be able to demolish the aforesaid theme.

10. It has further been submitted that appellants have rightly been convicted for an offence punishable under section 304 Part-II/34 of the I.P.C. as the appellants indulged in assaulting the victim while he made trespass and as the appellants failed to restrain themselves while exercising the right of private defence resulting

death of deceased.

11. It has further been argued that right of private defence is permissible only to the extent of protecting the life and property and not beyond that. It has further been argued that it was opened to the accused/ appellant to substantiate the right of private defence wherein they failed. Consequent there upon, the finding recorded by the learned Trial court happens to be just reasoned and proper and is fit to be confirmed.

12. With the assistance of respective counsels, I have gone through the Judgment impugned. From para-46 of the judgment, the learned lower Court entered in scrutinizing the evidences available on the record and during course thereof, it is apparent that learned lower Court had at one occasion doubted over the reliability of the testimonies of P.W. 1, P.W.2, P.W. 4, P.W. 6 and P.W.9 as well as had also concluded that the prosecution had failed to substantiate its claim over the land under dispute. It is also apparent from para-49 of the judgment impugned, that the learned Trial Court had also put question mark over the conduct of the I.O., P.W.-10. However, as per para-47 and 50 of the judgment, it is apparent that taking into account the evidence of P.W. 8, the informant concluded and held the appellants guilty. However, during course of appreciating evidence of P.W.-8, the informant, the learned Trial Court failed to consider that



when major part of prosecution case has been dis- believed, the P.O. has been held to be out of possession of the prosecution then in that circumstance, the injuries, even if admitted over the victim was not in the same sequence wherein it has been alleged more particularly when there happens to be a counter version (Exhibit –D’) as well as having been supported by the I.O., P.W.-10. That means to say, on account of changed scenario, the genesis as well as manner of occurrence could be found recurvous.

13. Evidence of single PW, if found trustworthy, can form basis of conviction, which Section 134 of Evidence Act suggests. And the learned lower Court, as disclosed above recorded its finding on the sole testimony of PW-8.

14. The evidence of P.W.8 has to be scrutinized in the background of own finding of the lower Court. The P.O. land was found to be in possession of accused/appellant which P.W. 8 had not accepted. Then, in that event, presence of PW 8 alongwith deceased over P.O.land suggest that they were aggressor, moreover for that there happens to be counter case for the injury caused to Appellant Arjun Sah. Furthermore, from the judgement impugned , it is apparent that learned lower Court failed to identify the actual place of occurrence and, perhaps, is found influenced by the evidence of doctor PW 3 which in no way was going to support the case of

prosecution in the back ground of aforesaid infirmities.

15. These type of cases, wherein there happens a version and counter version coupled with presence of injuries over person of the accused cast an obligation upon the prosecution to explain the injuries sustained by the accused because of the fact that in such event, the status of the prosecution could be that of aggressor and in the aforesaid back ground, defensive approach is found permissible.

In **Mohd. Ramzani Vs. State of Delhi** reported in **1980 (Supp) SCC -215** at, para-19, the Hon'ble Apex Court observed:-

“19... It is further well established that a person faced with imminent peril to life and limb of himself or another, is not expected to weigh in “golden scales”, the precise force needed to repel the danger, even if he in the heat of the moment carries his defence a little further than what would be necessary when calculated with precision and exactitude by a callous and unruffled mind, the law makes due allowance for it.”

16. Not only this, non exhibit of the relevant injuries report either that of Balia P.S. as well as Sadar Hospital, Begusarai have got much bearing in the back ground of presence of P.W.9, Dinesh Prasad Yadav, an Advocate Clerk, who is present since inception of prosecution being an attesting witness till conduction of trial and further been found duly carved by the lower court itself. Had there been respective injury report on the record, the authenticity of the prosecution case would have been exposed at least regarding

numbers of blow given on deceased as well as would have also flounced in the prosecution version, at least to the extent of exercise of right of private defence at the end of appellant in consonance with the evidence of P.W.8, informant.

17. Moreover, taking into account the conduct of prosecution, more particularly the PW 8, it is apparent that she had tried to suppress the true version of the occurrence and on account thereof, evidence of P.W. 3, the doctor who had conducted post mortem report and got it exhibited could not find kindered to prosecution.

18. In the aforesaid facts and circumstance of the case as referred above, the finding recorded by the learned Trial Court did not justify its prevalance. Hence, is setaside.

19. The appeal is allowed.

20. Both appellants are on bail. Hence, they are discharged from its liability.

(Aditya Kumar Trivedi, J)

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