

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.300 of 2002

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1. Babulal Ram son of Bigu Ram,
2. Deosharan Ram son of Bhikhar Ram, both resident of village Bijuratti Hatta,
P.S. Siwan Muffasil, Distt. Siwan.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 366 of 2002

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1. Sheolochan Ram son of Dharam Ram,
2. Liladhar Ram son of Dharam Ram, both resident of village Bijuratti Hatta, P.S.
Siwan Muffasil, Distt. Siwan.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) Nos. 300 & 366 of 2002)

For the Appellant/s : Mr. Ram Chandra Sahani, Advocate

For the State : Mr. Sujit Kumar Singh & Mr. Bipin Kumar, APPs

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 27-01-2015

Heard learned counsel for the appellants as well as
learned APP for the State.

2. Cr. App (SJ) No. 300/2002 wherein Babulal Ram and
Deosharan Ram happen to be appellants while Cr. App (SJ) No.
366/2002 wherein Sheolochan Ram and Liladhar Ram happen to be
the appellants commonly originate against the judgment of conviction
and sentence dated 27.05.2002 passed by Presiding Officer, Fast



Track Court-1st , Siwan in Sessions Trial No. 194/1989/80/2001 whereby and whereunder appellant, Sheolochan Ram has been convicted for an offence punishable under Sections 324 IPC and sentenced to undergo RI for six months while remaining appellants, namely, Babulal Ram, Deosharan Ram and Liladhar Ram have been found guilty for an offence punishable under Section 323 IPC and directed each of them to undergo RI for three months, on account thereof, have been heard together and are being disposed of by a common judgment.

3. PW-7, Bipin Ram gave his Fard-e-beyan on 02.05.1988 at about 10:30 p.m. at Sadar Hospital, Siwan along with his father Bikau Ram, brother, Balindar Ram and Charitar Ram (all injured) alleging inter alia that on the same day at about 7:00 p.m. while they were at their Darwaza, Babulal Ram, Sheolochan Ram Deosharan Ram and Liladhar Ram began to abuse from their Darwaza. They were also disclosing that they would not leave the hut. On this, his father resisted. During midst thereof, Babulal Ram came and caught hold his father. Sheolochan Ram armed with Farsa, Deosharan Ram, Liladhar Ram and Babulal Ram armed with Lathi came out of whom Sheolochan gave Farsa blow upon his father. Rest assaulted with Lathi. The accused persons were joined by Bhikhar Ram, Munilal Ram, Raksha Ram and Dharam Ram at the time of their



intervention who along with others assaulted them with Lathi. On hue and cry, co-villagers including, Goga Ram, Raghubar Ram, Khobari Ram and Parashu Ram came and got the matter pacified. It has further been disclosed that as they had lent their hut to the accused persons who were neither paying rent nor vacating the same, on account thereof, the said occurrence has been committed. Then thereafter, the injured were lifted to the hospital.

4. On the basis of the aforesaid Fard-e-beyan, Siwan Mufassil P.S. Case No. 83/88 was registered under Sections 307, 324, 323, 447/34 of the IPC, followed with investigation as well as submission of charge-sheet that led to conduction of trial as well as meeting with ultimate result, subject matter of instant appeals.

5. The defence case, as is evident from the mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C. is that of complete denial of occurrence as well as of false implication.

6. It has also been asserted that on the date and time of occurrence, the prosecution party armed variously raided and assaulted accused persons for which substantial case was registered wherein members of the prosecution party were found guilty, however, were let off on bond vide judgment dated 24.05.1996 passed by Rameshwar Mishra, Judicial Magistrate, 1st Class- Siwan in

G.R.Case No. 2494/1988 (Ext-E). Only to safeguard their interest, the instance case has purposely been introduced. The defence has also exhibited series of documents to support the same.

7. In order to substantiate its case, the prosecution had examined altogether 8 PWs out of whom PW-1 is Parsu Ram Manjhi (tendered), PW-2 is Raghuni Ram (tendered), PW-3 is Bab Nand Yadav (formal), PW-4 is Bikau Ram (one of the injured), PW-5 is Budhia Devi (wife of PW-4), PW-6 is Balindar Ram (one of the injured and son of PWs-4 and 5) PW-7 is Bipin Ram (one of the injured and son of PWs-4 and 5), PW-8 is Dr. Shyam Balak Singh, as well as had also exhibited Ext-1, Formal FIR, Ext-2, Fard-e-beyan, Ext-3 series, respective injury report. Defence, though failed to examine any DW, however, exhibited, Ext-A, Original Patta (Bihar Sarkar v. Muni Ram), Ext-B, CC of order of Addl. Collector, Siwan, Ext-B/1 CC of order passed by CO, Siwan, Ext-C, letter no. 261 dated 6.4.94, Ext-D, Injury report of appellant, Babulal Ram, Ext-E, CC of judgment passed by Sri. R. Mishra in Tr. No. 62/96, Ext-F, CC of Formal FIR, Siwan Mufassil P.S. 84/88, Ext-G, CC of Deposition of Dr. Shyam Balak Singh.

8. From the evidence of PWs, it is apparent that none of the PW has come forward to support genesis of occurrence as suggested in the Fard-e-beyan, as having the hut, belonging to



informant, given on rent to accused who neither were paying the rent nor were vacating the same. At the other end, the evidence on this score, brought up by way of examination-in-chief as well as cross-examination, happens to be dispute relating to settlement of land and for that, the different exhibits A, B, C on behalf of appellants/convict confirm the same. Taking into account the conduct of the prosecution, it is evident that claim of exclusive possession is found diluted and in place thereof, controversial issue over land followed with possession has flashed. Being so, the prosecution case is to be seen in the aforesaid background coupled with presence of counter version.

9. Now coming to other aspect, it is apparent from the evidence of PWs-5, 6 and 7 that they have denied any sort of occurrence whereunder the appellants were given a blow at their end and in likewise manner presence of injury, admission of one of the appellants, Babulal Ram in the hospital. However, they admitted presence of case instituted by Babulal Ram as well as they specifically asserted over their acquittal. As stated above, Ext-E speaks regarding identification of prosecution party to be the convict, however, were let off in terms of Section 360 Cr.P.C. At the other end, the evidence of PW-4, Bikau Ram, para-5 of his cross-examination, he had admitted admission of accused persons in the hospital at the same time. He had further admitted that Babulal Ram had also instituted a case for the

Maar-peet having effected in between. Moreover, they have been acquitted.

10. Though subsequently, the prosecution, reason best known to them, had tried to conceal the aforesaid factual admitted position which PW-4 had disclosed. It is not a universal rule that in each and every case, non explanation of injuries having over the person of accused will discredit the prosecution, in case, is found supported with the consistent, creditable and trustworthy evidence. In this regard, the evidence of PWs-4, 5, 6 and 7 is found to be corroborated by the medical evidence that of PW-8, Dr. Shyam Balak Singh along with Ext-3 series. The aforesaid Dr. Shyam Balak Singh had also examined the appellants on the same day, at the same time and deposed so as CW-1 in counter case and exhibited the injury report (Ext-G), and its admissibility in the aforesaid background is found in terms of Section 291 of the Cr.P.C.

11. In the background of aforesaid materials available on the record as well as having blatant denial on the part of prosecution, subsequently, than that as admitted by PW-4, clearly suggest that prosecution wants to suppress the true version of manner of occurrence.

12. Cumulative effect, on account of skulk of prosecution over genesis of occurrence as well as slink in the

prosecution version regarding manner of occurrence render the judgment impugned instulate.

13. Consequent thereupon, the judgment of conviction and sentence recorded by learned lower court is set aside. The appeals are allowed.

14. Appellants are on bail, hence they are discharged from the liability of the bail bonds.

(Aditya Kumar Trivedi, J)

Patna High Court
January 27th 2015
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