

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.440 of 2002

Arising Out of P S. Case No. -57 Year- 1990 Thana -Khodawanpur District- BEGUSARAI

1. **Shankar Mahto**, son of Shri Sukheshwar Mahto, resident of village-Saunt Tola Chhaurahi, P. S. Khodabandpur, District-Begusarai.
2. **Ram Narayan Sao**, son of late Ram Kishun Sao, resident of village-Saunt Tola Chhaurahi, P. S. Khodabandpur, District-Begusarai.
3. **Deo Narayan Yadav**, son of Shri Neti Yadav, resident of village-Patahi, P. S. Khodabandpur, District-Begusarai.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Miss Manisha Singh- Advocate
Mr. Prem Ranjan Raj-Advocate

For the State : Mrs. Abha Singh- A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 22-01-2015

Heard learned counsel for the appellants as well as
learned Additional Public Prosecutor.

2. Appellant Shankar Mahto, Ram Narayan Sao and
Deo Narayan Yadav have been found guilty for an offence punishable
under Section 323 of the I.P.C. and each one has been directed to
undergo rigorous imprisonment for a year. Deo Narayan Yadav
independently has further been held guilty for an offence punishable
under Section 379 of the I.P.C. and directed to undergo rigorous
imprisonment for two years with a further direction to run the
sentences concurrently vide judgment of conviction dated 20.06.2002
and sentence dated 21.06.2002 passed by the Presiding Officer,

Additional Court-1, Fast Track Court, Begusarai in Sessions Trial No.34 of 1991, have preferred instant appeal. While the instant appeal remained pending, appellant Deo Narayan Yadav died and on account thereof, vide order dated 23.07.2014; instant appeal has been directed to abate against him.

3. Mahadeo Lal (PW-3), the informant recorded first information report on 22.07.1990 at about 8.40 p.m. disclosing therein that his tiled roof house lies over Khesra no.261 wherein one washer man of Vikrampur village was residing as a tenant. Deo Narayan Yadav @ Debu Yadav, Ram Narayan Sao, Jai-Jai Ram Mahto, Shankar Mahto are inclined to take forceful possession, locked the house after removing the washer man. On his protest, they chased. At about 5.30 p.m. while he came to take out fodder there from, all the four accused chased him whereupon he ran to Bakhadda chowk followed by the accused persons, who encircled him and on an order of Debu Yadav, accused Ram Narayan Sao caught hold him while accused Shankar Mahto and Jai-Jai Ram Mahto put towel around his neck and began to pull in order to kill him, on hearing his whining, Ram Bahadur, Chaukidar Sahis, Raghunandan, Dafadar and others came and rescued, Debu Yadav also snatched away his wrist watch. The motive for occurrence has been shown as accused wants to take possession over the land.

4. After registration of Khodawanpur P. S. Case no.57 of 1990 followed with investigation as well as submission of chargesheet, the trial ultimately commenced and concluded in a manner, the subject matter of instant appeal.

5. Defence as pleaded as well as coming out from the statement recorded under Section 313 Cr.P.C. is of complete denial of occurrence as well as false implication in the background of land dispute.

6. In order to substantiate its case, prosecution had examined altogether four PWs, out of whom, PW-1 is Ashok Kumar Lal, cousin brother of informant, PW-2 is Md. Rais, the Chaukidar, PW-3 is Mahadeo Lal, informant himself and PW-4 is Shailender Kumar Singh. Documents have also been exhibited as Exhibit-1 signature of informant, Exhibit-2 is formal F.I.R., Exhibit-3 the injury report. Side by side the defence had also examined one DW Md. Noor Alam and had exhibited as Exhibit-A plaint of Title Suit No.210 of 1999, Exhibit-B Certified copy of order of 144 Cr.P.C.

7. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellants that the learned lower Court had acted in a mechanical manner while appreciating the evidences deposited by the respective witnesses. It has also been submitted that from the F.I.R. itself, fragrance of land dispute is



coming out. In likewise manner, during course of evidence, more particularly, from the evidence of PW-3, it is apparent that apart from continuance of a Title Suit amongst the parties, the possession of appellants over the dispute land has also been admitted and in the aforesaid background, it was incumbent upon the prosecution to have proved their exclusive possession on the alleged date of occurrence by means of cogent and reliable evidence wherein they failed. Thus, on the sole testimony of informant, the learned lower Court should have acquitted the appellants instead of convicting.

8. It has further been submitted that all the witnesses are inconsistent over manner of occurrence. According to initial version of the informant as well as during course of evidence of PW-3, it is apparent that at the second time, while he had gone to take out fodder, he was chased by all the accused persons to Bakhadda chowk where they intercepted, encircled and then assaulted. The aforesaid contents has completely been washed away by the PW-2 a Chaukidar. Consequent thereupon, the manner of occurrence is also found not properly proved. PW-1 is the cousin brother of PW-3 and on account thereof, his interestedness discredits his testimony.

9. It has further been stated that in the F.I.R. itself, it has been disclosed that before the alleged occurrence, these accused persons have already locked the house after removing the tenant.



Tenant has not come to say anything nor his name has been exposed. Had the house under tenancy, was it genuine conduct of informant a landlord not knowing his name. On account of non-examination of I.O., the objective finding, more particularly, over possession relating to the disputed land remained unanswered. Consequent thereupon, due to non-examination of the I.O., the interest of appellants is also found prejudiced. So, submitted that having the cumulative effect of aforesaid inherent infirmities, the conviction and sentence should not have been recorded by the learned lower Court.

10. On the other hand, while refuting the submission raised on behalf of appellants, it has been submitted on behalf of learned Additional Public Prosecutor that from the submission raised on behalf of appellants' dispute relating to possession over a house is admitted one which happens to be the motive of the occurrence. Therefore, motive is found properly proved. The dispute relating to aforesaid house has properly been proved by the Chaukidar, PW-2 itself whose unchallenged testimony divulges his deployment by the Police Station to keep watch over the disputed land.

11. Now, coming to the deficiency as pointed out by the learned counsel for the appellants, it has been submitted that in the aforesaid background instead of convicting and sentencing the appellants for an offence punishable under Section 307 I.P.C., they

have been convicted and sentenced for an offence punishable under Section 323 of the I.P.C. which did not require interference.

12. In order to properly appreciate the evidence inconsonance with the arguments raised on behalf of rival parties, depositions as well as exhibits have properly been scrutinized. From the F.I.R., it is apparent that informant had not alleged that he was standing since before at Bakhadda chowk rather he had disclosed that he was chased by four accused person upto Bakhadda chowk where he was intercepted by all the accused persons and then, the specific allegation regarding assault had gone. During course of evidence informant, PW-3 during his examination in-chief had stated that at second round of his visit, he was chased to Bakhadda chowk where accused persons followed him, intercepted him and then on an order of Debu Yadav, Ram Narayan Sao @ Pachu caught hold him and Shankar Mahton encircled his neck with towel. As he raised cry, Shankar Mahton began to pool his towel. Debu Mahto assaulted him with leg and fist. Ashok Kumar Lal, Ram Bilas, Dafadar, Chaukidar, Surpanch came and during course thereof, Debu Yadav snatched away his wrist watch. Although, no attention has been drawn towards his previous statement even then inconsistency is apparent on account of having the document (F.I.R.) being an exhibit of the record. In the first information report, there happens to be absence of assault by

Debu Yadav. However, at the present moment that has been introduced. In likewise manner, at an initial version, Shankar Mahton and Jai-Jai Ram Mahton were shown to have put towel on him and pulled while during course of evidence, it has been confined only to the extent of Shankar Mahton. There happens to be consistency in the evidence of PW-3 so far chasing to Bakhadda chowk as well as interception at the end of appellants are concerned.

13. When the aforesaid theme is taken together with the evidence of PW-2, the Chaukidar, it is apparent that he was present at Bakhadda chowk since before where he met with Mahendra Singh at that very moment, Mahendra Lal also arrived. Deo Narayan Yadav also arrived who ordered to assault and on account thereof, Ram Narayan Sao caught hold Mahadev and Shankar put towel around his neck and began to pull. Therefore, the manner of occurrence, suggested by PW-3 is not at all found to be in same way from the evidence of PW-2.

14. PW-1 Ashok Kumar Lal had deposed that while he was at his shop, heard alarm of Mahadev. He rushed there and found Mahadev Lal having been apprehended by Pachu Sah @ Ram Narayan Sao, Shankar Mahton, Debu Yadav. On an order of Debu Yadav, Pachu Sah caught hold Mahadev Lal, Shankar Mahton encircled towel around his neck and began to pull. Debu Yadav

assaulted him with fists and slaps. Debu Yadav also snatched away his wrist watch. Then thereafter, there happens to be arrival of the witnesses. When the aforesaid evidence is taken together with the evidence of PW-2, again it is found at two different levels inconsistent to each other.

15. The inconsistency prevailing amongst witnesses have to be seen in the background of persisting animosity amongst the parties, more particularly having own admission of the informant right from first information report that house was locked by the accused persons after removing his tenant, whose identity, the prosecution failed to disclose is further found properly nailed on account of non-examination of I.O.

16. Accordingly, the judgment of conviction and sentence recorded by the learned trial Court is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from the liabilities of their bail bonds.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-22.01.2015
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