

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.882 of 2011

Against the judgment of conviction dated 13.06.2011 and order of sentence dated 14.06.2011 passed by Shri Jagnath Rai, learned 1st Additional District & Sessions Judge, Sitamarhi, in Sessions Trial No. 21 of 1999/77 of 2005 (arising out of G.R. No. 302 of 1998 corresponding to Dumra P.S. Case No. 33 of 1998.

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Ram Sogarth Sahani @ Ram Sowarth Sahni S/O Ram Charitra Sahani Resident of Village- Mathaura, P.S.- Dumra, District- Sitamarhi

.... Appellant

Versus

The State Of Bihar

.... Respondent

WITH

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Criminal Appeal (SJ) No. 778 of 2011

Doma Sahani, Son of Late Satahu Sahani, resident of Village-Methaura, P.S. Dumara, District- Sitamarhi.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

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Criminal Appeal (SJ) No. 793 of 2011

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1. Ram Sujeet Sahni, Son of Ramcharitra Sahni
2. Vivek Sahni, Son of Ramcharitra Sahni
3. Jagnath Sahni, Son of Sujeet Sahni.
All resident of Village-Mathoura, P.S.-Dumra, Dist.-Sitamarhi

.... Appellants

Versus

The State Of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No. 882 of 2011)

For the Appellant : Mr. Ashok Kumar Jha, Advocate.

For the State : Mr. Bipin Kumar, A.P.P.

(In CR. APP (SJ) No. 778 of 2011)

For the Appellant : Mr. Anil Kumar, Advocate.

For the State : Mr. Binod Bihari Singh, A.P.P.

(In CR. APP (SJ) No. 793 of 2011)

For the Appellants : Mr. Ajay Kumar Verma, Advocate.
For the State : Mrs. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 17-09-2015

Heard Learned counsel for the appellants and learned counsel for the State.

2. Three appeals having been heard together are being disposed of by this common judgment as three appear arise out of the same judgment of conviction dated 13.06.2011 and order of sentence dated 14.06.2011 passed by Shri Jagannath Rai, learned Additional District & Sessions Judge, Sitamarhi, in Sessions Trial No. 21 of 1999/77 of 2005 (arising out of G.R. No. 302 of 1998 corresponding to Dumra P.S. Case No. 32 of 1998) by which the appellants have been convicted for offence under Sections 307/149 of Indian Penal Code and sentenced to under rigorous imprisonment for ten years and further sentenced to pay fine of Rs. 5000/- each and in default of payment of fine further sentenced to simple imprisonment for two years.

3. The prosecution case as alleged in the First Information Report by the informant Gopi Das recorded on 14.03.1998 at 9.40 A.M. in the clinic of Dr. Bishwanath Prasad, alleging therein that on 13.03.1998 at about 5.00 P.M. on the occasion of Holi, the informant along with villagers was singing song. In the meantime, Doma

Sahani, Ram Sujit Sahani, Bibek Sahani, Ram Sogarth Sahani @ Ram Sowarth Sahni, Jagarnath Sahani came and asked to follow Bichwala Tola and on the said command the informant told them that he is going to his Darwaja for the reason that the singing party is to reach at his Darwaja so he has to arrange welcome for singing party. While the informant was likely to proceed from the singing party to his house, the accused persons resist the informant to proceed to his house and in this context there was some scuffle between the informant and the appellants. The appellant obstructed the informant to proceed for his house and this led to physical altercation between the informant and the appellants. Further case is that appellant caught hold of informant and out of them one Ram Sogarth Sahani took out dagger and assaulted the informant by dagger blow on his abdomen by which the informant fell down in injured condition in front of the house of Bhuda Mahto and Ram Sogarth Sahani proceed saying that he had injured the informant in his abdomen causing intestine bulge out and he will die. Further case that Brijnandan Das P.W.1, Jainandan Das, (not examined), Ram Challitar Das P.W.3, Rajendra Sahani(not examined) along with villagers had seen the occurrence. On hearing hullah, family members of the informant had also came at the place of occurrence and the villagers took him to the clinic of Dr. Bishwanath Das on Rickshaw and where he was being treated and he

claimed that with the intention to kill Doma Sahani, Ram Sujit Sahani, Bibek Sahani and Jagarnath Sahani caught hold of him and Ram Sogarth Sahani gave dagger blow on his abdomen.

4. On the basis of Fardbeyan S.I. recorded statement and on the basis of Fardbeyan F.I.R. lodged on 14.03.1998 itself and investigation handed over to the police. After investigation, charge sheet submitted, cognizance was taken and case was committed to the Court of Sessions.

5. During trial, nine witnesses were examined by the prosecution as P.W. 1 Brijnandan Das had come to support the prosecution case, P.W. 2 Pralahad Das had also come to support the prosecution case, P.W. 3 Ram Challitar Das , P.W. 4 Gopi Das is the informant, P.W.5 Balchand Das, P.W. 6 Dr. Bishwanath Das who had proved the injury report, marked as Exhibit-2, P.W. 7 Mahesh Mahto, has turned hostile, P.W. 8 Kailash Shani also turned hostile and P.W. 9 Jainandan Das. Documentary evidence have been proved are Exhibit-1 signature of Prahlad Das on the First Information Report, Exhibit1/1, signature of Gopi Das, the informant and Exhibit-2 is the injury report. Defence has not produced any oral evidence. However, they have adduced documentary evidence which were Exhibit-1 charge framed against 19 persons in counter case, Exhibit-B is the certified copy of charge sheet of counter case bearing Dumra P.S.



Case No. 2 of 1998, dated 14.03.1998, Exhibit-C is F.I.R. of the counter case, Exhibit-D is evidence of Doctor who examined the injured in counter case which includes injury on the person of Smt. Shyam Sundar Devi, Sumitra Devi, Umesh Sahani, Dil Chand Sahni, Ram Dulari Devi, Exhibit-E to E/4 is the injury report on the persons of Sugarth Das, Sumitra devi, Umesh Sahani, Dilchand Sahni, Ram Sujit Sahani and Exhibit-F to F/1 is the certified copy of compromise petition.

6. The trial court taking into consideration the evidence of witnesses and submissions made by the parties convicted the appellants holding that appellants have been found guilty on the line of reasons that Gopi Das supported the prosecution case and injury on the person of Gopi Das had been corroborated by the Dr. Bishwanath Prasad and injury has been found on the abdomen and injury no. 1 and 2 are grievous in nature and on perusal of injury report which indicates injuries are bruise and P.W. 1, 2, 3 and 4 had supported the prosecution case, though, P.W. 5, 7, 8 and 9 have not supported the prosecution case. The trial court also taking into consideration that non-examination of I.O. has not prejudice and the defence had not brought any material on record and the prosecution party is the aggressor and hence convicted the appellants.

7. Learned counsel for the appellants however challenged the



order of conviction and sentenced recorded by the trial court and it is contended that this is a case of case and counter case and counter case was lodged earlier to this case. Further P.W. 5 to 9 had turned hostile and had not supported the prosecution case and defence has also received injury for which a case has also been filed. It has further been contended that doctor who has examined the victim on 13.03.1998, but he has given report on 20.03.1998. It has further been contended that victim was examined but the doctor has not intimated to the police at the earliest and the report is by a private doctor. It has further been contended that doctor had admitted that he has given injury report 20.03.1998 on the basis of injury on the person of victim and hence contended that no reliance can be placed on such evidence regarding the injury which has not been recorded at the time and place where the victim was treated. It has further been contended that non-examination of I.O. has caused prejudice and further doctor has neither mentioned identification mark of the victim nor has mentioned when the victim was treated.

8. Learned counsel for the State submits that occurrence took place on 13.03.1998 in both case and counter case on hand as the occurrence alleged to be occurred on 13.03.1998 at 5.00 P.M. and case was lodged on 14.03.1998 at 9.40 A.M. whereas counter case has been lodged on 14.03.1998 and injured were examined on 14.03.1998

and witnesses were examined on 14.03.1998 at a different primary health centre and injuries are simple and superficial. It is further submitted that going into the record to the counter case, it appears that counter case is palpably false and for this reason prosecution case cannot be rejected and hence contended that order of conviction and sentence recorded by the trial court is sustainable.

9. However, going into respective submissions in the light of evidence adduced by prosecution that occurrence took place while informant was singing song along with other villagers on the occasion of Holi. There is direct allegation against the appellants that caught hold of the informant and one Ram Sogarth Sahani gave dagger blow on the abdomen of the informant when he wanted to proceed to his home for the reason to welcome to singing party to his house.

10. However, the case of the defence as per Fardbeyan marked as Exhibit-C and on the basis of which F.I.R. lodged by Ram Sogarth Sahani alleging therein on 14.03.1998 at about 9.30 A.M. he has deposed at the primary health centre before Officer-in-Charge of Police Station that on 13.03.1998 at about 6.00 P.M. he along with family members came out for playing holi then his co-villagers Rajendra Sahni Mahesh Mahto, Gopi Das, Jainandan Das, Brijnandan Sahani, Challitar Das including 21 persons named came armed with lathi, danda etc. and started assaulted his wife by which Sumitra Devi,

Smt. Shyam Sundar Sahani and others received injury. Further case is that accused persons entered into the house and theft cycle, pumping machine, four bullocks and one buffalo and some ornaments. The mode and manner of occurrence as alleged is apparently appears to be superficial, the time of occurrence is also at 9.30 A.M. is not proximate to the counter case as the time of occurrence of the case at hand is in the evening and the doctor has found injuries are simple and superficial in nature except one incise wound and two injuries, though, found grievous on the person of Sumitra Devi, wife of appellant Ram Sogarth Sahni by which injury no. 1 and 2 tender swelling and x-ray examination of the part reported to show fracture in right forearms and right little finger but x-ray report has not been proved or even brought on record. Though, occurrence took place on 13.03.1998 and injured at Primary health centre on the next date and doctor examined the injured on 14.03.1998, but it may also be noted that the date of occurrence was a day of Holi festival. Moreover in the counter case, regarding assault by lathi, danda and farsa and even entering the house and stolen cycle, pumping set, bullock and buffalo, jewellery and case instituted for offence under Sections 147, 148, 325, 348 of Penal Code. Later on Section 438 of Penal Code has been added. However, in the counter case about assault and theft of bullock, buffalos and jewellery does not inspire confidence.

11. However, going to the evidence of prosecution of the case at hand, P.W.4 is the informant has stated that while he was singing song on the occasion of Holi then accused persons came and persuaded to follow Bichwala Tola when he told that he has to go to his darwaja for welcoming the singing party then they apprehended him and it was alleged that three persons caught hold him and Ram Sogarth Sahani gave dagger blow on his abdomen by which intestine came out, the informant fell down and accused persons flee away. Thereafter, Pralhad Das, Brijnandan Das and other villagers took him to the clinic of Dr. Bishwanath Das by Rickshaw and he remained there for treatment and on the next day his statement recorded and has proved Fardbeyan which has been marked as Exhibit-1. P.Ws. 2, 3 and 4 have supported the prosecution case. P.W. 1 Brijnandan Das is witness in the First Information Report and he has also supported the prosecution case and even stated that he had seen the occurrence and took Gopi Das, informant to the clinic of Dr. Bishwanath Prasad. P.W. 1 has further stated that while they were singing song and dances along with Prahlad Das, Ramchallitar Das, Jainandan Das, Rajendra Sahni, then Doma Sahani, Ram Sujit Sahani, Bibek Sahani, Ram Sogarth Sahani @ Ram Sowarth Sahni, Jagarnath Sahani came and asked Gopi Das to follow them to Bichwala Tola and when Gopi refused and he told them that he has to go to his house to welcome the

singing party at his door then Ram Sogarth Sahani commanded and all the four appellants caught hold the informant and Ram Sogarth Sahani gave dagger blow. However, in his cross-examination he has stated that there was verbal altercation followed with physical altercation and on command of Ram Sogarth all the four appellants caught hold the informant and Ram Sogarth gave dagger blow and blood has oozed out. P.W. 2 has specifically stated that dancing and singing was going on near the house of Bhuta Mahto and received dagger blow injury upon Gopi Das his intestine came and the same was bandaged by towel and taken to the clinic of Dr. Bishwanath Das. He has also supported the prosecution case and has also proved his signature on the written report of Fardbeyan of Gopi Das marked as Exhibit-1. He has further stated that there was no quarrel between Gopi Das with accused persons prior to the occurrence. P.W. 3 Ram Challitar Das has also supported the prosecution case regarding the occurrence. He had specifically stated singing and dancing started from Brahmasthan. He had given description the house of Bhuta Mahto and his boundary, north, south, east and west. He has further stated that first started verbal altercation followed with physical altercation which continued for ten minutes and dagger was subsequently taken out. He has further stated that there was no chases by any one also started blood oozed out and Gopi fallen in

unconscious state and intestine came out and it was placed and tied with Gamcha (towel). There is nothing in his evidence to disbelieve the prosecution case. P.W. 4 is the informant and injured and had also stated that at the time occurrence he was at the road near the house of Bhuta Mahto and they were started singing and dancing along with villagers in the meantime Ram Sogarath Sahani, Uma Sahani, Ram Sujit Sahani, Ram Bibek Sahani all the four persons came and asked to follow Bichalia Tola for playing Holi on which he has stated that he has to go to his house to welcome the singing party at his door and he will not to go then used force and at the instance of Sugarth four persons Doma Sahani, Ram Sujit Sahani, Ram Bibek Sahani and Jai Nath Sahani caught hold him and Ram Sugarth gave three dagger blow and blood oozed out. In his cross-examination he has stated that he has not singing and accused persons came and asked to follow him to singing song, he met with the accused persons in front of the house of Bhuta Mahto. P.W. 5 had turned hostile. P.W. 6 is Doctor and found the following injuries;

- (i) A sharp cut injury at abdomen below umbilicus 10 cm.x 4 cm. below of intestine, extruding from the cut abdomen. Nature of injury- Grievous;
- (ii) A cut wound over the right flank of chest 4 cm.x 2 cm. depth up to plural cavity. Nature of Injury-

Grievous.

(iii) A cut injury 4 cm. x 1 cm.x 05 cm. below injury

no.2. Nature of injury-simple.

12. However, this witness in cross-examination has stated that he examined the injured on 13.03.1998 and injury report given on 20.03.1998. This witness had further stated that by First Report regarding injury is missing and stated that his first report regarding injury was not available for him at this time and he had given evidence on the basis of second injury report which he had been prepared on 20.03.1998, but in the second injury report which does not mention the date of operation, though, injury was grievous and entire intestine was came out, but he has stated in his evidence that he examined the injured on 13.03.1998 but it appears he prepared injury report on 20.03.1998 and he admits that first injury report is missing. However, serious objection has been raised questioning injury report given by the doctor, P.W. 6 admits that first injury report which he had prepared is missing and evidence is being given on the basis of injury report dated 20.03.1998, but there is not mentioned on what basis injury report was prepared on 20.03.1998 when first injury report was missing even second injury does not mention the date of operation. He has further stated that at the time of first examination the injured was in full conscious and date of discharge has not been

mentioned in the injury report. Though, I.O. has not been examined in this case, but from the evidence of this witness, it is apparent that witness has stated about the place of occurrence and given the boundary of place and occurrence took place at the road in front of the house of Bhuta Mahto and P.W. 2 has specifically mentioned the boundary of the P.O. The evidence of P.W.3 in paragraph 4 that P.O. has well been established as per evidence of the prosecution.

13. Though, criticism had been raised on the defence of non-examination of I.O. that P.O. has not been established. However, witnesses have stated in their evidence about place of occurrence as well as given the boundary and has also stated that blood oozed out. Witnesses had also stated about dagger blow on the abdomen of the injured and intestine came and intestine was placed and tied by towel. However, though, witnesses have supported the prosecution case and the evidence of I.O. had also supported the prosecution case regarding injury on his person, but defect has pointed out in the injury report of the doctor and doctor stated that he examined the injured on 13.03.1998 and on that date he examined Gopi Das but in his evidence he has stated he prepared injury report on 20.03.1998 and first information report regarding injury which he had prepared on 13.03.1998 is missing and he had given evidence on the basis of injury report prepared on 20.03.1998 and in the injury report dated

20.03.1998 does not mention the date of operation and mark of identification. However, he has specifically stated that he examined the victim Gopi Das. However, injury report cast a serious doubt as the evidence is based on injury report on 20.03.1998 and hence injury mentioned from the deposition made on the basis of injury report prepared on 20.03.1998 appears to be doubtful.

14. However, learned counsel for the appellants submits that this is case of case and counter case and there was injury on the person in counter case. However, injury on the person in counter case was simple and superficial except two injuries on Smt. Shyam Sundari Devi which has been shown to be fractured or right radial shaft and tender swelling at the root of right little finger- x-ray of the part showed separation of epiphysis of distal part of first phalanx little finger.

15. Learned counsel for the appellants however submits that in the said case conviction recorded. However, having brought on record in evidence regarding conviction recorded and this fact in the counter case also does not explain about injury which is serious in nature on the person of Smt. Shyam Sundari Devi.

16. However, it is true that evidence of P.W. 6 doctor suffers from infirmities. In his cross-examination he had stated that he examined the injured on 13.03.1998, but he prepared injury report on



20.03.1998 and first information report regarding first injury report is missing and he has not mentioned that on what basis he prepared second injury report on 20.03.1998 and it casts a serious doubt. However, evidence of the doctor has only corroborated whereas evidence of P.Ws. 1, 2, 3 and 4 have supported the prosecution case and if there is competition between the evidence in such evidence it is not proper to discard the evidence of P.Ws. 1, 2, 3 and 4 that occurrence took place and victim Gopi Das, P.W. 4 informant received dagger blow. However, with regard to the fact that occurrence took place on a Holi day when the informant was singing the song and the appellant was persuaded the informant to lead the singing party to the Bichwala tola and this led to verbal altercation followed with physical altercation and had finally the occurrence of stabbing. However, taking into consideration the gravity of the occurrence, though, weapon is dagger and allegation of assault made on abdomen which is vital part of the body. However, taking into consideration the evidence of the doctor that he has given evidence on the basis of report prepared on 20.03.1998, when he examined the patient and there is no mention of the operation done as the evidence is on the basis of second report whereas the first report is missing.

17. However, going to this part the question arises whether intention can be attributed or whether occurrence took place in quarrel

and the evidence of doctor is questioning in view of that he had given report on the basis of injury report prepared on 20.03.1998 whereas he has examined the injured on 13.03.1998 and there is not mentioned of any such reason cast a doubt about the evidence of the doctor and hence conviction under Section 307 of Penal Code may not sustain, but occurrence has been proved by the proved and hence conviction has been recorded under Section 324 of Penal Code.

18. However, taking into consideration the fact that appellant Ram Sogarth Sahani remained in jail custody for more than five years and other accused person had attributed role to catch hold of the victim and they had remained in jail for four months each.

19. Hence, the interest of justice shall meet by sentencing the appellants for the period already undergone and hence the appeal is allowed in part. Accordingly, three appeals are allowed in part. However, the appellant, Ram Sogarth Sahani @ Ram Sowarth Sahni is in jail custody is ordered to be released forthwith, if not required to any other cases.

20. The appellants, Doma Sahani, Ram Sujeet Sahni, Vivek Sahni and Jagannath Sahni be relieved from the liabilities of the bail bonds.

m.p.
N.A.F.R

(Gopal Prasad, J)

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