

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.458 of 2002

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1. Jalim Mian son of Late Satarli Mian
 2. Shakur Mian son of Jalim Mian
 3. Jahoor Mian son of Jalim Mian
 4. Bujhawan Mian son of Jalim Mian
 5. Bulla Mian son of Rababar Mian
 6. Nathuni Mian son of Baheer Mian
 7. Maksud Mian son of Abdullah Mian
 8. Serajul Mian son of Babujan Mian
 9. Ali Raja Mian son of Nathuni Mian
 10. Bhannu Mian son of Serajul Mian
 11. Rashul Mian son of Jalim Mian
 12. Bhola Mian son of Baheer Mian
 13. Shamsul Mian son of Nath Mian, all of village Ramgadhwa, PS-Ramgarhwa, District- East Champaran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sangeet Deokuliar, Adv.
For the State : Mr. Sujeet Kumar Singh, APP
For the Informant : Mr. Ram Sdya Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT
Date: 12-01-2015

Appellants, Jalim Mian, Shakur Mian, Jahoor Mian,

Bujhawan Mian, Bulla Mian, Nathuni Mian, Maksud Mian, Serajul
Mian, Ali Raja Mian, Bhannu Mian, Rashul Mian, Bhola Mian and
Shamsul Mian have been found guilty for an offence punishable
under Sections 307/149 IPC and each of them has been directed to
undergo RI for 10 years, fined of Rs. 1000/- in default thereof, to
undergo for six months, under Section 147 of the IPC and sentence to
undergo RI for a year, under Section 323 IPC and sentence to undergo
RI for six months, Rashul Mian under Section 307 IPC and directed to



undergo RI for 10 years, under Section 148 IPC and directed to undergo RI for two years, Shakur Mian under Section 307 IPC, and directed to undergo RI for 10 years, fined of Rs. 1000/- in default thereof, to undergo RI for six months vide judgment of conviction and sentence dated 25.07.2002 passed by Additional Sessions Judge-FTC-5, East Champaran at Motihari in Sessions Trial No. 235/1988/198/2002, have preferred the instant appeal challenging the same.

2. Raghunath Prasad (PW 7) filed a written report on 18.11.1985 disclosing therein that on the same day at about 11:00 a.m., Jalim Mian along with 15-20 persons, variously armed raided his land bearing Khata No. 132, Khesra No. 984 wherein plants of brinjal were sown. For the purpose of construction of a hut they uprooted the brinjal plants and started work to erect the hut which was protested by his son, Ajay Kumar as case was going on in between the parties relating to the aforesaid land. The accused persons did not pay heed to, rather scolded him and further, they assaulted with *lathi*, *bhala*. They have also snatched away golden chain as well as Rs.250/- . Then he detailed the names of accused persons as well as witnesses.

3. On the basis of the aforesaid written report, Ramgadhwa P.S. Case No. 97/1985 was registered under Sections 147, 148, 323, 324, 325, 307 and 307/149 IPC and investigation commenced and after concluding the same, charge-sheet was

submitted under Sections 147, 148, 323, 324, and 325 IPC and accordingly, trial commenced however, invoking provision of 323 of the Cr.P.C, the case was committed after examination of four PWs and accordingly, appellants were re-charged by the court of sessions and faced trial meeting with ultimate result, the subject matter of instant appeal.

4. 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 of complete denial of the occurrence. It has also been submitted that on the alleged date and time of occurrence, the prosecution party raided illegally over the land under dispute and assaulted the accused persons for which counter case was launched and only to put safeguard, this case has been instituted taking the police in their collusion. No DW has been examined but series of documents have been exhibited in their defence.

5. In order to substantiate its case, prosecution had examined altogether nine PWs out of whom PW-1 is Ram Ekbal Rai (formal), PW-2 Yogendra Kumar (witness of occurrence), PW-3 is Ajay Kumar (injured), PW-4 is Bal Mukund Pandey (Formal), PW-5 is Ram Awtar Baitha (material witness), PW-6 is Dr. Rajeshwar Prasad Singh who had examined the injured, PW 3, PW-7 is Raghu Nath Prasad Singh, the informant, PW-8 is Bhupendra Kumar Mishra, Investigating Officer, and PW-9 is Ram Swaroop Sah (formal).

Prosecution had also exhibited Ext-1, Formal FIR, Ext-2, Endorsement of written report, Ext-3, Injury Report, Ext-4, X-ray report, Ext-5, written report, Ext-6, Entries in page no. 321 to 323 of the Register No. 104 dated 26.04.71 and Serial No. 7951 of the year, 1971 in respect of Sale-deed executed by Bibi Fatima and Shri Raghunath Pd. Sah, Ext-7, C.C. of judgment of T.S. No.114/71/66/74 and Ext-8 C.C. of order dated 20.05.71.

6. The defence had not examined any witness, however, exhibited Ext-A, C.C. of order-sheet of Hon'ble High Court, Ext-A/1, C.C. of judgment of T.S. No. 114/66, Ext-B, C.C. of order Sheet of T.S. 114/66/1971/74, Ext-C, C.C. of FIR of Ramgarhwa P.S. Case 98/85, Ext-D, photo C.C. of deposition of Rejeshwar Pd. Singh.

7. Learned counsel for the appellants while assailing judgment impugned has submitted that the learned lower court had failed to consider the moot question surviving in this case relating to P.O. land. From the written report it is evident that a case was already pending since before and to support the same, appellants as well as prosecution had filed series of documents. It is also evident from the evidence of PW-7, the informant that he happened to be purchaser of the land. His vendor had mentioned in the sale-deed that she had 12 *Annas* share in the disputed land while 4 *Annas* belongs to her brother. Therefore, the prosecution party was entitled only for 12 *Annas* of share which his vendor had. Therefore, the prosecution was under



obligation to place by cogent and reliable evidence that they have got exclusive possession over 2/3rd area of total land of Survey Plot No. 984 which, as per sale-deed extended to 2 Katthas 15 Dhurs. The boundary as is evident from sale deed (Ext-6) speaks North-Niz, South-Asharfi Ram Sonar, East & West-Khas. PW-8, the Investigating Officer had visited the place of occurrence but failed to locate any ridge in between by which one could infer that an area of 2 Katthas 15 Dhurs was under exclusive possession of prosecution party. The admitted position happens to be that for an occurrence relating to above referred plot number, case and counter case were launched, investigated and in both the cases charge-sheets were submitted. The prosecution party also faced trial though acquitted. Then in such circumstance, having vagueness in the prosecution case over exclusive possession with respect to 2 Katthas and 15 Dhurs will also melt the prosecution version and consequent thereupon, the conviction and sentence recorded by the learned lower court happens to be bad as well as against the settled principle of law.

8. It has also been submitted that the informant himself is not an eyewitness to occurrence and PWs-2 and 5 happen to be chance witnesses apart from the fact that they are borrowed one. PW 3, injured is the sole witness whose evidence needs proper scrutiny. From his evidence, it is apparent that it is also suffering from vagueness and on account thereof, unless and until the prosecution

party would have advanced their plea that appellants were the aggressors, then and then only the conviction and sentence would justify its relevance as the appellants have also put forward their claim over the disputed land as well as were a party in civil suit launched by the informant. So submitted that judgment of conviction and sentence is fit to be set aside.

9. On the other hand, learned APP assisted by learned counsel for the informant submitted that the appellants, after forming unlawful assembly and having been armed with deadly weapons pounced upon their land in order to have their forceful physical possession while resisted by the PW 3, Ajay Kumar, indulged in criminal action by piercing Bhala as well as assaulting with *lathi* and on account thereof, the conviction and sentence recorded by the trial court did not warrant interference. It has also been submitted that though the judgments of Civil Suit are the exhibits up to the First Appellate Court but the appellants have lost up to the Hon'ble Apex Court and consequent thereupon its adverse impact is bound to cloud the fate of the appellants.

10. The germ of the present litigation is land dispute. From the evidence of PW 7, the informant it is apparent that he had purchased the land from one Bibi Fatima Khatoon. Ext-6 is the sale deed. When other exhibits of the respective parties were looked into, it is apparent from Ext-A/1 that Raghunath Prasad, PW 7 had filed



suit for partition of 12 *Annas* share under Title Suit No. 114/99/1971/74 which was decided on 14.10.1974 wherein decree was passed to the extent of 1 Kattha 16 Dhurs and to carve out the aforesaid area it was also directed for appointment of pleader-commissioner. As per Ext-7 filed on behalf of prosecution, it is evident that 1st appeal was allowed and contention raised on behalf of informant claiming 2 Katthas 15 Dhurs of land out of total area of Survey Plot No. 984 has been decreed and for that, the Appellant Court had directed to carve out after having appointment of pleader-commissioner. Even accepting the contention raised on behalf of learned APP assisted by learned counsel for the informant that appellants have lost up to the Hon'ble Apex Court, admittedly, it was a suit for partition and there happens to be no evidence brought by the prosecution that separate *Patti* of 2 Katthas and 15 Dhurs were carved out, out of total area of Survey Plot No. 984 whereupon the prosecution were given exclusive possession and were enjoying the same. That means to say, till the day on which final *Pattibandi* is effected followed by delivery of possession, the land remained in jointness and on account thereof, exclusive possession of any of the party over Survey Plot No. 984 could not be accepted. In the aforesaid background, both the parties have rightful access over the disputed land.

11. Now, the oral evidences have to be scrutinized in the



light of aforesaid event and for that first of all, the evidence of PW-8, the Investigating Officer is to be taken into account. He had simply stated that disputed land happens to be Survey Plot No. 984 appertaining to Khata No. 132 having houses of Ram Awatar, Habib Mian in its northern side while Janak Sonar at southern side. Bagar Mian happens to be eastern and western side. He found radish as well as plants of brinjal and some of it were uprooted. He had found some ditches. He had recorded statement of witnesses, received injury report and filed charge-sheet. During cross-examination at para-2, he had stated that he had not found blood stain at the P.O. In para-3 he had further stated that had not found trampling mark over P.O. He had further admitted that injured had also gone to Raxaul for treatment. He had further admitted that from Raxaul he had received FIR of accused persons also. In para-7, he had further admitted that he had not investigated over possession nor he found sign of hut.

12. PW 7 is the informant who stated that after being informed by a stranger that his son was being assaulted, he rushed to P.O. where he found him lying on the ground. He talked with his son who disclosed that while he was in a way to shop, 15-20 persons armed with lathi and Bhala were engaged in uprooting brinjal and radish plants and named them. He further disclosed that Rasul had inflicted Bhala blow while Jahur with Banna and rest by Lathi. Jalim Mian also snatched away Rs. 250/- and Baheer snatched away his



chain. In para-4 of the examination-in-chief, he had admitted that he had purchased this land from Bibi Fatima. He had further disclosed that this land was under his exclusive possession whereunder he had planted the crops. In para-6, he had stated that there was civil suit in which he got decree. In para-7 of his cross-examination, he had fairly admitted that he had not seen the occurrence. In para-11 he had admitted that for the last 10 years there happens to be litigation in between. He had filed suit before Sub-Judge which was partly allowed against which he had filed appeal before Judge Saheb and then got his land as per sale-deed. Then he had shown ignorance with regard to other kinds of litigation fought amongst the parties. He further disclosed that total area of Survey Plot No. 984 happens to be 3 Katthas and 19 Dhurs. He had further stated that this three Katthas 19 Dhurs happens to be in one plot. He had further stated that both the parties are also fighting criminal cases. He further admitted that witness, Ram Awatar had deposed from his side in other cases also against the accused. In para-13, he had admitted presence of counter-case wherein he has been acquitted.

13. The date of occurrence is of 1985 and the judgment of Title Appeal bearing no. 124/74/44/1987 is of dated 30.06.1989. That means to say, after alleged occurrence. The status of the parties have to be perceived on the alleged dated of occurrence and as observed above, the delivery of possession effected by the Court has not taken



place till the date of occurrence. The most crucial aspect happens to be that informant himself had filed suit for partition and on account thereof, having the total area of land measuring 3 Kattha 19 Dhurs under his exclusive possession as claimed is nothing but an unpropitious version, as the informant himself claimed the land by virtue of sale deed covering an area of 2 Katthas 15 Dhurs. As per evidence of PW 8, as stated above the total area has been found in one block, then certainly the prosecution has got no leg to stand by. In an alternative, if the total area of 3 Katthas 19 Dhurs has been claimed to be in possession of informant, then in that event, the status of prosecution is found adverse to its own case and further probabilizes their status to be aggressor than the appellants/accused. In the aforesaid background, the narration of prosecution regarding the manner of occurrence wherein PW 3, as alleged, had sustained injury became doubtful. Moreover, from the examination-in-chief of PW 3 in consonance with the evidence of PW 8, para-9, it is apparent that there happens to be material development in his evidence coupled with para 8, 10 of PW-8 relating to other PWs. Furthermore, from the evidence of PW 7 para 13 the counter case ended in acquittal on that very score.

14. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.

15. Appellants, being on bail, are discharged from the liabilities of bail bonds.

(Aditya Kumar Trivedi, J)

Patna High Court
January 12th 2015
Perwez/AFR

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