

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.489 of 2002

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1. Bhairab Lall Rai son of Lagan Rai
 2. Ram Ayodhya Rai, son of Lagan Rai
 3. Jagarnath Rai son of Sita Ram Rai
 4. Sudama Rai son of Laxman Rai, all are residents of Panchpokhariya, P.S. Mahna, Distt- East Champaran

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uma Shankar Verma, Adv.
Mr. Prakash Chandra Jha, Adv.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 09-02-2015

Appellant, Bhairab Lall Rai has been found guilty for an offence punishable under Sections 379 IPC and sentenced to undergo RI for two years, under Section 504 IPC and directed to undergo RI for six months, appellants, Bhairab Lall Rai, Ram Ayodhya Rai, Jagarnath Rai and Sudama Rai have been found guilty for an offence punishable under Sections 448 IPC and each one has been directed to undergo RI for one year with a direction to run the sentences concurrently vide judgment of conviction and sentence dated 06.08.2002 passed by Additional Session Judge, Fast Track Court No-5, East Champaran at Motihari in Sessions Trial No. 04/1992/248/2002, have preferred the instant appeal.

2. PW-4, Radha Mohan Pd. Yadav filed a written report on 02.06.1991 disclosing therein that his father-in-law late Kenhari Pd. Yadav died leaving behind his four daughters. He was married with



Bimla Devi, second daughter of late Khenhari Pd. Yadav. He had gifted all his properties to him and on account thereof, he is residing in his Sasural after constructing a house as well as is also doing cultivation. It has also been disclosed that he had given five Bighas of land to Bhairab Lall Rai, Sudama Rai, Ram Ayodhya Rai and Jagarnath Rai on *Hunda* against 100 mounds of wheat as well as paddy, which was to be handed over on the day of lunar eclipse of *Jyestha* i.e., on 21.05.1991. On the plea that Ram Ayodhya is not available, they got it extended. Today, at about 11:00 a.m. Bhairab Lall Rai, Ram Ayodhya Rai, Jagarnath Rai and Sudama Rai armed variously came at his Darwaza, began to abuse. During midst thereof, his wife Bimla Devi came who was thrashed by Bhairab as well as after encircling her neck by cord, pulled with an intention to kill. He also inflicted Farsa blow. He also snatched away golden chain. He tried to save her and during course thereof, Sudama Rai snatched away his wrist watch as well as cash appertaining to Rs.2000/-. Then thereafter, several lathi blows were given and on account thereof, he fell down. Thereafter, Jagarnath Rai snatched away his golden ring. Vakil, Jamuna, Jyotik along with others have been cited as eyewitnesses.

3. After having institution of Chhauradana (Mahuawa) P.S. Case No. 34/91, investigation proceeded and completing the same, charge-sheet was submitted under Section 307 IPC including allied

Sections of the IPC whereunder cognizance was taken and accordingly, the trial commenced and culminated in a manner, the subject matter of instant appeal.

4. Defence, as is evident from the mode of cross-examination as well as statement recorded under Section 313 Cr.P.C., is of complete denial of occurrence as well as of false implication. However, neither any DW nor any document has been exhibited.

5. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellant that four PWs have been examined in this case out whom PW-1 has failed to support the case of the prosecution hence declared hostile. With regard to remaining, PW-2 Jyotik Rai as well as Bimla Devi, one of the injured, it has been submitted that there happens to be material development in their evidence and on account of non examination of Investigating Officer, which caused prejudice to the appellants as well as also deprived of to bring those piece of evidence legally on record. It has further been submitted that so far evidence of PW-4 is concerned, having conjoint reading of PWs-2 and 3, his testimony also became unreliable. So submitted that instead of convicting and sentencing the appellants for minor offences as indicated above, the learned lower court should have acquitted the appellants.

6. Per contra, it has been submitted on behalf of learned APP that '*falsus in uno falsus in omnibus*' is not at all a sound theory

and on account thereof, the learned trial court after scrutinizing the evidence adduced on behalf of prosecution rightly found and held the appellants guilty in terms of evidence available on the record. As such, the judgment of conviction and sentence needs no interference.

7. From perusal of the lower court records, it is evident that out of eight witnesses named in the charge-sheet only four have been examined out of whom PW-1, Jamuna Rai had gone *volte face*, therefore, declared hostile. Now, the case of the prosecution is to be seen on the basis of the evidence deposited by remaining witnesses that means to say, PWs-2, 3 and 4 in the background of non examination of Investigating Officer as well as doctor, in particular.

8. As per evidence of PW-2, it is apparent that while he was present at the Darwaza of Rudal Rai, uncle of PW-3, he had seen the occurrence on account of having Darwaza of Rudal Rai adjacent to the alleged place of occurrence. Rudal Rai has not been cited as a witness in this case nor had he deposed. However, he had stated apart from others that Bhairab Lall snatched away the Hasuli of PW-3, Bimla Devi, while wrist watch and cash appertaining to Rs.200/- belonging to Radha Mohan was taken away by Sudama Rai. During cross-examination from para-5, it is evident that he was not at all an eyewitness in terms of Section 161 of the Cr.P.C. However, on account of non examination of Investigating Officer, the appellants have been prevented to get it corroborated at his end. Furthermore, as



per his examination-in-chief, it is apparent that he had disclosed the place of occurrence to be Darwaza of informant while at para-9, he had shown the place of occurrence to be the Darwaza of Rudal Rai. He had further stated that all the accused have gone inside the house of Radha Mohan and stayed there for 10-15 minutes. When the accused persons began to assault, he along with Rudal had gone inside to get the matter pacified. At that very time, blood was oozing out. In para-10, he had stated that he had caught Bhairab lall and Ram Ayodhaya Rai and set apart. He had seen some portion of string in the hand of Bhairab Lall.

9. PW-3, Bimla Devi is one of the injured. She had stated that on the alleged date and time of occurrence, she was inside her house where Bhairab Lall, Ayodhaya Rai and Sudama Rai armed variously, came. First of all, they began to abuse which was resisted by her and during course thereof, Bhairab thrashed as well as also snatched away golden Hasuli, then assaulted. Her husband came in her rescue. Jagarnath snatched away Rs. 2000/- while Sudama snatched away ring. Jyotik came and rescued. Ramprit, Rudal and others were cited as eyewitnesses. She had further stated that accused persons wanted to grab her property. During cross-examination at para-5, she had admitted that accused persons never indulged in such kind of nefarious activities at earlier occasion. She had further admitted that accused persons had taken her land on Hunda. She had

further stated that as she had withdrawn all the land from the accused persons, on account thereof, they quarrelled. In para-8, she had shown the place of occurrence to be her Darwaza. In para-12 and 13 again there happens to be material contradiction, however for want of evidence of Investigating Officer, could not be tested.

10. PW-4 is informant himself. During examination-in-chief, he had stated that on the alleged date and time of occurrence while he was at his house Bhairab Lall, Ayodhya Rai, Jagarnath Rai and Sudama Rai armed variously came at his Darwaza and began to abuse. During course thereof, Bhairab thrashed his wife. Also snatched away her Hasuli. Attempted to assault with Farsa. Pressed her neck through string. When he intervened, Ram Ayodhya Rai and Sudama Rai assaulted him on account thereof, he sustained injury. Sudama snatched away Rs. 2000/- and wrist watch. Jagarnath took away his golden ring. Both of them were examined at Chhauradano P.S. Then thereafter, he had filed written report. During cross-examination, at para-10 he had admitted that they were not carrying any sort of enmity with the accused persons. Accused persons never indulged in criminal action with them at an earlier occasion. He had further admitted that 2-4 Katthas of land was given by him on *Hunda* in favour of accused persons last year. Again he corrected, it was *Bataee* no *Hunda* and then his attention was drawn towards written report on that very score. Again at para-9, he reported the same

version. In para-13, he had stated that Maar-peet took place outside Darwaza and inside the compound. He had further stated that on call made by accused persons, his wife came out and then the occurrence took place.

11. The learned lower court during course of scrutiny of the evidence adduced on behalf of prosecution had taken into consideration the suggestion given to PW-4, Radha Mohan Rai that on account of dispute over land which the accused persons have taken on *Hunda*, motive, even having deficiency at the end of prosecution, is found admitted and in the similar way, taken into account the evidence, held the appellants guilty as indicated above. However, from perusal of the judgment impugned, it is apparent that infirmities with regard to place of occurrence amongst all the three PWs have not been properly perceived. In likewise manner, the story of snatching from the possession of PW-4, Radha Mohan Rai. With regard to snatching of Hasuli from PW-3, again the evidence happens to be cryptic.

12. Now coming to the relevant section whereunder appellants have been found guilty, it is apparent that for an offence punishable under Sections 504 IPC, there should be intentional insult, the insult must be such to give provocation to the person insulted. Such provocation should cause or knowledge that such provocation was likely to cause, the person so insulted to break public peace or to

commit any other offence, is not at all found visible from the evidence adduced on behalf of prosecution. In likewise manner with regard to Section 448 of the IPC, on account of fluctuation over place of occurrence, the same would not be attracted.

13. Now coming to the Section 379 IPC, apart from inconsistency as well as contradictory statement amongst all the PWs on this very score, evidence of PW-2 as well as PW-3 has been perceived accelerated with material development which, for want of non examination of I.O. has caused a dent over prosecution case, as has caused prejudice to the appellants.

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

15. Since appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

Patna High Court
February 9th 2015.
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