

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.93 of 2015

Arising Out of PS.Case No. -468 Year- 2004 Thana -MUFFASIL District-
WESTCHAMPARAN(BETTIAH)

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1. Jitendra Prasad Son of Ram Prasad
2. Dharmendra Prasad son of Suresh Prasad.
3. Suresh Prasad son of Ramugrah Mahto
4. Sriram Prasad son of Ramugrah Mahto All are resident of village- Amawa
Majhar, P.S. Bettiah (Mufassil) , District- West Champaran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akhileshwar Kr. Srivastava, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 07-04-2017

Appellants, Jitendra Prasad, Dharmendra Prasad,

Suresh Prasad and Sriram Prasad have challenged under instant appeal the judgment of conviction and sentence dated 06.01.2015 passed by Additional Sessions Judge-6th West Champaran at Bettiah in Sessions Trial No. 745/05 whereby and whereunder appellant, Jitendra Prasad has been found guilty for an offence punishable under Sections 324 IPC and sentenced to undergo SI for two years, under Section 323 IPC sentenced to undergo SI for six months with a further direction to run the sentences concurrently while appellants Dharmendra Prasad, Suresh Prasad and Sriram Prasad for an offence punishable under Sections 323 IPC and each one has been sentenced to undergo SI for six months with a further direction to set off with regard to the period already undergone during course of trial in terms of Section 428 of the



IPC.

2. Motilal Prasad (PW-2) gave his Fard-e-beyan on 16.11.2004 at Sadar Hospital, Bettiah disclosing therein that on 14.11.2004 at about 4:00 PM while he was feeding animals at his cattle-shed, his pattidar, Sriram, Jitendra, Jaikishore, Dharmendra, Suresh, wife of Jaikishore, wife of Jitendra and wife of late Rajendra armed variously, came at his cattle-shed and began to abuse. On protest made by him, Sriram ordered to kill whereupon Jitendra gave Bhala blow causing injury over his cheek as a result of which, he was bleeding. He fell down. Seeing this, his cousin brother, Birendra and uncle, Basant Prasad rushed to rescue whereupon Jaikishore gave a Farsa blow over head of Birendra as a result of which he sustained injury and fell down. Even thereafter, they continued assaulting with their respective weapon. During course thereof, wife of Jaikishore took away wrist watch belonging to Birendra Prasad. So many villagers came who lifted them to hospital. Birendra Prasad is still unconscious while he regained his sense. The genesis of occurrence is on account of grazing leaves of litchi plant belonging to Sriram.

3. On the basis of the aforesaid Fard-e-beyan, Bettiah Mufassil PS Case No. 468/2004 was registered whereupon, the investigation commenced and after concluding the same, charge-sheet was submitted only against the male members exonerating the female. The learned lower court took cognizance for an offence punishable



under Section 307 IPC along with other allied Sections and accordingly, the case was committed whereupon trial commenced and concluded in a manner, subject matter of the instant appeal.

4. The defence case, as is evident from the mode of cross-examination as well as statement under Section 313 of the CrPC, is that of complete denial of the occurrence and further of false implication. Furthermore, it has also been pleaded that on the date and time of alleged occurrence, the prosecution party brutally assaulted the appellants' side for which there was a case and save their skin therefrom, purposely instant case has been introduced and to substantiate the same, injury report as well as petition have been made on exhibit by way of examination of DW-1.

5. In order to substantiate its case, the prosecution had examined altogether 9 PWs out of whom PW-1 is Birendra Prasad, the injured, PW-2 is Motilal Prasad, informant as well as injured, PW-3 is Brijlal Prasad, a co-villager, PW-4 is Tarkeshwar Prasad, full brother of informant, PW-5 is Basant Prasad, uncle of informant, PW-6 is Dhora Prasad, a co-villager, PW-7 is Ramji Prasad, PW-8 is Dr. Vijay Deo Mangal and PW-9 is Kailash Rai, formal witness who had exhibited formal FIR on account of non examination of Investigating Officer. Side by side, had also exhibited Ext-1, Signature of witness Motilal Prasad on the Fard-e-beyan, Ext-2, Injury Report of Birendra Prasad, Ext-2/1, Injury Report of Motilal



Prasad, Ext-3, Injury report of Birendra Prasad by PMCH, and Ext-4 Fard-e-beyan.

6. Defence had also examined DW-1, Hari Narayan Tripathi. Also exhibited Ext-A Series, Injury Reports, Ext-B, Certified copy of First Information Report, Ext-C, Certified copy of Charge-sheet.

7. PW-1, one of the injured had deposed that on the alleged date and time of occurrence, he was at his Bathan which lies by the side of Bathan of informant. He saw Sriram, Jitendra, Jaikishore, Dharmendra, Suresh, Indu Devi, Krishnawati Devi, Sushila Devi, at Bathan of Motilal Prasad who were abusing him. At that very time, Jaikishore was armed with Farsa. Jitendra was armed with Bhala while rests were armed with Lathi and Phatta. On protest by Motilal, Jitendra gave Bhala blow over Motilal causing injury over his cheek on an order of Sriram. He along with father Basant Prasad rushed to rescue. On an order of Sriram, Jaikishore gave Farsa blow over his head as a result of which he fell down. Indu Devi snatched away wrist watch. Other accused also assaulted him as well as Basant, his father. He became unconscious. He was taken to Bettiah hospital where he remained unconscious and lastly as referred by the doctor he was taken to PMCH, Patna where he regained his sense.

8. During cross-examination, he had admitted presence of counter case at the instance of accused for an occurrence



committed on the same date and time. Furthermore, it is evident that he was not at all cross-examined on the material aspect save and except giving suggestion regarding institution of this false case as a counter blast to this case instituted by the accused. Furthermore, at para-17, he had shown the place of occurrence to be his Bathan. In para-20, he had stated that he is unable to remember as to how many injuries were inflicted over his persons.

9. PW-2 is another injured who had stated that in the background of grazing of litchi plant by a she-goat, on the alleged date and time of occurrence, all the accused, namely, Sriram, Jitendra, Jaikishore, Dharmendra, Suresh, Indu Devi, Krishnawati Devi, Sushila Devi armed variously came and began to abuse. On his protest, Jitendra gave Bhala blow over his left cheek causing injury thereupon. Jaikishore had inflicted Farsa blow over head of Birendra causing injury thereupon as a result of which he became unconscious. Other assaulted with other weapons. Villagers came and lifted them to hospital where police came before whom he had recorded Fard-e-beyan. Eight days thereafter, Birendra was referred to PMCH as he could not regain his sense. During cross-examination, he had admitted that Jaikishore, one of the accused has been murdered.

10. From para-9, it is also evident that house of both the parties lies adjacent to each other. In para-10, he had stated that just after receiving injury, he became unconscious. He regained



sense after a month. In para-11, he had admitted presence of counter-case. In para-15, he had reiterated that after 7-8 days of the occurrence, he regained his sense at Bettiah hospital where police was present. Then there has been denial at his end regarding institution of false case in order to save their skin from counter case.

11. PW-3 is Brijlal Prasad, a co-villager who had stated that he after hearing sound of uproar rushed towards Place of occurrence and found Birendra lying having injury over his head and blood was oozing out. He had also seen Motilal in injured condition but as he failed to show his status as an eyewitness whereupon, he was declared hostile. Even then, prosecution could not be able to extract any logical material from him.

12. PW-4 is Tarkeshwar Prasad, brother of PW-2. He had stated that on the alleged date and time of occurrence, he was at his Darwaza. At that very time, wife of Sriram and Jogendra were abusing on account of grazing of litchi plant by a she-goat for which Basant forbade. As a result of which, Sriram, Jogendra, Jitendra, Suresh, Dharmendra armed with Lathi, Phatta rushed. Jogendra was armed with Bhala while Jaikishore was armed with Farsa. They came and began to assault. Motilal was given Bhala blow by Jogendra over his left cheek while Jaikishore gave a Farsa blow over head of Birendra. He was also assaulted by female member with Lathi. Motilal and Birendra were taken to the Bettiah hospital for treatment.



He identified the accused in the dock. Because of the fact that none of the accused had got name as Jogendra so it might be Jitendra. However, identity has not been questioned. During cross-examination, it is evident that he happens to be full brother of informant. He had further admitted regarding presence of counter case. He had further stated in para-7 that he had seen Jogendra and Jitendra at Bettiah Hospital where they were admitted for 4-5 days. In para-11, he had admitted that they have filed this case to save their skin from a case having instituted by the accused persons. In para-13, he had stated that occurrence took place before his Darwaza. He had further stated that in a case having instituted by other co-accused, Dharmendra and Suresh had deposed against them and on account thereof, they have been implicated in this case. In para-14, he had further stated that 5-7 persons of his side has sustained injuries who are Birendra, Motilal, Basant, his wife, he himself, Rajeshwar and Chandeshwar and all were examined by the doctor. He in para-15 had stated that he sustained injury over back and leg while his wife sustained injury over head. Rajeshwar and Chandeshwar sustained 3-4 injuries by Lathi. In para-16, he had stated that Birendra had one injury over his head. He had sustained injury at 4-5 places. One wound was caused by Farsa while rest were by lathi. In para -17, he had stated that Motilal sustained two injuries, one by Bhala, another by Lathi.

13. PW-5 is Basant Prasad, father of PW-1. He had stated



that on the alleged date and time of occurrence, while he was at his Bathan, Birendra, Motilal, Tarkeshwar, Rajendra Prasad were present there. Sriram, Jitendra, Jaikishore, his wife; wife of Jitendra cane and began to abuse in the background of grazing of litchi plant by a she-goat. They resisted over which on an order of Sriram, Jitendra had given a Bhala blow over left cheek of Motilal causing injury thereupon. Then thereafter, others have begun to assault by Lathi, Danda. When he along with Birendra had gone to save him, Jaikishore gave a Farsa blow causing injury over head of Birendra. He fell down. Wife of Jitendra snatched away his (Birendra) wrist watch. He was also assaulted by the accused persons. Birendra and Motilal were lifted to hospital where they were treated. Subsequently thereof, Birendra was referred to PMCH. During cross-examination, he had admitted with regard to presence of counter case. He had also admitted murder of Jaikishore. In para-3, he had stated that when he saw Birendra, he was unconscious. Motilal was also unconscious who were lifted to hospital by the villagers.

14. PW-6 had deposed that on the alleged date and time of occurrence, he was at his house. He heard that there was Maar-peet in between Birendra and Sriram over which he had gone to the Darwaza of Birendra where he saw Birendra lying unconscious. Blood was coming out from the injuries. Then he came to know that Jaikishore, Jitendra and Sriram had assaulted him. He had further stated that



Motilal was also assaulted. Identified the accused in the dock. During cross-examination, he had shown his interestedness.

15. PW-7 is Ramji Prasad who had stated that on the alleged date and time of occurrence while he was cutting fodder, he heard sound of uproar coming out from Darwaza of Sri Lal Mahto and Basant Mahto whereupon he rushed and saw Jitendra giving a Bhala blow to Motilal causing injury over left cheek . Jaikishore gave Farsa blow over head of Birendra as a result of which, he fell down.They were joined by other accused as well as their wives who also assaulted with Lathi. Villagers intervened and then injured were rescued. During cross-examination at para-2, he had exonerated Dharmendra and Suresh by stating that they were not involved in Maar-peat. They were simply standing at the place of occurrence.

16. On behalf of the rest of the appellants, he had admitted that he happens to be cousin brother of Birendra. He had further stated that when he saw Birendra and Motilal, they were unconscious and then thereafter, they were lifted to Bettiah Hospital.

17. PW-8 is the doctor who had found following injuries over the persons of injured:-

1. **Birendra Prasad:-**

- (i) Abrasion three in number of verities size of approximate 3"x 1/6" on right side of neck.
- (ii) Lacerated cut 2" x 1/4" x skin deep over right side of head. Advice for X-ray skull, AP and Lateral.
- (iii) Swelling of Peri-ocular area of right eye.
- (iv) Swelling over left knee.

2. **Motilal Prasad:-**



- (i) Peri-ocular blackness and swelling— Advice of X-ray skull, AP and lateral.
- (ii) Lacerated cut $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{6}$ " over left side of neck.

18. From the evidence of record, it is crystal clear that brother of informant had admitted institution of instant case as a counter blast to the case instituted by the accused which the injured witnesses had also admitted. Furthermore, it is also evident that admission of two of the accused at Bettiah Hospital along with prosecution party has also been admitted. Had there been non admission on the part of the prosecution, then in that event, Ext-A, B and C would have got no relevance for want of non examination of doctor as well as informant of that counter case. But on account of admission, it is evident that manner of occurrence as alleged is found doubtful.

19. Apart from this, when the evidence of Doctor, PW-8 has been gone through, it is evident that although, Bhala, a sharp pointed weapon giving sign of piercing injury or if blade is used, a sharp cut injury and in likewise manner Farsa, a sharp cutting injury would also speak regarding causing of sharp-cut injury, is found completely ruled out as the Doctor had not opined the injuries to be caused by sharp pointed or sharp cutting weapon rather hard and blunt substance. Furthermore, the location of injuries also did not tally with the oral evidence. None of the prosecution witnesses had stated that Lathi portion of Bhala was used and in likewise manner, back portion



of Farsa was used during commission of crime.

20. On account of non examination of the I.O., the actual P.O. could not be ascertained in the background of the fact that PW-2, Motilal Prasad and his brother, PW-4 had claimed their Bathan to be the place of occurrence while rest of the witnesses have stated the P.O. to be that of Bathan of Basant Prasad, that means to say, Bathan of PW-1 as well as PW-5. So giving a holistic appreciation of the materials available on the record, it is evident that there happens to be some sort of infirmity persisting in the prosecution case with regard to place of occurrence as well as manner of occurrence, more particularly in the background of admitted case of prosecution that the accused were also admitted in the hospital for 3-4 days as well as institution of counter case, whereupon the finding recorded by the learned lower court appears to be non sustainable.

21. Consequent thereupon, the instant appeal is allowed.

22. Since all the appellants are already on bail, they are discharged from the liability of the bail bonds.

(Aditya Kumar Trivedi, J)

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