

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.111 of 2015

Arising Out of PS. Case No. -31 Year- 2014 Thana -SC/ST PS District- DARBHANGA

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**HARISHCHANDRA YADAV, SON OF LATE CHAUDHARY YADAV,
RESIDENT OF VILLAGE- MOTIPUR, P.S.- BAHERA, DISTRICT-
DARBHANGA**

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Ram Subhas Singh, Adv.

For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 21-12-2017

Appellant, Harishchandra Yadav has been found guilty for an offence punishable under Section 323 of the IPC and sentenced to undergo S.I. for six months, under Section 3(i)(x) of the SC/ST (POA) Act and sentenced to undergo R.I. for six months as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo S.I. for one month additionally vide judgment of conviction and sentence dated 26.11.2014 passed by First Additional Sessions Judge-cum-Special Judge (SC/ST), Darbhanga in SC/ST Case no.31 of 2014 arising out of Bahera P.S. Case No.231 of 2006.

2. Kanman Devi (PW.1) gave her fardbeyan on 31.10.2006 at about 11:30 PM while she was admitted at PHC, Bahera alleging inter alia that in absence of her father at about 04:00 PM Saroj Yadav, Chaudhary Yadav, Harishchandra Yadav, Parmeshwar Yadav armed with lathi, spade came at her house and



began to dismantle wall of her house whereupon, she resisted. The accused persons abused by calling caste name and further threatened that her father will be brutally assaulted. They again indulged in dismantling the wall and in likewise manner, she continued with making protest. During midst thereof, Sikandar Yadav and Dinesh Yadav, came who assaulted her with lathi as well as also abused. On her alarm, her mother Bimal Devi, PW.2, Rambesar Kumari, PW.5, Anita Kumari, not examined, Nirmal Devi, PW.4 and Bucchi Devi, PW.3 came who were also assaulted by them.

The motive for the occurrence has been shown as her grandfather, Lakhan Ram had taken 11 Dhur 4 Kanma of land on Mahada from Anand Ram, co-villager about eleven years ago whereupon, they have constructed Indira Awas. The accused persons purchased the same land from Pichlagwa Beta of Anand Ram, namely, Faguni Ram and for that title suit is going on. So many villagers have seen the occurrence.

3. After registration of Bahera P.S. Case No.231 of 2006 investigation commenced and concluded by way of submission of charge sheet. As is evident during course of trial the prosecution had compromised the case with the other co-accused however, contested with the appellant as a result of which, the learned lower court had recorded finding of guilt and accordingly sentenced the appellant,



subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. Furthermore, only to pressurize upon the appellant to relinquish their rightful claim, this case has been filed. Though no ocular evidence has been adduced, documentary evidence has been exhibited.

5. In order to substantiate its case, altogether seven PWs have been examined on behalf of prosecution, PW.1-Kanman Devi, PW.2-Vimal Devi, PW.3-Bucchi Devi, PW.4-Nirmal Devi, PW.5-Rajweshar Kumari, PW.6-Nathuni Ram and PW.7-Dr. Jitendra Narain Singh. Side by side had also exhibited Ext.1 Series-Injury Report, Ext.2-Formal FIR. On the other hand the defence had also exhibited Ext.A-C.C. of the plaint of Title Suit no.24/2004.

6. PW.1, Informant during course of her evidence had stated that the occurrence is about five years ago. It was 04:00 PM. All the accused persons had assaulted. As she happens to be Harijan on account thereof, she had instituted the case under Harijan Act. Then had stated that case has been compromised with Saroj Yadav, Chaudhary Yadav, Dinesh Yadav, Parmeshwar Yadav, and Sikandar Yadav. Case has not been compromised with Harishchandra Yadav. During cross-examination she had stated that Saroj Yadav,



Chaudhary Yadav, Dinesh Yadav, Parmeshwar Yadav had not abused by calling caste name. Only Harishchandra Yadav had abuse her by calling her caste name. She had further stated that at the time of dispute only she along with her mother was present. She had further stated that dispute relates with land. Five accused persons had executed sale deed in their favour. They have got no other land. No title suit is going on relating to said land but with regard to different land, the dispute is going on. Her father had instituted this case against the accused persons. She had further stated that as Harishchandra Yadav had assaulted them so she had not compromised with him. At the time of dispute only she along with her mother and sisters were present. Harishchandra Yadav assaulted them with fist and slap, danda. Then had said that all the accused persons assaulted with danda as well as fist. Her mother, Bhabhi were also assaulted. She had further stated that about three months ago, the other accused persons had executed sale deed in name of her mother. They have also returned back the land and on the basis thereof, land is under her possession. Then had admitted that with regard to the land under dispute title suit is going on. She had also stated that the land which Harishchandra Yadav had purchased is under his possession. If Harishchandra Yadav return back the land then in that circumstance, compromise will be effected with him also. Then had denied the suggestion that no such time of occurrence had ever taken



place and due to land dispute this false case has been filed.

7. PW.2 is the mother who had stated that on the alleged date and time of occurrence she was at inner courtyard where, Harishchandra Yadav came, abused and then inquired about her husband and further said that he will be murdered. She was assaulted. Again corrected all the family members were assaulted. Later on her husband came and took all of them to hospital, where they were treated. Her statement was recorded by the police. During cross-examination she had stated that she along with accused persons are on strain relationship due to land dispute and for that, title suit is going on. She had further stated that Harishchandra Yadav has not returned her land and is claiming that he will contest. Then had said that in due course of time compromise has effected with rest of the accused persons. Then had said that Harishchandra Yadav assaulted Kanman with lathi over her head as well as leg, also assaulted her over head, also assaulted her second daughter with *lathi* on right leg, Buchiya Devi with fist over neck, Rajbeshar Devi by catching her hair. All of them became senseless on account of assault. Harishchandra Yadav escaped therefrom after assaulting. None of the villagers came in rescue. She was alone. She had gone to Mukhiya and then to Thana, after getting instruction from Mukhiyajee. The land under dispute has been purchased by Harishchandra Yadav and is under peaceful possession of the Harishchandra Yadav, since the



day of Kewala. Before that, the land was in her possession. Harishchandra Yadav had purchased the land from Faguni Rai. She had filed a title suit for setting aside the sale deed. She had further stated that the place where Harishchandra Yadav had abused her, none was present. Then had denied the suggestion that no such kind of occurrence had ever taken place. Rather due to land dispute this false case has been filed.

8. PW.3 is the Bucchi Devi. She had stated that on the alleged date and time of occurrence she was at her courtyard. Sanjay Yadav and Harishchandra Yadav began to cut the wall of her house which was resisted by her sister-in-law whereupon Harishchandra Yadav began to abuse by calling her *Chamainiya* and further said that his father will be murdered. Then, thereafter, they have assaulted whole family. Later on, after arrival of her father-in-law he took all of them to hospital where they were treated. During cross-examination she had stated that Saroj Yadav, Chaudhary Yadav, Parmeshwar Yadav, Sikandar Yadav, Dinesh Yadav, have not committed any kind of occurrence with them. They have not abused by calling her caste name. On behalf of appellant while she was cross-examined, she had stated that Harishchandra Yadav assaulted with *lathi* over neck. Then, there happens to be contradiction. Then had stated that first of all her sister-in-law was assaulted then, her mother-in-law then she herself and then, her other sister-in-law. Then had stated that



the occurrence took place at her courtyard. Then again corrected that her sister-in-law was assaulted in a garden (Bari). She had further stated that aforesaid places were shown to the Investigating Officer when he visited place of occurrence. She had further stated that Harishchandra Yadav had purchased the land. She had further stated that case is going on at Benipur court. She had further stated that her sister-in-law remained at Hospital for two days. Then had denied the suggestion that no such kind of occurrence had ever taken place.

9. PW.4 is Nirmal Devi she had stated that on the alleged date and time of occurrence while she was inside her house, Saroj came with spade, Harishchandra Yadav with lathi. Saroj Yadav had given a spade blow over the wall and began to dismantle the same whereupon his sister came out from the house. Harishchandra Yadav gave one *lathi* over her leg and one *lathi* over her head. On hue and cry raised by her sister, she came out whereupon they began to abuse by calling her caste name and then, Harishchandra Yadav began to assault all of them. Later on, her father came and took them away to hospital where they were treated. During cross-examination on behalf of others, she had stated that they have not committed any kind of occurrence with her. Then had stated that she is unaware with regard to any kind of land dispute in between. She had further stated that at that very time neither her sister was in standing condition nor she had fallen over the ground. She is also unable to say whether she was



unconscious or not. She had further stated that Harishchandra Yadav had assaulted with fist and slap. On which part of body he had assaulted, she is unable to disclose. Then had denied the suggestion that no such type of occurrence had taken place.

10. PW.5 had deposed that on the alleged date and time of occurrence she was at her house. At that very time, Saroj Yadav came with spade while Harishchandra Yadav with lathi. Saroj Yadav began to dismantle the wall whereupon Kanman Devi protested as a result of which, Harishchandra Yadav gave *lathi* blow. Kanman Devi raised alarm. Harishchandra Yadav said that “you people have been assaulted and then, your father *Chamarwa* will be also assaulted”. Later on at 06:00 PM his father came and took them to hospital where they were treated. During cross-examination she had stated that case has been compromised along with others and not with Harishchandra Yadav. She had further stated that occurrence took place inside her courtyard. At that very time, save and except Harishchandra Yadav none was present. Then happens to be contradiction. Then had stated that dispute relates with the land. Harishchandra Yadav is claiming the land. He is directing to vacate the land but they are not vacating and for that, Harishchandra Yadav had instituted a case. She had further stated that Kanman Devi as well as Bucchi Devi were admitted at hospital. She had further stated that now Harishchandra Yadav is over the land. He forcibly took possession over the same.



She had further stated that she had seen injury over head as well as left leg of Kanman Devi. She was only assaulted by Harishchandra Yadav.

11. PW.6 Nathuni Ram, father who admittedly is not an eyewitness to occurrence. He had deposed that when he came to his house at about 06:00 PM he had seen Kanman Devi and Bucchi Devi in an injured condition whereupon they were taken to hospital. Police came there and recorded her statement. He was disclosed by his daughters that they were assaulted. They had also disclosed that Saroj Yadav came with spade and began to dismantle wall whereupon she resisted as a result of which Harishchandra Yadav gave lathi blow, also abused with caste name. He had further stated that on account of land dispute this occurrence has been committed. During cross-examination, he had stated that he is not an eye witness to occurrence. He had further stated that with regard to land dispute, he had already instituted a case. He had further stated that with other co-accused, the case has been compromised. He had further stated that the land is under the possession of the Harishchandra Yadav.

12. PW.7 is the doctor who, on 31.10.2006 had examined the injured and found the following:

(a) Bimal Devi

- i. Pain below left knee.



ii. Pain in occipital region.

Both injuries were caused by hand and blunt object and were simple in nature.

(b) Kanman Devi

i. Pain over left knee right side.

ii. Pain left upper arm.

iii. Pain left parital region.

All injuries were caused by hard and blunt object and were simple in nature.

13. After going through the evidences available on the record, it is manifest that some of the witnesses have disclosed presence of all the accused persons including those with whom case has been compromised while some of them had disclosed presence of only Saroj Yadav and Harishchandra Yadav. During course thereof, it has been disclosed that Saroj Yadav was armed with spade and through which, he began to cut wall of the house of the prosecution. In the aforesaid background, when the evidence has minutely been gone through, it is further evident that some of the witnesses have disclosed occurrence outside the house while some had disclosed inside the house, inner courtyard while some had disclosed different locations including Bari. That means to say, they are not at all consistent with regard to place of occurrence. Moreover, from the evidence of respective witnesses more particularly PW.3, PW.5, there



happens to be material contradiction. In the aforesaid background, non-examination of the I.O. appears to be prejudicial to the interest of the appellant because of the fact that apart from having been deprived of to bring on record the material exaggeration, on account of inconsistency amongst the evidences of the PWs with regard to place of occurrence also remained unexplained. In likewise manner, due to non-examination of I.O., the objective finding could not properly been exposed whether wall of house of prosecution party was cut, as the witnesses are inconsistent over aforesaid event also. Furthermore, it is also evident that some of the witnesses who happens to be the family member have claimed to be assaulted at the end of the accused persons including Harishchandra Yadav, appellant while some had identified Harishchandra Yadav only, some had stated that all the family members were assaulted while some had confined to informant as well as Bimal Devi which, the doctor PW.7 had also corroborated, though simple in nature. Furthermore, there also happens to be inconsistency amongst the evidence of the PWs with regard to the filthy words uttered by the accused persons, which, the informant PW.1, had not re-iterated. In the aforesaid background when the evidence in its entirety has been considered, it is evident that prosecution utterly failed to substantiate the case, more particularly in the background of the case that witnesses have admitted the land to be under possession of appellant since the day of



purchase. Then what was occasion to come with others armed with spade and dismantling wall of house of informant.

14. That being so, the conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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