

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.640 of 2015

Arising Out of PS.Case No. -2 Year- 2004 Thana -KALYANPUR District-
EASTCHAMPARAN(MOTIHARI)

1. Anirudh Ram S/o - Asharfi Ram, R/o- Village- Barharwa Mahanand, P.S.-
Kalyanpur, District- East Champaran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 652 of 2015

Arising Out of PS.Case No. -2 Year- 2004 Thana -KALYANPUR District-
EASTCHAMPARAN(MOTIHARI)

1. Bhuar Ram @ Bhuaaur Ram S/o late Mahangu Ram
2. Satish Ram s/o Musafir Ram
3. Baleshwar Ram S/o Bhuaaur Ram
4. Mahanth Ram S/o Satahu Ram
5.Ashok Ram s/o Dwarika Ram All R/o village- Barharwa mahanand P.s Kalyanpur
District East Champaran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 644 of 2015

Arising Out of PS.Case No. -2 Year- 2004 Thana -KALYANPUR District-
EASTCHAMPARAN(MOTIHARI)

1. Suraj Prasad Son of Late Dhanulal Sah, R/o village - Barharwa Mahanand, P.S.
- Kalyanpur, District - East Champaran.
2. Manjay Prasad, S/o Suraj Prasad, R/o Village - Village - Barharwa Mahanand,
P.S. - Kalyanpur, District - East Champaran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.640+652+644 of 2015)

For the Appellant/s : Mr. Prakash Chandra Jha, Advocate
For the Informants : Mr. Sharda Nand Mishra, Advocate
Mr. Dhananjay Kr Gupta, Advocate
Mr. Deepak Kumar, Advocate
For the State : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT



Date: 13-07-2017

Criminal Appeal (SJ) No.640 of 2015 wherein Anirudh Ram is the sole appellant, Criminal Appeal (SJ) No.652 of 2015 wherein Bhuar Ram @ Bhaur Ram, Satish Ram, Baleshwar Ram, Mahanth Ram and Ashok Ram are the appellants, Criminal Appeal (SJ) No.644 of 2015 wherein, Suraj Prasad and Manjay Prasad are the appellants have been filed against a common judgment of conviction dated 06.10.2015 and order of sentence dated 08.10.2015 passed by Additional Sessions Judge-12th, East Champaran, Motihari in Sessions Trial No. 670 of 2007 on that very pretext, have been heard together and are being disposed of by a common judgment.

2. Appellant, Anirudh Ram has been found guilty for an offence punishable under Sections 148 IPC and sentenced to undergo RI for 2 years, under Section 326 IPC and sentenced to undergo RI for 7 years as well as to pay fine of Rs. 5000/- in default thereof, to undergo RI for 6 months, under Section 307 IPC to undergo RI for 7 years and to pay fine of Rs. 5,000/-, in default thereof, to undergo RI for six months additionally with a further direction to run the sentences concurrently while remaining appellants, namely, Bhuar Ram @ Bhaur Ram, Satish Ram, Baleshwar Ram, Mahanth Ram, Ashok Ram, Suraj Prasad and Manjay Prasad have been found guilty for an offence punishable under Sections 147 IPC and sentenced to



undergo RI for 1 year, under Section 323 IPC sentenced to undergo RI for 6 months, under Section 307/149 IPC, to undergo RI for 7 years and to pay fine of Rs. 5000/- and in default thereof, to undergo RI for 6 months additionally with a further direction to run the sentences concurrently.

3. Lal Bahadur Ram (PW 6) gave his Fard-e-beyan on 05.01.2004 while he was admitted at Sadar Hospital, Motihari along with his injured mother, Shivkali Devi alleging, inter alia, that on 02.01.2004 at about 4:30 PM. while his mother was carrying she-goat, which, after covering some distance, had gone to the maize field of Bhuar Ram, on account thereof, Bhuar Ram who was present in the field, began to abuse her as well as also slapped her. Suraj Prasad, Manjay Prasad and Mahanth Ram were nearby irrigating their field rushed carrying Lathi. During midst thereof, Anirudh armed with Farsa, Ashok armed with Lathi, Baleshwar Ram armed with Garasa and Satish Ram who happens to be member of the same family arrived and then thereafter, began to abuse his mother. On hue and cry, he along with brother Subhash Ram arrived. Seeing them, Suraj Prasad provoked whereupon, Anirudh gave Farsa blow over his mother cutting forehead as well as eye (left eye). She became unconscious. As soon as he rushed to save his mother, Ashok Ram gave Lathi blow over his head. His brother Subhash was also chased.



Manjay Prasad snatched away writ watch as well as cash appertaining to Rs. 400/-. His brother Subhash along with villagers came after departure of accused persons and took him along with his mother to local hospital wherefrom they were referred to Sadar Hospital, Motihari.

4. The aforesaid Fard-e-beyan was transmitted from Town PS Motihari to Kalyanpur PS for registration and investigation of the case as occurrence so alleged committed within the jurisdiction whereupon Kalyanpur PS Case No. 02/2004 was registered followed with investigation as well as submission of charge-sheet being magistrate triable facilitating the trial before the court of Magistrate and during course thereof, invoking procedure as laid down under Section 323 CrPC, the case was committed to the court of sessions which ultimately concluded recording finding adverse to the appellants, the subject matter of these appeals.

5. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of the case.

6. It has also been pleaded that no such kind of occurrence had ever taken place rather the prosecution party in the background of persisting land dispute, brutally assaulted the accused persons for which Kalyanpur PS Case No. 03/2004 was registered and



only to save their skin, this case has been filed. In order to substantiate the appellants have also exhibited relevant documents from Ext-A to Ext-E, however, no oral evidence has been at their end.

7. In order to substantiate its case, prosecution had examined altogether 8 PWs out of whom PW-1, Nathuni Ram, PW-2, Subhash Ram, PW-3, Sheokali Devi, PW-4, Suganti Devi, PW-5, Bedami Devi, PW-6, Lal Bahadur Ram, PW-7, Rup Singh Barai and PW-8, Ram Babu Ram. Side by side, had also exhibited Ext-1, Signature of Subhash Ram on the Fard-e-beyan, Ext-1/A, Signature of the informant on the Fard-e-beyan, Ext-2, Certified copy of deposition of Doctor Rameshwar Prasad.

8. Learned counsel for the appellants, while assailing the judgment of conviction and sentence, has submitted that learned lower court should have considered that by way of admission at the end of prosecution party, land dispute coming since before amongst the parties, was the motive followed with assault over person of appellants resulting institution of the case at their end and so, did not consider properly whether manner as well as genesis of occurrence flashed by the prosecution happens to be reliable one. On this score, the learned counsel for the appellants stressed upon that injury over the person of accused/appellants was not at all explained at the end of the prosecution party and so, cast doubt over authenticity of the



prosecution version.

9. Furthermore, it has also been submitted that the motive for occurrence as suggested by the prosecution happens to be on account of grazing of crop belonging to the appellant, Bhuar Ram but, during course of cross-examination, it is apparent that the aforesaid motive is found completely washed away. On the other hand, whatever been suggested at the end of the appellant happens to be probable, plausible, acceptable, reliable and so should have disbelieved the version of the prosecution.

10. Apart from this, delay has not been properly explained at the end of the prosecution in institution of the case and for that drew attention toward the evidence of PW-2, Subhash Ram and PW-6, Lal Bahadur Ram and submitted that Subhash accompanied the so alleged victim to Kalyanpur PS as well as to the Hospital and further, his presence has been claimed at the place of occurrence during course of occurrence though not an injured and so, it was but natural at his end to have recorded his Fard-e-beyan at an earliest. In its continuity, it has also been submitted that from the evidence of PW-6, it is apparent that he was not at all severely injured whereupon, he on his own perhaps recorded Fard-e-beyan. That means to say, there happens to be inordinate delay in recording Fard-e-beyan without any explanation whereupon, genuineness of the prosecution case should



be doubted, more particularly, in the background of assault over appellants and for that admittedly, happens to be counter case.

11. It has also been submitted that all the witnesses whoever have been examined are own family members without having presence of independent witnesses and for that no explanation has been offered although their presence have been shown and so, being interested one as well as accused in the counter case, their evidence should not have been relied upon in casual manner rather in the aforesaid background, needed in depth scrutiny whereupon the inconsistency prevailing therein ruins their reliability and so, would have been rejected out rightly.

12. In an alternative, it has also been submitted that when for the same occurrence case and counter-case have been registered, then in that event, the Court should have taken pain to search out as to who happens to be the aggressor but, the learned lower court failed to do such exercise whereupon, the judgment impugned does not justify its finding.

13. It has also been submitted that during course of trial being conducted before Magistrate, doctor was examined, cross-examined, however, when the case was committed to the court of sessions in terms of Section 323 CrPC, the doctor could not be examined. The learned lower court as is evident has admitted the



certified copy of the deposition with the aid of Section 33 of the Evidence Act which would not have been as, the witness was examined, cross-examined and discharged. Therefore, Section 33 of the Evidence Act was not at all applicable whereupon admitting the evidence of doctor is found illegal. That being so, the evidence of doctor is fit to be rejected. In its entirety, the prosecution failed to substantiate its case whereupon judgment impugned is fit to be set aside.

14. On the other hand, learned APP assisted by learned counsel for the informant has submitted that for an occurrence committed on 02.01.2004, case and counter case were registered at both end bearing Kalyanpur PS Case No. 02/2004 (present one) and Kalyanpur PS Case No. 03/2004 at the end of appellants. Fard-e-beyan relating to both the cases were recorded on 05.01.2004 by Motihairi Police. In the aforesaid facts and circumstances, the submission having been made on behalf of appellants that there happens to be inordinate delay in filing of instant case is not at all found tenable in the eye of law as well as on factual aspect being the informant PW-6 as well as Sheokali Devi, PW-3 admitted at Sadar Hospital, Motihari for treatment of the injuries sustained by them at the hands of appellants.

15. It has also been submitted that the occurrence took



place in front of house of prosecution party, on account thereof, family members were natural witness whereupon they deposed. It is not the rule that evidence of family members should not be accepted. Family members are not at all interested witness nor they could be accepted as hostile to accused unless and until there happens to be bleak possibility of being their presence at the place of occurrence. Moreover, having been arrayed as accused in counter case justifies their status.

16. In the aforesaid legal event, it has been submitted that the witnesses, more particularly, the injured (PW 3) as well as PW-6 remained consistent over manner of assault and so, the learned lower court had rightly recorded the conviction and sentence against the appellants which is fit to be confirmed.

17. PW-1, though has been declared hostile by the prosecution as he disowned to be an eye witness even then, supported the version of the prosecution in a manner that after hearing an alarm, he rushed to the Darwaza of Sheokali Devi where he found her lying over the ground. Her left eye got completely damaged.

18. PW-2 is one of the sons of PW-3. He had deposed that on the alleged date and time of occurrence, he was at his house. His she-goat was tied in an open place for grazing. While his mother was returning carrying the she-goat, it has gone in the maize field of Bhuar



whereupon, Bhuar began to abuse his mother. His mother protested. Bhuar assaulted with fists. Suraj, Manjay, Mahanth also arrived. They began to assault his mother with fists and slaps. They dragged his mother near his house where they were joined by Anirudh armed with Farsa, Baleshwar armed with Garasa, Ashok and Mahanth armed with Lathi. He along with his brother, Lal Bahadur rushed to rescue her whereupon Suraj incited and directed to commit murder whereupon, Anirudh gave Farsa blow over head of his mother which strike upon her left eyebrow. Ashok assaulted Lal Bahadur with Lathi over his head. Lal Bahadur fell down and thereafter Manjay assaulted with Lathi. Manjay also assaulted him with Lathi. While rests assaulted him with legs and fists. They also snatched away wrist watch as well as cash appertaining to Rs. 400/- from Lal Bahadur. Suganti Devi, Malti Devi, Bedami Devi, Rambabu Ram, Nathuni Ram, Bhujesh Ram and others had seen the occurrence. Thereafter, they carried the mother as well as brother to PS over bicycle. Police Officer sent his mother to the local hospital and therefrom, she was referred to Motihari PHC. His mother and brother were treated at Motihari. Police had come at Motihari hospital where Fard-e-beyan of his brother was recorded in his presence over which, he also put his signature (Exhibited). Eye of his mother got damaged. During cross-examination at para-4, he had deposed that four accused persons were



present in the field at the time of grazing of crop by his she-goat. Just 2 minutes thereafter, he heard the uproar. Bhuar Ram had caught hold of his she-goat which, his mother was insisting upon to release. His mother insisted for two minutes. He had not co-operated his mother. After two minutes, the accused persons released the she-goat. On hue and cry of his mother, 20-25 persons had assembled there. They had not directed the accused persons to release the she-goat. In para-5, he had stated that till the time of releasing of she-goat, none had sustained injuries. No Maar-peat took place. She-goat was released in the field itself. He had also stated that the accused persons who were present since before namely, Suraj, Manjay, Bhuar, Mahanth were not armed with Farsa or Garasa. House of Suraj lies 1 kilometer away therefrom. In para-6, he had deposed that after release of the she-goat, same was entrusted by him to a child who took away the she-goat. Then he asserted that his mother was assaulted in the field wherein wheat crop was standing. Only his mother was assaulted in that field. He along with Malti, Suganti, Bedami were trying to save. Rests were watching the occurrence. First of all, Farsa was hurled. 3-4 blows were given out of which only one blow was received by his mother. Farsa was hurled by Anirudha Ram. He tried to catch hold of him. His mother sustained last blow whereupon she fell down. His elder brother had gone to lift her but could not. After falling of his mother,



she was assaulted by Lathi. Then thereafter Lal Bahadur was assaulted with Lathi and thereafter, he was assaulted. All of them were assaulted in the same field. In para-7, he had admitted the presence of counter case but shown his ignorance with regard to the allegation attributed against them.

19. PW-3 is Sheokali Devi, mother of PW-2 as well as PW-6 who had deposed that on the alleged date and time of occurrence, she was returning along with she-goat from a field where she-goat was left for grazing. She was coming over ridge. Her she-goat tried to graze the maize crop belonging to Bhuar Ram but she prevented by pulling the she-goat. Bhuar, who was present in the field came out and began to abuse which was resisted by her where upon, she was assaulted with fists and slaps. Suraj, Manjay, Mahanth who were irrigating their fields nearby came, assaulted with Lathi. Anyhow, she reached at her field along with she-goat. Anirudh armed with Farsa, Baleshwar armed with Garasa, Ashok, Satish armed with Lathi also came whereupon Suraj induced Anirudh who gave a Farsa blow over her head causing injury thereupon. Her head along with left eye sustained cut injuries and the scar was shown to the Court. She fell down and became unconscious. She was taken to hospital where she regained sense after 5-6 days. She also found her elder son Lal Bahadur having bandage over his head. She inquired whereupon he



disclosed that Satish and Ashok assaulted him with Lathi. He also disclosed that Baleshwar chased her another son Subhash with Garasa whereupon he ran away. Lal Bahadur also disclosed that Manjay snatched away wrist watch as well as cash appertaining to Rs. 400/-. She had made statement before the police. During cross-examination at para-3, had admitted that Bhuar happens to be her cousin brother with whom, she was continuing with strained relationship. In para-4, she had deposed that she was residing at her Maika. In para-5, she had disclosed regarding status of other witnesses to be her family members as well as with regard to the land dispute for which 144 and 145 CrPC proceeding was going on. In para-6, she had disclosed boundary of the place of occurrence as North-Dwarika Ram, South-She herself, East-Suraj (Accused) West- her house, road. She had further stated that the accused persons had taken her to her field and during midst thereof, they continued with assault. She had further stated that till the time of unconsciousness she was carrying she-goat. She had further stated that her sons arrived while she was in sense. In para-7, She had stated that she was assaulted in the field whereupon her house stands. In para-8, she had stated that before sustaining Farsa injury, she had sustained 2-3 blows of Lathi as well as slaps. She is unable to disclose as to who had assaulted her with Lathi. She had further stated that there was maize crop standing in the field wherein



Maar-peet took place. Maize plants were trampled. While Lathi blow was given, Farsa blow was inflicted. In para-10, there happens to be contradiction. Then had denied the suggestion relating to assault by them and for that, accused persons had also instituted a case.

20. PW-4 is the daughter-in-law of PW-3 who had deposed that on the alleged date and time of occurrence, she was at her house. While her mother-in-law, Sheokali Devi was coming back along with she-goat. She-goat had gone to the field of Bhuar Ram. Anyhow, her mother-in-law taken out the she-goat. Bhuar who was present in the field, came out, abused and assaulted her mother-in-law by fists and slaps. Soon thereafter, Suraj, Mahanth, Manjay, Rambabu, Lal Bahadur, Subhash, Ashok, Baleshwar, Satish came out of whom Anirudh was armed with Farsa and Baleshwar armed with Garasa. Rambabu, Lal Bahadur, Subhash were the spectators. Ashok was armed with Lathi. At the instance of Suraj, Anirudh gave Farsa blow over her mother-in-law which caused injury over her forehead and eye (left side). Ashok assaulted with Lathi. Her Bhaisur, Lal Bahadur was also assaulted with Lathi. They had also abused. Her mother-in-law was treated. During cross-examination at para-2, she had stated that after hearing uproar, she along with her Gotni, Bedami Devi and Malti Devi came out. Their husbands were also present at the house. They altogether had gone to the place of occurrence. At that very time,



rattling was going on. When her mother-in-law fell down after sustaining injury, they lifted her and took to the hospital. She regained sense after 5-6 days. In para-4, she had deposed that she is unable to say that as to how many times quarrel had taken place. Lastly, Lathi and Farsa were hurled. She had deposed relating thereto. In para-5, she had stated that the accused persons were brandishing their weapons. Her mother-in-law fell down just after receiving Farsa injury. Her family members lifted her to hospital. In para-5, she had stated that Lal Bahadur also became unconscious. He regained sense after two days. Denied the suggestion that on account of land dispute, the instant case has been lodged.

21. PW-5 is Bedami Devi who had deposed that on the alleged date and time of occurrence, she was at her house. Anirudh had inflicted Farsa blow over her mother-in-law which caused injury over her forehead as well as upon eye. As a result of which the eye was completely damaged. Ashok had assaulted Lal Bahadur with Lathi. Manjay took away wrist watch and cash Rs. 400/-. Baleshwar chased Subhash. Blood had oozed out from the injury of Lal Bahadur and her mother-in-law. The aforesaid event was committed at the instance of Suraj. Mahanth had assaulted her mother-in-law with Lathi. Satish also assaulted with Lathi. Her mother-in-law, Bhaisur were taken to the hospital. During cross-examination, at para-2, she



had deposed that her mother-in-law as well as Bhaisur returned back from the hospital together after a month. She had further stated that she-goat came to her house. She had further stated 10-15 persons were present at her *Darwaza* before occurrence including the accused. They stayed over 20-25 minutes. In para-4, she had further stated that her house as well as that of accused lie near the place of occurrence. She had further stated that the maize crops were trampled. In para-12, she had shown the boundary of the place of occurrence as North-Dwarika Ram, South-Sheokali Devi, East-Suraj Prasad, West- house of Ganesh Ram. In para-14, she had stated that her mother-in-law did not lie over ground after sustaining injuries. With the assistance of her Devar, Ram Babu, Subhash and father-in-law, she was taken to her place and then she was carried over bicycle to the hospital. Her mother-in-law was taken to her *Darwaza*. She had further deposed in para-19 that a counter-case has wrongly been instituted. She had denied the suggestion that eye of her mother-in-law was completely damaged since before and in the background of land dispute, this false case has been instated.

22. PW-6 is the informant who had stated that on the alleged date and time of occurrence, he was at his *Darwaza*. His mother had gone to bring the she-goat. During course thereof, she goat had gone to the field of Bhuar Ram wherein maize crop was



standing. Bhuar, who was present in the field came out, abused and assaulted with fists and slaps. Suraj, Manjay and Mahanth who were engaged in irrigating their wheat crop nearby came with Lathi. They also abused. During course thereof, they were also joined by Anirudha armed with Farsa, Baleshwar armed with Garasa, Ashok and Satish armed with Lathi and then all of them surrounded her, began to abuse, assaulted with fists and slaps. His mother raised alarm over which, he along with his brother rushed. Suraj, seeing them, provoked whereupon, Anirudh gave Farsa blow over head of his mother causing injury over forehead and eye as a result of which her eye got completely damaged. His mother fell down. Blood oozen out. Ashok, Satish give 5-6 blows of Lathi. He was assaulted by Ashok over his head as a result of which, he also sustained injury. He fell down. Thereafter, Manjay assaulted with Lathi and then snatched away wrist watch as well as cash appertaining to Rs. 400/-. Suraj and Manjay also assaulted his brother Subhash over which, Subhas rushed therefrom and at that very moment, Baleshwar chased him with Garasa. When her mother became unconscious, all the accused persons left the scene. Thereafter, he along with his mother were taken to Kalyanpur hospital where they were given primary treatment and then referred to Sadar Hospital, Motihari where his statement was recorded by the police. During cross-examination, he had stated that land dispute was



going on only with Suraj Prasad. There was no dispute with others. In para-7, he had stated that the land wherein Maar-peet took place lies east to his house. In para-9, there happens to be cross-examination over their family status. In para-11, there happens to be cross-examination relating to status of the witnesses. Para-14, 15, 16 and 17 happens to be cross-examination relating to the land dispute. In para-18, he had stated that Suraj Prasad stood at an eastern boundary of the P.O. land. In para-20, he had stated that he had shown the land of Bhuar to the police during course of investigation. In para-24, he declined to accede to the suggestion given by the accused to the effect that they have not sustained any injuries. In para-25, he had also admitted that Bhuar had instituted case wherein he has been bailed out. He had further denied the suggestion that they had assaulted the accused persons and during course thereof, his mother had sustained self-inflicted injury. In para-26, he categorically denied that the occurrence had not taken place in the field of Bhuar nor in the field of Suraj Prasad but in his field. However, he is unable to say that as which side of the plot, the occurrence took place. In para-27, he had stated that occurrence was concluded within 10-15 minutes. They had sustained injuries one by one. He was assaulted at last. He did not become unconscious. Subhash was chased by Baleshwar with Garasa whereupon, Subhash had gone to his Darwaza. After 2-3 minutes,



Subhash again came back. Till then, the accused persons already left the scene. He had come to the place of occurrence after hearing sound of accused as well as alarm made by his mother. In para-28, he had stated that Farsa was hurled 3-4 times. No Farsa blow was give upon him. He was assaulted with Lathi. He was assaulted after assault over his mother. In para-31 and 32, he had narrated the manner of occurrence and stated that after assault over person of his mother, he was assaulted. His mother had sustained 3-4 Lathi blows and in likewise manner, he also happened to be. In para-35, 36, there happens to be contradiction. In para-37, he had denied the suggestion that they had assaulted the accused persons for that a case was instituted and only to save their skin, this case has been launched.

23. PW-7 is the Investigating Officer who had deposed that after registration of case on the Fard-e-beyan of informant, he was entrusted with the investigation. He had visited the place of occurrence and identified the same with boundary, North-Dwarika Ram, South-Field of informant as well as land of Jainandan Tiwari, East-land of Suraj Prasad, West-Informant. He had recorded the statement of the informant witness and after concluding investigation submitted charge-sheet. He had also exhibited the case diary. During cross-examination, he had admitted that during course of investigation, sufficient material were collected with regard to the



land dispute prevailing amongst the parties since before. In para-7, he had further admitted that for the same occurrence two cases were instituted and he happens to be the Investigating Officer of the both the cases and in both the cases, he had filed charge-sheet but, he could not opine who happened to be the aggressors. In para-10, he had further stated that house of other co-accused lies adjacent to the house of informant save and except that of Suraj whose house lies at a distance. He had further stated that in para-71, 93, he found the case false against the accused, Mahanth, Suraj and Manjay and so they were not charge-sheeted. In para-12, he had further stated that he had found land of accused, Suraj in the boundary of alleged place of occurrence. He had also found land of accused, Ashok at the northern flank of place of occurrence. Para-16 and 17 happen to be contraction relating to informant.

24. PW-8 is Rambabu Ram, another brother of informant who during course of his examination-in-chief had reiterated the prosecution version as well as manner of assault at the end of Anirudh over his mother by means of Farsa causing injury over forehead, eye (left side) and in likewise manner, assault over his brother Lal Bahadur by Ashok with Lathi over head as well as snatching of wrist watch as well as cash of Rs. 400/- by Manjay. During cross-examination at para-4, he had admitted the land dispute. In para-5, he



had further stated that house of Suraj Pd. lies at the distance of half- a quarter kilometer. In para-6, he had further admitted that maize and potato crops were existing over the place of occurrence and he identified the boundary as North-Dwarika Ram, South-Sheokali Devi, East-Suraj Prasad and West- his house. Then had stated that the place of occurrence lies 10-12 lagga away from his Darwaza. In para-8, he had stated that he was ill, on account thereof, he had not gone to the place of occurrence though his other brothers and female folk had gone there. He had further deposed that after the occurrence, his mother was brought to Darwaza and then was lifted to the hospital. In para-11, he had stated that his mother sustained single Farsa blow while 3-4 Lathi blows. Four persons were engaged in hurling Lathi. She along with his brother had sustained injuries. In para-12, he had stated that police had come, visited the place of occurrence and had seen the blood. He had admitted pendency of 144-145 proceeding but had denied the suggestion that they were aggressors and assaulted the accused persons whereupon, they had instituted a case to save their skin.

25. The prosecution had also tendered evidence of doctor who was examined as PW-6 before the learned lower court court. The doctor had deposed that on 02.01.2004 while he was posted at Sadar Hospital, Motihari as an Eye Specialist, at 7.15 PM, he examined



Sheokali Devi and found the following injuries.

- (1) Incised wound on forehead to lead nose 3" long x ½" wide and deep of bone.
- (2) Upper lip cut through 1 ¼" deep. Conjunctive, nasal and scarala cut off. Interior chamber full of blood, opthalma scopic examination media not clear. Inside not clear. Only posterior feel. Vision lost.

In the opinion of the doctor both the injured were grievous in nature caused by sharp cutting weapon. Furthermore, the doctor had opined that injure had lost her eye-sight.

26. On the same day, he had examined Lal Bahadur and found the following injuries:-

- (1) Lacerated wound 2' x ½" x ½" on vertex region of scalp
- (2) Bruise on the knee left 2" x 1".
- (3) Bruise on the right knee 2 ½" x 1"
- (4) Bruise on left leg 2" x 1"

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

27. The appellants have also exhibited document which as is evident have been admitted by the prosecution witnesses. However, no injury report relating to the assault having been made over the persons of appellants have been made exhibit and so there happens to be absolutely no material to find out whether appellants have had sustained injuries and if so, its nature. Therefore, for want of conclusive evidence prosecution is not at all under obligation to explain the same.

28. On proper scrutiny of the evidence available on record,



it is evident from the evidence of PW-7, Investigating Officer, that he had identified the place of occurrence by the boundary which, other witnesses have also corroborated but his objective finding cast doubt over genuineness of the prosecution version over proper identification of the P.O. land as he had not mentioned that maize crops as well as potato shrubs were found as well as completely trampled. In likewise manner, he had not deposed with regard to presence of blood stain. In likewise manner, although he had admitted to be Investigating Officer of counter case also but failed to locate the field of Bhuar Ram nor appellants have had cross-examined him relating to place of occurrence concerning counter case. In the background of aforesaid deficiency, when the evidence of prosecution witnesses, more particularly, alleged injured, the informant PW-6 and his mother PW-3 have been gone through, it is evident that irrespective of litigation going on amongst them, none of the parties have indulged in criminal activity. The aforesaid event cropped up after trespassing the cattle (she-goat) to the Maize field of Bhuar and the subsequent activity, in case, is properly perceived in the background of case and counter-case, speaks otherwise as, presence of appellants at the alleged place of occurrence according to prosecution version itself happens to be in three stages, that means to say, presence of Bhuar Ram then being joined by Manjay, Mahanth



and Suraj and then by Anirudh, Baleshwar, Ashok and Satish.

29. Now coming to the activity of the appellants, inspite of Baleshwar having been armed with Garasa, had not inflicted Garasa blow over PW-3 or over PW-6, informant, Lal Bahadur. Though, it has been alleged that he chased Subhash (PW 2) but that part appears to be exaggerated in the background of the fact that at an initial stage, informant had not alleged that Subhash (PW 2) was also assaulted which, during course of evidence, PW-2 had claimed to have extended also been supported by PW-6. In likewise manner, there happens to be absence in initial version with regard to hurling of Farsa blow 3-4 times which, during course of evidence has been introduced whereunder it has been stated that Anirudh had hurled Farsa blow over Sheokali Devi 3-4 times but the aforesaid event is found purposely been introduced in the background of the fact that the same was not at all probable perceiving the gap in between Sheokali Devi as well as Anirudh.

30. Furthermore, it has been found from the evidence of the PWs that there happens to be substantial distance in between the field of Bhuar as well as alleged Place of occurrence and for that though some of the PWs had stated that accused persons dragged Sheokali to the place (alleged P.O.) and during course thereof, she was continuously assaulted and then thereafter, she was surrounded by all



the accused persons whereunder, she was assaulted by means of Farsa by Anirudh and in likewise manner, the assault by Lathi. What was the occasion for directing the accused at that place which, has not been substantiated by all the PWs, more particularly, PW-3 being a lady, Bhuar was himself competent to tackle her which he did by abusing followed with assault with fists and slaps and then, arrival of Manjay, Mahanth, Suraj with Lathi is another factor and subsequently thereof, the presence of Anirudh, Baleshwar, Ashok and Satish is a circumstance which is to be seriously taken note of.

31. Apart from this, there happens to be evidence of the prosecution that PW-3, Sheokali Devi became unconscious but with regard to PW-6, informant, there happens to be contradiction. Furthermore, the prosecution also happens to be consistent that injured were taken to Kalyanpur P.S. and from there, the police sent them to Kalyanpur PHC wherefrom, they were referred to Motihari Sadar Hospital. However, there happens to be no evidence at the end of the prosecution in order to ascertain the authenticity of the aforesaid disclosure. Furthermore, had there been presence of all the persons, out of whom at least PW-2 and PW-8 were not at all injured but being eyewitnesses either of them would have lodged a case and furthermore, the police requisition would have also disclosed the nature of injuries, the status of injured and further, the injury report



issued by Kalyanpur PHC divulging the nature of injury, if any, sustained by the respective injured.

32. During examination of PW-7, the Investigating Officer, all these things were not at all brought up by the prosecution and in likewise manner, the accuse also failed to cross-examine even relating to the counter version coupled with their injury. At the present moment, the evidence of doctor happens to be relevant who had not found at least PW-6, Lal Bahadur to be unconscious. So, there happens to be inordinate delay in institution of the case and whatever explanation happens to be, not at all substantiated as, the doctor had not deposed on the score of which date they were admitted, on which date, they were discharged and their physical condition during intervening period. However, institution of counter-case for the same occurrence on 5th January 2004, that means to say, the day on which the present case has been instituted, is matter of consideration.

33. Now coming to other aspect, it is evident that just after sustaining injuries by the PW-3, Sheokali Devi by means of Farsa hurled by Anirudha whereupon she fell down, became unconscious, and further having no intervening circumstance, even then no repetition of blow was there. At the other end, all the accused persons left the scene at their own.



34. Now coming to the admissibility of the injury report inconsonance with the evidence of the doctor who was examined before the court of magistrate as PW-6, the learned lower court opined the same to be admissible in accordance with Section 33 of the Evidence Act which, appears to be incorrect in the background of the fact that Section 33 of the Evidence Act permits admissibility of evidence of a witness who subsequently been not available for cross-examination on account of death or on certain exigency during subsequent stage of trial in the case accused had an opportunity to cross-examine but, did not opt to cross-examine. In the present case, the doctor was already cross-examined and so, Section-33 was not at all applicable. On the other hand, Section 291 of the CrPC is found applicable whereunder the evidence of doctor appears to be admissible. For better appreciation, the same is quoted below:-

Deposition of medical witness.— (1) The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in, evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject-matter of his deposition.

35. From the record it is evident that doctor put his



presence before the Magistrate who recorded his evidence in presence of accused and further, was cross-examined by the accused and so, though the trial has been committed in terms of Section 323 of the CrPC but status of doctor is found duly covered in terms of Section 291 of the CrPC and that being so, the evidence is found admissible.

36. After giving anxious consideration over facts and circumstances of the case, it is found that in absence of objective finding relating to place of occurrence by the Investigating Officer, PW-7 and further, dragging PW-3 from the field of Bhuar to the present place of occurrence, as narrated by her, though not properly corroborated in same manner by other PWs, cast doubt with regard to manner as well as genesis of occurrence, more particularly, in the background of arrival of accused at different stages when, PW-3, a lady being unarmed was really a threat for the appellants in consonance with the presence of counter case which the prosecution party admitted coupled with longstanding enmity relating to land, coupled with the conduct of the accused persons as perceived, detailed hereinabove whereunder arrival of accused have been shown in three parts, out of which one of the members of third part had individually hurled *farsa* blow, though caused grievous injury over PW-3 and further lacking at prosecution to narrate common object of an unlawful assembly did not justify conviction and sentence recorded by



the learned lower court relating to Section 307 of the IPC against Anirudh Ram and further Section 307/149 relating to Bhuar Ram, Satish Ram, Baleshwar Ram, Mahanth Ram, Ashok Ram, Manjay Prasad and Suraj Prasad. So, is set aside.

37. Now coming to the remaining part of the judgment, save and except Anirudh Ram, others have been found guilty for an offence punishable under Sections 147/323 IPC, while Anirudha under Section 326 IPC, 148 IPC and that part of finding recorded by the learned lower court is confirmed.

38. Now coming to the sentence, considering presence of counter-case as well as nature of evidence inconsonance with the surrounding circumstances, it looks desirable to interfere with the sentence inflicted by the learned lower court whereupon Anirudha Ram is directed to undergo RI for 2 years with fine appertaining to Rs. 50,000/- which, in case, deposited by the appellant, Anirudh Ram, Rs. 40,000/- out of the same will be paid to Sheokali Devi (PW3) in terms of Section 357 of the IPC, failing which, the appellant, Anirudh Ram will have to suffer RI for 1 year additionally under Section 326 IPC maintaining sentence relating to Section 148 IPC with a further direction to run the sentences concurrently.

39. So far Baleshwar Ram is concerned, it is evident that he was charged under Section 148 of the IPC but found guilty for an



offence under Sections 147, 323 IPC for which sentenced for and on account thereof, there happens to be impediment in getting the judgment impugned concur on that very score and is accordingly, modified to that extent holding him guilty for an offence punishable under Sections 148 IPC and for that, his sentence is found saturated with the period already undergone by reducing the same. So far Section 323 IPC is concerned, that is not applicable against him, on account of being him non-assailant and so finding of the learned lower court is set aside to that extent.

40. So far remaining appellants, namely, Bhuar Ram, Satish Ram, Mahanth Ram, Ashok Ram (Cr.Appeal (SJ) No. 652/2015), Manjay Prasad and Suraj Prasad (Cr.Appeal (SJ) No. 644/2015), their conviction relating to Sections 147 and 323 IPC is retained, however, sentence inflicted by the learned lower court is reduced directing to be modified as period already undergone under both heads.

41. Accordingly, these three appeals are dismissed with the aforesaid modification. Appellant, Anirudh Ram is under custody, which he will continue till saturation of sentence while remaining appellants, namely, Bhuar Ram @ Bhuaar Ram, Satish Ram, Baleshwar Ram, Mahanth Ram, Ashok Ram (Cr.Appeal (SJ) No. 652/2015), Suraj



Prasad and Manjay Prasad (Cr. Appeal (SJ) No. 644/2015 was concerned, they are being discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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