

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.199 of 2015

Arising Out of PS.Case No. -479 Year- 2002 Thana -MUZAFFARPUR TOWN District-
MUZAFFARPUR

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1. Manish Kumar Agarwal @ Manish Agarwal
2. Vikash Kumar Agarwal @ Vikash Agarwal Both are sons of late Om Prakash Agarwal resident of village - New Area Sikandarpur, P.S. Town, District Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ravi Ranjan, Advocate
Mr. Nilesh Kumar, Advocate
For the State : Mr. Z. Hoda, A.P.P.
For the Informant : Mr. Rajeev Ranjan No. II, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 28-04-2017

Appellants Manish Kumar Agarwal @ Manish Agarwal and Vikash Kumar Agarwal @ Vikash Agarwal challenged the verdict of guilt as well as sentence dated 28.02.2015 recorded by Additional Sessions Judge-11th, Muzaffarpur in Sessions Trial No. 623 of 2005 whereby and whereunder they both have been found guilty for the offences punishable under Sections 324/34 of the Indian Penal Code, 342/34 of the Indian Penal Code and each one has been directed to undergo R.I. for three years as well as fine of Rs. 1000/- in default thereof to undergo, sentence of two and half months additionally, S.I. for six months as well as fine of Rs. 500/- in default



thereof to undergo imprisonment for one month, additionally, respectively with a further to run the sentence concurrently.

2. P.W. 8 Jaypurnjay Prasad Verma gave his fardbeyan on 05.12.2003 at about 11 A.M. while he was admitted at Karn Neuro and Research Centre, Brahmpura before Brahmpura P.S. official disclosing therein that on the preceding evening i.e. on 04.12.2003 at about 5.45 P.M. his father Maheshwar Prasad Verma was cleaning flank of staircase, at that very moment his neighbour Om Prakash Agrawal along with his two sons and an owner of telephone booth namely Dilip Kumar came and enquired from his father while he is assembling garbage in front of the house over which, his father said that just now the same is being removed. The accused persons did not pay heed to it and indulged in an altercation. After hearing commotion, he came out and enquired from the accused persons why they are creating ruckus over which, they became enraged whereupon Om Prakash as well as elder son of Om Prakash caught hold his hands while younger son of Om Prakash gave rod blow over head of his father as a result of which, his father sustained injury. Seeing this, he became angry and tried to release himself from their grip during midst thereof, Om Prakash Agarwal and his elder son assaulted him with rod and danda on account of which he sustained injury and fell down. He became unconscious. During course of aforesaid illegal activity, Dilip Kumar, Booth Operator was actively involved. On hue and cry,



the female as well as the persons of the surroundings came and lifted them to the clinic of Dr. Hemchandra Lal Karn where first aid was given to his father. Because of the fact that blood had not stopped coming out from his injury so he was admitted. C.T. Scan was conducted and after seeing the same, doctor had opined for operation, which is going to be held.

3. On the basis of the aforesaid fardbeyan, Muzaffarpur Town P.S. Case No. 479 of 2003 was registered whereupon investigation was taken up and after completing the same, chargesheet was submitted facilitating the trial, 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 pleaded that prosecution party happens to be hostile to them as the appellants/accused had purchased half share from brother of Maheshwar Prasad Verma, father of the informant and for that, title suit was pending since before and in the aforesaid background, on the alleged date and time of occurrence, the prosecution party brutally assaulted and for that Complaint Case No. 2917 of 2003 was filed at the behest of Om Prakash Agarwal @ Om Prakash and to substantiate the same, apart from exhibiting the relevant documents, altogether nine D.Ws. have also been examined.



5. In order to substantiate its case prosecution had examined altogether 10 P.Ws. out of whom P.W. 1 is Krishna Devi , mother of informant, wife of one of the injured Maheshwar Prasad Verma (P.W.6), P.W. 2 Rambabu Sahni, P.W.3 Ramchandra Sahni, P.W.4 Suman Kumar Sahni, P.W.5 Tribhuvan Kumar, P.W.6 Maheshwar Prasad Verma, P.W.7 Seema Verma, wife of the informant, P.W. 8 Jaypuranjay Prasad Verma, informant , P.W.9 Dr. Hemchandra Lal Karn and P.W. 10 Gyan Prakash Srivastava, I.O.

6. Prosecution had also exhibited Exhibit 1- signature of informant over fardbeyan, Exhibit 2 series-injury report of P.W.6 as well as P.W.8, Exhibit 3-F.I.R. and X-ray plate marked as for identification. In likewise manner defence had also examined nine D.Ws. out of whom D.W. 1 is Anand Prasad, D.W.2 is Raj Kumar Singh, D.W.3 is Baban Sahni, D.W. 4 is Afraj Alam, D.W.5 is Sanjay Kumar Agarwal, D.W.6 is Ganesh Kumar Sharma, D.W.7. is Ram Kumar Nathani, D.W. 8 is Ram Prasad Pandey, D.W.9 is Gowandi Poddar as well as also exhibited Exhibit A- order of cognizance relating to Complaint Case No. 2917 of 2003, Exhibit –B-Complaint Petition No. 2917 of 2003, Exhibit-C-injury report, Exhibit-D-death report of Om Prakash.

7. While assailing the judgment of conviction and sentence, it has been submitted on behalf of the learned counsel for the appellants that the judgment impugned happens to be perverse,



cryptic on account of non consideration of the materials available on the record in its right perspective. To substantiate the same, it has been submitted that there happens to be an admission at the end of the prosecution that half share belonging to brother of Maheshwar Prasad Verma (P.W.6) has been purchased by the appellants and for which, title suit was pending since before. Filing of title suit is indicative of the fact that prosecution party were aggrieved thereby and so, they were adamant to grab the land any how and so, the defence case was more probable than that of prosecution case. Furthermore, it has also been submitted that there happens to be admission at the end of the prosecution regarding presence of counter case. In the aforesaid background, having a version as well as counter version for an occurrence then in that event, the learned lower court should have considered the evidences having been adduced on behalf of respective parties and further, nature of injury disclosed by the P.W.9, the Doctor, clearly indicate being manufactured one, whereupon the learned lower court ought to have disbelieved the prosecution version.

8. Apart from this, it has been also been submitted that when the evidences of the P.Ws. is going to be scrutinized then in that event, it will be apparent that the character of the Doctor as well as the informant happens to be of same brand and in the aforesaid background, in spite of having admission at the end of Maheshwar Prasad Verma (P.W.6) under para 11 that clinic of Dr. Awadhesh



Babu lies 300 yards away from his house and at Juran Chhapra Mohalla is densely occupied by the Doctors, having their clinics and putting by the same had gone to the clinic of P.W.9, Dr. Hemchandra Lal Karn and for that, no sufficient reason is found, save and except perceiving the conduct of the informant who happens to be an accused in so many heinous offences and in likewise manner, P.W. 9 (Doctor) had also admitted his conduct more particularly under para 10 wherein he admitted that he happens to be under suspension for the last ten years and further institution of case and counter case as is evident from para 11 and 12, gives another jolt to prosecution case.

9. Apart from this, it has also been submitted that after going through the evidence of P.W.9 in consonance with the fardbeyan, it is evident that injury report happens to be manufactured. Brushing aside the aforesaid event, inconsistency prevailing amongst the evidences of the P.Ws. over the manner of occurrence as well as the genesis of occurrence and further, considering the place of occurrence as deposed by them in consonance with the objective finding of the I.O., P.W 10, it is crystal clear that this case has been filed with an ulterior motive putting false and frivolous allegation and so, the judgment impugned is fit to be set aside.

10. The learned Additional P.P. as well as learned counsel representing the informant have refuted the submission made on behalf of the learned counsel for the appellants and have submitted



that evidence in its totality is to be seen. Law does not permit consideration of the evidence in piecemeal manner. That being so, keeping in view the aforesaid principle when the evidence of each of the witness is taken up, it is apparent that they succeeded in substantiating the prosecution version.

11. It has also been submitted that even having criminal antecedent or being an accused in a criminal case is not going to jeopardize the interest and in likewise manner, would not erase his testimony unless and until same happens to be unreliable, unbelievable. For consideration of the same, it has also been submitted that it should be seen in its totality and further, status of the witnesses. Furthermore, it has also been submitted that in this case, two witnesses are injured witnesses and so, their evidences have got priority. When the evidence of P.W.6 as well as P.W.8, both injured is minutely scrutinized, it is apparent that they succeeded in substantiating the case corroborated by the objective findings of the I.O. substantiated by the Doctor, P.W.9. Consequent thereupon, the judgment of conviction and sentence is fit to be confirmed.

12. Before coming to the other evidences, first of all the evidence of P.W.6 as well as P.W.8, as alleged by the prosecution to be an injured, is to be taken on priority basis because of the fact that evidence of the injured has got primacy over other evidences. Before that, it looks better to recollect the allegation having attributed



by the informant, P.W.8, in his fardbeyan. According to fardbeyan, Om Prakash Agarwal and his elder son had caught hold hands of informant at the other end younger son of Om Prakash gave rod blow over head of his father on account of which, his father sustained injury over his head. When he tried to release himself, Om Prakash and his elder son had assaulted with rod and danda over his head. That means to say younger son of Om Prakash is responsible for causing injury over person of P.W.6, Maheshwar Prasad Verma while Om Prakash and his elder son are responsible for causing injury over informant. One more important thing is to be perceived from the fardbeyan is that when informant came at the place of occurrence, he had not noticed accused persons being armed with any weapon including that of rod and danda. So, how they possessed those things is a matter of concern. True it is, that First Information Report could not be considered as an encyclopedia but material facts, having so left out is to be perceived in same manner.

13. Now coming to evidence of P.W.6, he had stated that after cleaning staircase he was keeping garbage. At that very moment Om Prakash along with his son Manish Agarwal and Vikash Agarwal came and said that why he is collecting garbage in front of him over which, he said that just now he is going to remove. Even then, they shouted and disclosed that you are not carrying bona fide intention. Om Prakash indulged in scuffle. At that very moment, his



son Jaypuranjay Prasad came over which Om Prakash and Manish caught hold his hand and Vikash had assaulted him with rod. His son tried to get himself released from clutches of Om Prakash and Manish and during course thereof, Om Prakash caught hold his collar, bend him and then Manish gave rod blow. Om Prakash also gave rod blow. His son sustained injury over his head. His son began to flounder. Suman Sahni and others came and intervened in to the matter whereupon accused persons fled away. Then thereafter, they both came to the clinic of Dr. Hemchandra Lal Karn over rickshaw where they were treated.

14. P.W.8 is the informant, as well as another injured. He had stated that the occurrence is of dated 04.12.2003 at about 4.45 P.M. at that very time he was at his house. His father was cleaning the staircase lying at the back of his house with broom. His neighbour, shopkeeper Om Prakash and his two sons Manish and Vikash along with Dilip Kumar came there and enquired from his father why he is keeping garbage in front of their house. His father has replied that just now he is going to remove the same, but they became adamant to quarrel. Hearing sound of uproar, he came out from his room whereupon they became enraged. On his query, Om Prakash and Manish caught hold his hand while Vikash gave rod blow over head of his father as a result of which, he sustained injury. He tried to release himself over which, Om Prakash caught hold his collar and



gave jerk. Manish gave danda blow over his head. Om Prakash also gave danda blow over his head. He fell down. Again got up whereupon Om Prakash gave iron rod blow. Manish had given iron rod blow. He again fell down. His mother and wife were seeing the occurrence from 15-20 feet away. Witnesses were also seeing the occurrence. Then thereafter, brandishing the weapons, the accused persons left. Thereafter, he came to the clinic of Dr. Karn Saheb on a rickshaw where Police came and recorded his fardbeyan. He has further stated that there was C.T. Scan. He was operated upon and shown scalp hang mark.

15. From the examination-in-chief of these two P.Ws. alone, it is evident that they are inconsistent over the manner of occurrence. According to P.W.6, he had not disclosed any thing with regard to his own assault at the end of the appellants, at the other end had identified Vikash to be assailant at first round over his son and then thereafter, Om Prakash and Manish. P.W. 6 had also stated that Om Prakash and Manish have also assaulted the informant with iron rod while the informant had deposed that his father was assaulted by Vikash and then thereafter, he was assaulted by Om Prakash and Manish by means of danda as a result of which, he fell down and then thereafter, Manish and Om Prakash assaulted him with iron rod. That means to say, PW-6 had disclosed single attempt at the end of accused over his son, while PW-8 disclosed attempt having at the end of



accused twice, one by danda and later on by rod. Not only this, they are completely silent how there weapons came in the hands of accused, as they have not deposed that accused were duly armed since before.

16. Now, the remaining evidences have to be seen to perceive how much it is going to substantiate the prosecution version.

17. P.W.1 had stated that Om Prakash, Manish Agarwal and Guddu Agarwal @ Vikash had come along with danda and rod and then thereafter, Guddu assaulted her husband as a result of which, her husband sustained injury over forehead. Her son was caught hold by Om Prakash and Manish and then, Manish had assaulted him with rod. Then thereafter, all of them assaulted her son as a result of which, he sustained injury.

18. P.W.2 had stated that he had seen Guddu assaulting father of Vakil Saheb with rod. Vakil Saheb was assaulted by Manish and at that very time father of Manish caught hold him. P.W.4 has stated that Manish had assaulted Maheshwar Prasad Verma. Chhotu had assaulted Jaypuranjay.

19. P.W.5 had stated that Guddu and Om Prakash assaulted Maheswar Prasad Verma. Guddu and Om Prakash caught hold the informant and others. Manish assaulted him with iron rod.

20. P.W.7 had alleged that her husband was caught hold by Om Prakash and Manish and then, Vikash gave rod blow over



her father-in-law. Her husband was assaulted by Manish Agarwal with danda and substantiate to that, Om Prakash Agarwal and Manish Agarwal again assaulted with danda as a result of which, he sustained injury over his head. Therefore, save and except P.W.1 who had shown presence of appellants having weapon in their hands, none had deposed on that very score and in likewise manner, happens to be inconsistency amongst them over proper identification of the assailant.

21. Now coming to place of occurrence, first of all evidence of I.O., P.W.10 is to be considered. In para 2, he had described the place of occurrence happens to be the back portion of the east front house of Maheshwar Prasad Verma, where happens to be a septic tank as well as staircase where Maheshwar Prasad Verma was sweeping and was putting garbage below staircase. He had further identified the place of occurrence with following boundary as north house of Sanjay Jha, south-barren land of Pappu Singh, east-road which goes towards Akharaghat, west-road going towards Sikandarpur. P.W.6 Maheshwar Prasad Verma had indemnified the place of occurrence under para 7 of his deposition, north septic tank of Sanjay Jha, south barren land of Pappu Singh, east Akharaghat road at a distance of 100 yards and west road proceeding towards Jarda Factory. P.W.8, informant in para 15 had identified the place of occurrence, east his house, west road. North and south has not been



disclosed. In para 20 he had further deposed that marpit took place over road having boundary. North septic tank of Sajay Jha, south barren land of Pappu Singh, east-west road. Evidence of other witnesses are absent.

22. Now coming to test the veracity of the evidence of the P.Ws. over an occurrence wherein injury is said to have been caused over the person of P.W.6 as well as P.S.8, first of all fardbeyan is to be taken note of. The fardbeyan was recorded on 05.12.2013 at about 11 A.m. whereunder there happens to be disclosure that his C.T. Scan was conducted and after seeing the same Doctor, has opined that an operation is to be carried out. P.W. 9 is Dr. Hemchandra Lal Karn. From his evidence, it is evident that he had not disclosed that any kind of operation was conducted over P.W.8, the informant. Apart from this, from para 2, there happens to be details of the injury having over person of P.W.8 and those are (i) CLW left F.T. region 3"x2" x scalp deep (ii) swelling and tenderness right F.T. region 3"x2" caused by hard and blunt substance (iii) C.T. Scan was there whereupon he has opined (a) right front parietal extredeoned hamatoma (b) right temporal contusion. Injury No. 1 and 2 were shown simple and with regard to injury No. 3 the injury was to be seen followed at least for three months. From the injury report (Exhibit-2) it is evident that there happens to be overwriting over the same whereupon it could be read as 04.12.2003 while the injury report has been issued on 05.12.2003.



23. So far injury report concerning P.W.6, Maheshwar Prasad Verma is concerned one injury has been found as swelling with tenderness on the right temporal region 1"x2", simple in nature caused by hard and blunt substance. During cross-examination at para 14 he had stated that after seeing the C.T. Scan he had reported the same. In para 19 his attention has been drawn towards the overwriting having over the injury report. Furthermore, he had admitted that he had not prescribed the length and breadth of the injury, which has to be identified by the Doctor who conducted the C.T.Scan.

24. Now coming to the other aspect, it is evident from the evidence of P.W.6 para 8 that he had already instituted Title Suit No. 174 of 1996 before this occurrence relating to land as the accused had purchased from his brother. He had further admitted that his land was illegally possessed by his brother, which he sold to accused whereupon accused had already constructed his house. He had tried to stop. When accused did not accede then in that event, he had instituted the title suit.

25. From the evidence of P.W.8, informant from para 10, it is evident that he had shown ignorance with regard to Title Suit No. 174 of 1996. However, he had admitted that accused persons have purchased from his uncle whereupon shop has been constructed. In para 12, he had shown ignorance with regard to Title Suit No. 202 of 1989.



26. In the background of aforesaid materials, the most surprising feature of the present episode appears from evidence of P.W.8, para 19, whereunder he had stated that his father after sweeping the open land lying in between house of Sanjay Jha and accused and kept the garbage in front of shop of accused, then the quarrel took place. From the evidence as referred above, it is evident that there happens to be no presence of accused/appellants in the boundary of the alleged place of occurrence. Had there been accumulation of garbage in front of shop of accused persons/appellants then in that event the boundary of the aforesaid location at least would have disclosed presence of accused at any location east -west, south -north and so, non presence of accused in the boundary of the alleged place of occurrence is indicative of the fact that the actual place of occurrence is not at that very place where the occurrence might have taken place.

27. The prosecution though admitted that accused had succeeded in getting land from brother of Maheshwar Prasad Verma (P.W.6) but the prosecution failed to disclose the exact location from which side of his land purchase was made and further, in the aforesaid facts and circumstances, the I.O., P.W.10 could have perceived presence of accused. The aforesaid eventuality made the instant allegation suspicious when the evidence of P.W.8 para 17 is gone through whereunder he had admitted that his residential house lies



adjacent north to the house of accused. His father had swept his residential house. Road lies 20-25 feet away from the aforesaid house. In para 18, he had divulged that his door opens adjacent to shop of accused at southern side having eastern front where accused has got no land and that area was not swept. That means to say, presence of accused happens to be at Southern flank, but as per I.O. Southern side, there happens to be barren land of Pappu Singh.

28. It is evident from the PW-6 as well as PW-8 that they had gone to the clinic of PW-9 soon after the occurrence, that means to say on 04.12.2003. PW-9 had not disclosed that he had informed the police, nor PW-6 as well as PW-8 had said that they had informed the police. PW-10, the I.O. happens to be of different police station, and so, unable to explain. Then under such circumstance, arrival of police on 05.12.2003 became doubtful. In likewise manner, none of the injured were in critical condition, nor P.W.9 had spoken with regard to their condition, being unconscious, hence, non-presence of police on 04.12.2003, and in likewise manner, non-informing the police on 04.12.2003 going to play a vital role while appreciating the prosecution version.

29. Considering the evidence in its totality as referred above, it is apparent that neither the prosecution had succeeded in substantiating the place of occurrence nor the manner of occurrence. Furthermore, presence of appellants having armed with iron rod as



well as danda is also found suspicious one. Further conceiving the conduct of the prosecution whereunder he had crossed the densely populated area occupied by Doctors and proceeding ahead to the place of P.W.9 whose activity is found from his evidence alone did not inspire confidence over reliability of the injury report having been issued by P.W.9. Apart from this, having admission at the end of P.W.6 as well as P.W.8 regarding presence of counter case whereunder P.W.8 had remained judicial custody for months together is another circumstance coupled with the fact that prosecution was very much aggrieved on account of purchase of land by the appellants from brother of P.W.6 also shake the motive so assigned and the cumulative effect thereupon, could not justify the finding recorded by the learned trial court.

30. Consequent thereupon, same is set aside. Appeal is allowed. The appellants are on bail hence, discharged from its liability.

(Aditya Kumar Trivedi, J)

Vats/-

AFR/NAFR	NAFR
CAV DATE	
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