

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.211 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

- =====
1. Vidya Nand Singh son of Ram Dhan Singh
 2. Ram Dhan Singh son of late Daya Singh
 3. Kare Lal Singh son of Ram Dhan Singh
 4. Nitya Nand Singh son of Ram Dhan Singh
 5. Sachidanand Singh son of Ram Dhan Singh
 6. Ramchandra Singh alias Chando Singh son of late Daya Singh
- All resident of village Goregama P.S. Nayagaon Dist. Begusarai

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay thakur
Mr. Mukesh Kumar

For the Respondent/s : Bipin Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: -04-2017

This appeal is directed against the judgment and order dated 16.04.2002 passed by Sri Vijay Kumar Verma, Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter to be referred as 'the S.C. & S.T. (POA) Act'], by which he has convicted the appellants under Sections 147, 323 & 341 of the Indian Penal Code and also under Section 3(1) (X) & (XI) of the S.C. & S.T. (POA) Act, 1989 and has further convicted the appellant, Vidya Nand Singh under Section 379 of the Indian Penal Code. All the appellants have been sentenced to undergo R.I. for six months under Section 323 of the Indian Penal Code, three months S.I.



under Section 147 of the Indian penal Code and S.I. for three months under Section 341 of the Indian Penal Code and the appellant Vidya Nand Singh has been further sentenced to undergo R.I. for one year under Section 379 of the Indian Penal Code. However, no separate sentence has been passed for conviction under Section 3(1)(X) and (XI) of the S.C. & S.T. (POA) Act.

2. The prosecution story in short is that the informant, Ratilal Paswan (P.W.5) lodged Fardbeyan on 18.10.1996 at 06:30 P.M. before the Officer Incharge of Harijan Police Station, Begusarai alleging therein that on the same day at 03:00 P.M., the informant along with his wife proceeded towards market from his house for the purpose of purchasing the articles of '*Dashehra*', and he reached near the '*Thakurbari*', all the appellants, namely, Vidya Nand Singh, Ram Dhan Singh, Karelal Singh, Nitya Nand Singh, Sachidanand Singh and Ramchandra Singh armed with '*lathi*', '*paina*', '*pistol*' and other deadly weapons surrounded them and asked him why he had filed a case in Labour Office, withdraw it otherwise, it will be difficult to live in the village. In reply, informant stated that you took work from him like bounded labourer but do not pay wages. Thereupon, the appellants abused him by stating '*Saala Dusadh*' and thereafter Ram Chandra Singh ordered to assault him, on which Nitya Nand Singh assaulted with the '*But*' portion of the Pistol on his head, which



caused injuries on his left hand and other appellants also assaulted by fist and slaps. It has also come in the prosecution story that when wife of the informant (P.W.5), Mina Devi (P.W.6) raised alarm, the accused persons assaulted her by fist and slaps. It is also case of the prosecution that the accused persons tried to outrage the modesty of his wife by pulling her 'Saree' but the witness, Rambahadur Paswan and Dular Paswan assembled there, who saved him and his wife from further assault. Further allegation against the appellant- Vidya Nand Singh is that he took out Rs.240/- from the pocket of informant and they also threatened not to file any case against them otherwise to face dire consequences. On the basis of the aforesaid Ferdbeyan, Begusarai Harijan Thana P.S. Case No.13 of 1996 dated 18.10.1996 was instituted against the appellants under Section 342, 323, 379, 354, 504 and 34 of the IPC and Section 3 of S.C. & S.T. (POA) Act, 1989 and the Police after investigation, submitted charge-sheet against all the appellants under the aforesaid Sections of the IPC and S.C. & S.T. (POA) Act, 1989.

3. From perusal of the record, it appears that the case was transmitted to the Special Judge of Begusarai for trial and then the charges were framed against all the accused persons under Sections 147, 323, 341 as well as under Section 3 (1) (x) & (xi) of S.C. & S.T. (POA) Act, 1989. Further the appellant Vidya Nand Singh has also



been charged under Section 379 of the IPC. Accused pleaded not guilty to the charges.

4. After the trial, the learned trial court convicted and sentenced the appellants, as stated above. It further appears that eight witnesses have been examined on behalf of the prosecution, they are - Ram Bahadur Paswan (P.W.-1), Ramkeswar Paswan (P.W.2), Parsidhi Singh (P.W.-3), Dular Chand Paswan (P.W.4), Ritlallal Paswan (P.W.5) and Mina Devi wife of the informant (P.W.6), Dr. Akhilesh Kumar (P.W.7), who had examined the injured and Bhuneswar Yadav (P.W.8), who is formal witness.

5. On behalf of the prosecution, following documents have been admitted into the evidence, Ext.1 is the injury report of Ritlall Paswan and Ext.1/1 is injury report of Mina Devi. Ext. 2 is the F.I.R., Ext. 3 the Fardbeyan and Ext.4 is the Case Diary, Ext.5 is certified copy of order sheet of the Minimum Wage Case No.175/1996 in which informant is shown as petitioner and appellant, Ramchandra Singh is shown as Opposite Party. Ext. 6 is the certified copy of petition filed by informant (P.W.4) in Case No.175 of 1996 and Ext.7 is the certified copy of the show cause, submitted by appellant Ram Chandra Singh in Case No.175 of 1996.

6. On behalf of the defence, neither any witness has been examined nor any document has been brought on record. So far



defence of the appellant is concerned, there is simply denial and further that, no such occurrence took place.

7. It has been argued on behalf of the appellants that in the present case, there is no independent witness and all the witnesses, examined on behalf of the prosecution are relative witnesses. Further there are discrepancies in between the evidences of all the witnesses and further prosecution has failed to prove the motive in this case.

8. On the other hand, the learned A.P.P. has submitted that testimonies of prosecution witnesses are consistent to each other and they corroborated the evidence of P.W.5, who is injured and informant and the evidences of P.W.5 and P.W.6 are also consistent to each other and that has been corroborated by the evidence of Doctor. In such a situation, evidence of the witnesses can not be brushed aside only on the ground that they are related witnesses. It is further submitted on behalf of the Learned A.P.P. that the prosecution has brought application filed by informant (P.W.5) before the Labour Office under Minimum Wages Act as well as certified copy of order sheet of Case No.175 of 1996 (Ext. 5) and also copy of the petition filed by the informant and the show cause of appellant in that case (Ext. 6 & 7) and they clearly go to show that the prior to the occurrence, there was a case, going on between the informant and appellants and as such the prosecution has also proved motive behind



the occurrence.

10. In view of aforesaid background of submissions of the learned counsel for the appellants as well as the State, now I would like to examine the evidences available on the record.

11. P.W.5 Ritlal Paswan is the informant as well as one of the injured persons. As per F.I.R., prosecution case is that; while he was going to Market, on the way, the appellants surrounded him and called him by caste name '*saala dusadh*' and also said why he has lodged a case before the Labour Office against them and further told to withdraw the same or it will be difficult for him to live in the village. When he protested and said that wages are not paid to him, they abused him by taking his caste name '*saala dusadh*' and on the order of Ram Chandra Singh, he was assaulted by the '*But*' portion of the Pistol by Nityanand Singh and also by fists and slaps, throwing him on the ground and when his wife tried to save him, the accused persons tried to undress her by pulling her '*Saari*'. However, Ramkeswar Paswan and Dular Chand Paswan reached there and tried to stop the appellants and appellant Vidaya Nand Singh took out Rs.240/- from his pocket. This witness has come with a case that he had lodged a case with respect to his pending wages for last seven years in the Labour Office, Begusarai and notices were issued to the appellants.



12. P.W.-5 Ritlal Paswan has fully supported his case in evidence-in-chief however, he has not stated anything with regard to lodging of a case before the Labour Office as stated in the FIR. In his cross-examination at Para 11, he has stated that he has no land and he is settled on the land of appellant, Vidaya Nand Singh. Further, he has stated in Para 14 of his cross-examination that he had dispute with the appellants for last eleven years. In para 15 of his cross examination, he stated that Ramkeswar Paswan and Dular Chand Paswan are his own brother and witness Ram Bahadur Paswan is his own uncle. There is nothing substantial in his testimony to dislodge his credibility.

13. P.W.6 Mina Devi has supported the occurrence as alleged but she not stated anything with regard to allegation of undressing by appellants and she has further stated in Para 4 that at the time of '*maar-pit*', Rs.240/- fell down from the pocket of her husband and the appellant, Vidya Nand Singh took it and fled away. Her evidence in para 7 also shows that near place of occurrence, there are houses of Singheswar Sao, Rajendra Mahto, Sagar Singh and there is also a '*Gumati*' at the place of incident, which, at that time, was closed and the occurrence took place on road. In para 5 of her cross –examination, she has stated that her husband is a labourer .

14. On comparing evidences of this witness and P.W.5, it



appears that so far occurrence, as alleged, and calling the informant by his caste name is concerned, they are consistent to each other but she has not stated anything about undressing of her 'Saree' in her evidence. Further, from the evidence of both P.W.5 and P.W.6, it is also clear that accused-appellant caused the occurrence with them as P.W.5 had lodged a case against appellant, Ram Chandra Singh in the Labour Officer for payment of wages.

15. P.W.7 is the Doctor and he has stated in his evidence that he had examined both the injured and found the following injuries on the person of P.W.5 :

- (i) Contused and lacerated wound (1" X ¼" X ¼") over left hand.*
 - (ii) Bruise 1" X 2" at left side of chest.*
- Injuries are simple in nature caused by hard and*

blunt substance and also found following injuries on the person of Mina Devi (P.W.6) :

- i. Braise (1" X 1/2" in the right side of chest, in its mid auxiliary line near the middle of chest.*
- ii. Injury is simple in nature, caused by hard and blunt substance.*

16. So far evidence of other witnesses is concerned, P.W.1 Ram Bahadur Paswan is the uncle of P.W.5 and he has fully supported the prosecution case. He has not stated anything about the assault by the "But" portion of the Pistol rather he has stated that P.W.5 was assaulted by 'Lathi' and fists and slaps. Further, he has



stated that when P.W.6 tried to save him, appellant Vidya Nand Singh thrashed him on the ground and called '*saala dusadh*' and asked P.W.5 to withdraw the case from Harijan Thana. He has also stated in Para 2 of his cross-examination that P.W.5 Ritlal Paswan had lodged a case prior to occurrence and appellant Vidaya Nand Singh had asked him to withdraw the present case.

17. P.W.2 Ramkeswar Paswan is the brother of the informant and he has also stated about assault by the appellants to the informant and his wife. He further stated that the assault was made by '*Lathi*' and leg and when his wife went to save him, she was also assaulted and appellant, Vidya Nand Singh snatched Rs.240/- from him. So far snatching of money is concerned, he has stated in Para 2 that Rit Lal Paswan told him about snatching of money. Further his evidence in Para 4 shows that he saw the occurrence from the house of Sagar Singh and when the appellants left, he came at the place of occurrence. This witness appears to be a hearsay witness.

18. P.W.3 Parsidhi Singh appears to be an independent witness. He has stated that P.W.5 informed that Vidya Nand Singh and Sachidanand Singh assaulted him but he had not stated about assault by any other appellants and further he had not stated about calling the informant as '*saala dusadh*'.

19. P.W.4 Dular Chand Paswan is the own brother of the



informant. This witness has supported the occurrence of '*maar-pit*' but further stated that the appellant Vidya Nand Singh snatched golden chain of his 'Bhabhi' and also snatched her clothes, which is not the prosecution story. His evidence in Para 5 shows that when he reached at the place of occurrence, his brother and "Bhabhi" told that they were assaulted and Rs.240/- was snatched.

20. So far genesis behind the occurrence is concerned, P.W.5 has categorically stated that he had filed a case in Labour Office for payment of wages, on that pretext, the appellants caused occurrence with him. In this regard, documentary evidence has been filed viz. Ext. 5 is the order-sheet of Minimum Wages Case No.175 of 1996 and Ext. 6 and Ext.7 are the certified of petition filed by the informant and certified copy of the show cause submitted by the appellant, Ram Chandra Singh respectively.

21. The above facts go to show that from before, the informant had filed a case for realising wages and this proves genesis of occurrence, as alleged against the appellants.

22. P.W. Ritlal Paswan has come with a case that Vidya Nand Singh had taken out Rs.240/- from his pocket whereas P.W.6 Mina Devi has stated that Rs.240/- fell down from the pocket of P.W.5, which was taken away by Vidya Nand Singh. Hence, so far charge under Section 379 of the Indian Penal Code is concerned,



evidences of both P.W.5 and P.W.6 are not consistent to each other.

23. In this case, the appellants were also charged under Sections 3(1) (x) and 3 (1) (xi) of the S.C. & S.T. (POA) Act, 1989 and Section 3(1) (x) of the above Act provides as follows : -

“(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;
Section 3 (1) (xi) of the S.C & S.C. (POA) Act, 1989

provides as follows :

“(xi) assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;

24. So far charge under Section 3 (1)(xi) of S.C & S.C. (POA) Act, 1989 is concerned, P.W.6, in her evidence has not stated anything regarding her undressing by appellants. Thus, the prosecution has not been able to prove the charge under Section 3(1) (x) and 3 (1) (xi) of the S.C. & S.T. (POA) ACT, 1989.

25. So far charge under Section 3 (1) (x) of the S.C. & S.T. (POA) ACT, 1989 is concerned, it requires occurrence to be happened at any place with the public view though it has come in the evidence that the occurrence took place at ‘*Chalu Rasta*’ but there is no evidence that at the time of occurrence, anyone was present there. No doubt the prosecution has brought P.W.1 to P.W.4 as eye witness. From the evidences as discussed above, they do not appear to be eye



witness of the occurrence. Further, it appears to be a super-imposition just to make the case serious and further the occurrence, as alleged, can not be said to have happened in public glare or view.

26. From the entire discussions as made above, it appears that it is well established that the appellants assaulted the P.W.5 and P.W.6, while they were going to market to buy some articles of '*Dashehra*'. It is further clear that all the accused persons surrounded P.W.5 on way and assaulted them.

27. So far conviction of appellants under Sections 147, 323 and 343 of the Indian Penal Code is concerned, there are sufficient cogent and reliable materials available on the record. However, so far conviction of appellant, Vidya Nand Singh under Section 379 of the Indian Penal Code is concerned, as noticed above, the charge, under the above Section, is not proved and it is beyond all doubts.

28. So far conviction under Section 3 (1) (x) and 3 (1) (xi) of S.C. & S.T. (POA) Act, 1989 is concerned, as noticed above, the prosecution has not been able to prove the above charges against the appellants.

29. So far conviction of appellant, Vidya Nand Singh under Section 379 of the Indian Penal Code and all the appellants under Sections 3 (1) (x) and 3 (1) (xi) of the S.C. & S.T. (POA) Act, 1989 is concerned, they are not sustainable in the law. Hence, conviction



and sentence under the aforesaid Sections are set aside.

30. In the light of discussions as made above, conviction of appellants under Sections 147, 323 and 341 of the Indian Penal code sustains in the law. Hence, it is upheld.

31. This is the case of the year, 1996 and more than 20 years has lapse since then, the appellants have faced trauma and harassment of this case, hence, it would not be just and proper to sustain the punishment as awarded to them. Thus, in view of the facts and circumstances, it appears expedient to release the appellants after due admonition under Section 3 of the S.C. & S.T. (POA) Act, 1989 instead of sending them to imprisonment.

32. Accordingly, this appeal is partly allowed with modification in the conviction and sentence as stated above.

(Vinod Kumar Sinha, J)

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Uploading Date	
Transmission Date	

