

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.422 of 2002

**Against the judgment of conviction and sentence dated 19th July, 2002
passed in Sessions Trial No.183 of 1993/24 of 2002 by the Addl. Sessions
Judge, Fast Track Court No.5, Motihari, District East Champaran.**

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1. Ramadhar Tiwary, son of late Janak Tiwari.
 2. Sheo Shanker Tiwari, son of late Baidh Nath Tiwari.
 3. Magani Tiwary, son of late Baidh Nath Tiwari.
 4. Lallan Tiwari, son of late Baidh Nath Tiwari.
 5. Ram Kishore Tiwari, son of Magani Tiwari.
 6. Kanahiya Tiwari, son of Ramadhar Tiwari.

All resident of village- Gokhula, P.S. Banjariya, District-East Champaran.

... .. **Appellant/s**

Versus

State of Bihar

.. ... **Respondent/s**

Appearance :

For the Appellant/s : Mr. Aminesh Kr. Mishra, *Amicus Curiae*

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

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 16-09-2017

Appellants Ramadhar Tiwary and Sheo Shankar Tiwari have been convicted to undergo rigorous imprisonment for a term of three years and two years respectively for offences under Sections 148 and 324 respectively. Further, appellants Kanhaiya Tiwari, Magani Tiwary, Ram Kishore Tiwari and Lallan Tiwari are convicted to undergo two years rigorous imprisonment under



Section 147 IPC vide impugned judgment dated 19.07.2002 passed by the Court of Additional Sessions Judge, Fast Track Court No.5, Motihari, East Champaran, in Sessions Trial No.183 of 1993/24 of 2002.

It is the case of the prosecution that the informant Chirkut Tiwari, who is also the injured person, lodged the FIR in question to the effect that to the southern house of his house, a bathan is situated which was in his possession and five years back he had purchased the same from Mahendra Tiwari through a sale deed. The informant used to tie his cattle on this bathan over which there were Nads and Khuntas and the main passage of way is near this bathan. It is alleged that for the same bathan, accused persons Ramadhar Tiwari and Sheo Shankar Tiwari are also said to have got a sale deed executed by Most. Kanti Devi, wife of Bijuli Pathak, a year before and there was a dispute with regard to this Bathan between the informant and the accused parties, as a result, the police had initiated proceedings under Section 144 and 107 Cr. P.C. wherein the informant succeeded. It is said that Rameshwar Tiwari and Sheo Shankar Tiwari after losing the case had inimical relation with the informant and came to the land on the date of the incident to take forceful possession. It is said that Ramadhar Tiwari armed with Pharsa, Sheo Shankar Tiwari armed with Tangi



and Kanhaiya Tiwari, Magani Tiwari, Ram Kishore Tiwari and Lallan Tiwary armed with Lathi came on the Bathan, Ramadhar Tiwari and Sheo Shankar Tiwari assaulted the informant with Pharsa and Tangi respectively, whereas other persons assaulted him on the head with lathi. The informant raised alarm on which his brother's son Ram Binoy Tiwari and Om Prakash Tiwari and also his wife came there to rescue them and the accused assaulted him with bricks and stone. While Kashi Pandey, Jai Shankar Tiwari and Bhushan Prasad were coming towards the place of occurrence, accused Sheo Shankar Tiwari snatched away HMT wrist watch from the person of Ram Binoy Tiwari. The complainant was taken to the hospital and ferdbeyan was lodged.

Based on the evidence and materials that came on record, the learned trial Court has proceeded to analyse the same. From the medical report of Chirkut Tiwari, the complainant, i.e. Ext.-2 and Ext. 2/1, only two incised wounds on his scalp were found. The doctor did not find any injury on his person by lathi. The learned trial Court, therefore, held that except for the injury caused by appellant Ramadhar Tiwari and Sheo Shankar Tiwari, no other injury has been caused on the person of the complainant-informant. The story of theft etc. are also disbelieved. The doctor



in his statement says that the injury on the person of the informant were superficial in nature and were only skin deep.

Taking note of the aforesaid materials that have come on record, it is seen that an offence under Section 324 of the Indian Penal Code against the appellant Ramadhar Tiwari and Sheo Shankar Tiwari may not be made out. As far as other accused persons are concerned, there is no allegation of any assault or causing injury by any of them. They are only said to have physically present on the spot and if there is nothing to indicate that they have not assaulted or caused injury to any of the persons, their mere presence is not sufficient enough to make out a case under Section 148 or 147 of the Indian Penal Code.

That apart, a very vital lacunae in the case of prosecution, which was highlighted to me at the time of hearing, is the recording of Statement under Section 313 of the Code of Criminal Procedure. Placing heavy reliance on the following judgments of the Hon'ble Supreme Court in the case of **Ranvir Yadav v. State of Bihar** [(2009) 6 SCC 595]; **Tara Singh v State** [AIR 1951 SC 441]; and **Sukhjit Singh v State of Punjab** [(2014) 10 SCC 270], it was argued that the accused persons were not granted opportunity to explain the circumstances appearing against them



and they have been denied this opportunity which vitiates the entire trial.

Before advertng to consider the factual aspect of the matter in this regard, i.e. the manner in which the statement of accused under Section 313 Cr. P.C. is recorded, it would be apt to deal with the law laid down by the Hon'ble Supreme Court with regard to requirement as are envisaged under Section 313 of the Cr. P.C.

In the case of **Ranvir Yadav** (supra), it has been laid down by the Hon'ble Supreme Court that the purpose of Section 313 Cr.P.C. if scrutinized in its entirety would establish that it contemplates bringing to the notice of the accused incriminating materials available against him and thereafter putting questions to him based on these materials, it is held by the Hon'ble Supreme Court that the requirement of Section 313 Cr.P.C. is not an empty formality. It is held in the said case that the incriminating material, if not brought to the notice to the accused and is not given an opportunity to explain the same, tantamounts to a serious lapse on the part of the trial Court making the entire conviction based on such a trial vitiated in law.

In the case of **Tara Singh** (supra), the provision as is existed in the year 1951, i.e. Section 342 Cr.P.C. was taken note of and it has been held that it is not proper compliance of this statutory



provision by merely reading out questions and putting them to the accused and directing him to answer. It is held that the whole object of the Section is to afford to the accused a fair and proper opportunity to explain the circumstances which appear against him and it is held that if the requirement of this Section is not properly complied with, the error is so gross that it causes grave prejudice to the accused.

Both the aforesaid cases and two more cases of the Hon'ble Supreme Court on the issue in question, namely **Hate Singh Bhagat Singh v. State of Madhya Bharat** [AIR 1953 SC 468] and **Ajay Singh v. State of Maharashtra** [(2007) 12 SCC 341] have been considered by the Hon'ble Supreme Court in the case of **Sukhjit Singh** (supra) and the Hon'ble Supreme Court after evaluating the legal principle has held that the whole object of Section of 313 Cr.P.C. is to afford to the accused a fair and proper opportunity of explaining the circumstances which appear against him and, therefore, the questions put to him must be fair and must be couched in a form that he is able to appreciate and understand them and explain them. The purpose of this section is to draw an attention of the accused to the specific point in the charge and in the evidence which has come against him and he should be granted an opportunity to explain the same. The Hon'ble Supreme Court



holds that if this requirement of law is not met, the entire trial stands vitiated and conviction unsustainable.

Based on the aforesaid judgments, my attention was drawn to the statement of the accused persons available on record and on going through the same, we find that the only question put to each of the accused was identical in nature, a cyclostyle question to the effect that you have heard the witnesses speaking against him, they talked about the information given by Chirkut Tiwari with regard to his purchasing property and with intention to dispossess him, you formed an unlawful assembly went with arms and assaulted him. This is the only question put to each of the accused while recording their statement under Section 313 Cr.P.C. No other question is put to them.

Taking note of the totality of the circumstances, we find that apart from some discrepancy in the statement of the witnesses, the requirement of law as contemplated under Section 313 Cr.P.C. has not been followed and as laid down by the Hon'ble Supreme Court, the entire trial stands vitiated on this count alone and if that be the position, there is no reason as to why the appeal should not be allowed and the appellants acquitted of the charges levelled against them.



Accordingly, on this count, we allow the appeal setting aside the judgment of conviction and acquit all the appellants of the charges levelled against them. They are on bail vide order dated 19.08.2002. Now, they are discharged from the liabilities of their bail bonds.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2017
Transmission Date	21.09.2017

