

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.541 of 2002

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

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1. Baleshwar Yadav @ Baleshwar Rai. 2. Nand Jee Yadav. Both sons of Late Rameshwar Yadav. 3. Bhuneshwar Yadav, son of Late Brichh Rai. 4. Raj Bihari Rai. 5. Lal Babu Rai. Both sons of Late Sheo Bachan Rai. 6. Nagina Rai, son of Late Ram Chander Rai. All residents of village-Bhusahula, P.S. Ara Muffasil, District Bhojpur, Ara.	 Appellants.
Versus	
The State of Bihar.	 Respondent.

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Appearance :

For the Appellants : Mr. Animesh Kumar Mishra, Amicus Curiae.

For the State : Mr. Bipin Kumar, A.P.P.

For the Informant : Mr. Nityanand Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 29-08-2017

This appeal has been filed against the judgment and order of conviction dated 10.09.2002 and order of sentence dated 13.09.2002 passed by the Additional Sessions Judge-cum-Fast Track Court-III, Bhojpur at Ara in Sessions Trial No.364/93, arising out of Ara Muffasil P.S. Case No.9/93, whereby the learned trial Court has convicted the appellants for the offence punishable under Sections 147, 323, 325 & 307 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment of seven years each under Section 307 of the Indian Penal Code and further sentenced to undergo rigorous imprisonment of one year each under Section 147, 323 and 325 of the Indian Penal



Code. The sentences were directed to run concurrently.

2. The factual matrix of the case is that Ara Muffasil P.S. Case No.9/93 was instituted under Section 147, 323 and 307 of the Indian Penal Code against Baleshwar Rai, Nandjee Rai, Bhuneshwar Rai, Nagina Rai, Lalbabu Rai & Raj Bihari Rai on the basis of fardbeyan of one Chela Rai, son of Rambrai Rai, resident of village Bhoshula, P.S. Ara Muffasil, District Bhojpur at Ara recorded by S.I. Ganesh Thakur on 24.01.1993 at 12:45 PM in the male ward room no.1 of Sadar Hospital, Ara with the allegation in succinct that on 24.01.1993 at 7 AM he along with his son Vishwanath Rai was irrigating the field. After irrigating the field of Baldeo Singh, he started irrigating the field of Jairam Yadav. In the meantime, Baleshwar Rai, Nandji Rai, Bhuneshwar Rai, Nagina Rai, Lalbabu Rai & Raj Bihari Rai arrived there and insisted for irrigation of their field first. On protest made by him stating that after irrigating the field of Jairam Yadav his field will be irrigated. The aforesaid accused persons assaulted him by means of 'lathi' inflicting injury on his right wrist and on head, forehead, both limbs and upper part of the left knee of his son. After sustaining injury his son fell senseless. The aforesaid case was investigated by the police. The Investigating Officer after recording the further statement of the informant, statement of



witnesses, inspecting the place of occurrence, collecting the injury report and finding the case to be true submitted the chargesheet against the accused persons under 147, 323, 325 and 307 of the Indian Penal Code.

3. On perusing the chargesheet and case diary, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions. After transfer, the case finally came in seisin of learned Additional Sessions Judge-cum-Fast Track Court-III, Bhojpur at Ara for trial.

4. The charge against the accused persons was framed under Section 323, 147, 325 and 307 of the Indian Penal Code. The charges were read over & explained to the accused persons to which they pleaded not guilty and claimed to be tried.

5. To substantiate its case, in ocular evidence the prosecution has examined altogether seven prosecution witnesses. Asarfi Rai as P.W.1, Jairam Yadav as P.W.2, Asha Nand Yadav as P.W.3, Vishwanath Rai as P.W.4, informant Chela Rai as P.W.5, Satyendra Kumar Singh, the Investigating Officer as P.W.6 and Dr. Ram Babu Singh as P.W.7. In documentary evidence, the prosecution has filed and proved some documents.

6. Statement of the accused persons were recorded under Section 313 of the Cr.P.C. The case of the defence is



complete denial of the occurrence. The accused persons neither adduced any ocular nor documentary evidence in buttress of their case.

7. After hearing the parties and perusing the record, the learned trial Court convicted the accused persons under Section 147, 323, 325 & 307 of the Indian Penal Code and awarded sentence as detailed in earlier paragraph.

8. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present criminal appeal.

9. It has been submitted by learned counsel for the appellants that P.Ws.1 to 3 do not happen to be eye-witness of the occurrence. There is vital contradiction between the testimonies of the aforesaid witnesses and that of testimony of P.Ws.4 & 5. P.W.1 also happens to be on inimical terms with Nagina Rai. P.Ws.4 & 5 who happens to be the injured of the case are also having inimical terms with the appellants as it is admitted case that the appellant had filed the case of burglary against the prosecution party on the date of occurrence itself. The injuries allegedly sustained by P.Ws.4 & 5 also does not stand corroborated by the injury report & the testimony of the doctor examined as P.W.6 in this case which creates serious doubt about



the injury said to have been inflicted on the persons of P.Ws.4 & 5. As per the prosecution case and account of the witnesses, the occurrence took place in the field of wheat and blood from the injury of Vishwanath Rai fell on the ground but the I.O. has not found any wheat crop damaged, any blood or mark of violence at the place of occurrence which goes to rule out the prosecution case. The place of occurrence also does not stand established by the prosecution as there is vital contradiction regarding place of occurrence as narrated by P.Ws.4, 5 and 6 (Investigating Officer). As per prosecution case, accused persons assaulted P.Ws.4 & 5 by means of 'lathi' but the doctor has found skin deep injury on the right hand of the informant-Chela Rai, which also rules out the prosecution case as the said injury can be inflicted only by sharp cutting weapon. Thus, the ocular evidence of the prosecution also has not been corroborated by the medical evidence. In view of the aforesaid contradictions, the prosecution case does not stand established beyond all reasonable doubt.

10. On the other hand, learned A.P.P., advocating the correctness and validity of the impugned judgment and order of conviction and sentence, has submitted that the learned trial Court has passed the impugned judgment and order of conviction and sentence, correctly appreciating the consistent ocular and



medical evidence of the prosecution and the facts and law involved in this case and the same is sustainable and this appeal has no substance in it and is liable to be dismissed.

11. Learned counsel for the informant appearing before the Court also submitted that all the witnesses have consistently supported the prosecution case and ocular evidence also stand corroborated by the medical evidence adduced by the prosecution. The injured witnesses, namely, P.Ws.4 & 5 have also supported the prosecution case and nothing convincing and cogent has been illustrated in the evidence of the aforesaid injured witnesses to rule out their testimonies.

12. From perusal of testimony of P.W.1-Asarfi Rai and P.W.3-Asha Nand Yadav, it appears that the aforesaid two witnesses have made abortive bid to support the prosecution case claiming themselves to be eye-witness of the occurrence. Likewise P.W.2-Jai Ram Yadav has also made abortive bid to support the prosecution case claiming himself to be eye witness of the occurrence. But P.W.5-Chela Rai, who happens to be informant of the case has stated in paragraph-6 of his cross-examination that P.Ws.1, 2, 3 and others had arrived at the place of occurrence at the time of lifting the injured, which means that the said witnesses had not witnessed the occurrence, rather they



had arrived at the place of occurrence after conclusion of the occurrence. The attention of P.Ws.1 & 3 have also been drawn by defence towards their statement given before the I.O. under Section 161 Cr.P.C. P.W.1-Asharfi Rai in paragraph-6 of his cross-examination has, inter alia, denied to have stated before the I.O. that he had not witnessed the occurrence, while P.W.3-Asha Nand Yadav in paragraph-6 of his cross-examination has denied to have given statement before the I.O. that while he was proceeding to boring located towards north of the village he witnessed the assailants had departed. To confirm and corroborate the aforesaid statement of the witnesses the defence has also cross-examined the I.O. and the I.O. in paragraphs-10 & 12 of his cross-examination has stated that Asarafi Rai, P.W.1 had given statement before him that when he arrived at the boring of Chela Rai the occurrence of assault had culminated by that time and Asha Nand Yadav, P.W.3 has given statement before him that at his house he listened from someone that there was assault at the boring of Chela Rai then he rushed towards boring located towards north of the village and found the assailants departed from there. But P.Ws.1 & 3 have taken different stand before the Court as given before the I.O. as they have claimed themselves to be hearsay witness of the occurrence before the I.O. while before the Court they have



claimed themselves to be the eye-witness of the occurrence. In view of the aforesaid contradictory statements of P.Ws.1 & 3 given before the Court and that given before the I.O. under Section 161 Cr.P.C., their testimonies are not worth credence and reliable.

13. Though P.W.2-Jairam Yadav has also made an abortive bid to support the prosecution case as eye-witness of the occurrence but in paragraph-6 of his cross-examination he has stated that when he arrived at the place of occurrence he witnessed Vishwanath Yadav (one of the injured) in falling condition. As per the prosecution case, the appellants had first assaulted informant-Chela Rai and then Vishwanath Yadav and after assault and sustaining injury Vishwanath Yadav fell on the ground but as per the aforesaid statement of P.W.2, when he arrived at the place of occurrence, he found Vishwanath Yadav in falling condition which means that he had not seen the occurrence of assaulting the aforesaid victims by the appellants. P.W.1 happens to be on inimical terms to the accused Nagina Rai as P.W.1 in paragraph-3 of his cross-examination has stated that he and his brother were accused in the murder case of Paras, brother of Kashi and accused Nagina Rai had deposed against him in the aforesaid case.

14. As per the prosecution case, the occurrence of



assault took place in the wheat field during the course of irrigation of the field of Jairam Yadav by the informant and the appellants arriving there assaulted him and his son for not obliging them to irrigate their field giving priority to Jairam Yadav. P.W.1 in paragraph-5 of his cross-examination has stated that the place of occurrence is the wheat field and the wheat crops were of 1½ ft. height. P.W.2 in paragraph-6 of his cross-examination has stated that when he arrived at the place of occurrence, he saw Vishwanath Yadav falling there. P.W.3 in paragraph-6 of his cross-examination has stated that from the wound of Vishwanath Yadav blood was fallen on the ground but the I.O. has not found any damaged wheat crop or blood or foot print at the place of occurrence. Thus, the said statement of the I.O. goes to rule out the prosecution case of assault at the place of occurrence.

15. P.W.1 in paragraph-1 of his examination-in-chief has stated that Vishwanath Yadav had sustained injuries on his thigh and back as well but the doctor P.W.7 has not found any such injury on the aforesaid portion of aforesaid person. P.W.2 in para-6 of his cross-examination has stated that he had seen 5 to 7 wounds on the person of Vishwanath Yadav but P.W.3 in para-6 of his cross-examination has stated that he had witnessed only one injury on the person of Vishwanath Yadav. P.W.3 in paragraph-6



of his cross-examination has stated that both the injured i.e. Chela Rai and Vishwanath Rai were rushed to the hospital on two different cots but Vishwanath Yadav (P.W.5) has stated in paragraph 10 of his cross-examination that he had rushed to the hospital on foot and not on the cot. Thus, there appears to be vital contradiction between the statements of P.Ws.1, 2, 3, 5 & 7 regarding the number of injuries, manner of occurrence and sustaining injuries etc.

16. P.W.4 & P.W.5 (informant) happens to be alleged injured of the case. They were allegedly rushed to the hospital and Vishwanath Yadav was unconscious at that time but no head-head ticket or discharge slip of the aforesaid injured has been brought on record by the prosecution. Moreover, the I.O. (P.W.6) in paragraph-8 of his cross-examination has stated that when Chela Rai and Vishwanath Rai were discharged from the hospital is not mentioned in the case diary. Their discharge slips were also not annexed in the case diary. He has not issued injury slip of both the persons. P.W.7, the doctor in his examination-in-chief has stated that he had examined Chela Rai and Vishwanath Rai on 24.01.1993 but the said doctor neither mentioned in the injury report nor stated in his examination-in-chief that he had found Vishwanath Rai unconscious. Though, P.W. 3 in paragraph-



6 of his cross-examination and P.W.2 in paragraph-10 of his cross-examination have stated that Vishwanath Rai was senseless for two days but I.O. has stated in paragraph-3 of his examination-in-chief that he took the statement of Vishwanath Rai on the following day of occurrence i.e. on 25.01.1993. Though the doctor has opined the injury no.4 of Vishwanath Rai and the swelling injury of Chela Rai as grievous but the doctor in paragraph-8 of his cross-examination has stated that it is not mentioned in the injury report as to who did the x-ray and he has also stated that he cannot say as to who prepared the x-ray report. Moreover, in the injury report of Vishwanath Rai the injury no.(iv) which is abrasion on left 4th finger of the dimension of 1''x1½'' has been opined as grievous but the doctor has not mentioned the basis of giving opinion regarding injury no.(iv) of Vishwanath Rai. The injury report of Chela Rai indicates that doctor has opined his abrasion injury as grievous on the basis of x-ray report but neither the x-ray plate nor the x-ray report has been brought on record and the skin deep injury of Chela Rai cannot be caused by the hard & blunt substance. Thus, the aforesaid aspects of the case creates serious doubt about sustaining of any injury by P.Ws.4 & 5 in the occurrence. P.W.5 in paragraph-3 of his cross-examination has stated that accused Baleshwar has filed a case of burglary against



them on the date of occurrence itself. From perusal of the aforesaid statements of P.W.5. It appears that P.Ws.4 & 5 are on inimical terms with the accused persons. They are highly interested witnesses of the case. Hence, in view of aforesaid facts and circumstances the testimonies of P.W.4 & P.W.5 do not appear to be convincing, trustworthy and reliable.

17. The place of occurrence also does not stand established by the prosecution as there is a vital contradiction between the statement of P.Ws.4, 5 and 6 regarding the place of occurrence. P.W.4 has stated in paragraph-3 of his cross-examination that towards north his own field, south pind of Aahar, east field of Kamla Rai and west field of Pushan Rai are situated, while P.W.5 has given boundary of the occurrence in paragraph-4 of his cross-examination as towards north Nanhak, south Aahar ka pind, east Chandradeep and Ramjatan and west field of Ramjatan are located. But I.O. (P.W.6) has stated in paragraph-4 of his examination-in-chief that towards east of the place of occurrence wheat field of the informant, towards west wheat field of Haribhajan Rai, towards north wheat field of Chela Rai and towards south Bandh thereafter Aahar are located.

18. In view of the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and



miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy, reliable, & cogent ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower Court is set aside and the appellants are acquitted from all the charges levelled against them. As the appellants are on bail they are discharged from their liabilities of bail bond.

19. Let Sri Animesh Kumar Mishra, learned Amicus Curiae be paid prescribed fee of hearing by the Patna High Court Legal Services Committee.

Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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