

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.22 of 2015

Arising Out of PS.Case No. -203 Year- 1997 Thana -SAUR BAZAR District- SAHARSA

1. Rahmat Khan, son of Late Sakhawat Khan, resident of Village - Sour Bazar,
Police Station - Sour Bazar, District - Saharsa.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

Criminal Appeal (SJ) No. 56 of 2015

Arising Out of PS.Case No. -203 Year- 1997 Thana -SAUR BAZAR District- SAHARSA

1. Bijay Kumar Yadav @ Bijay Yadav, Son of Sri Radhey Shyam Yadav Resident
of vill-Barahi,P.S-Sour Bazar,Distt.-Saharsa
2. Sanjay Yadav @ Sanjay Kumar Yadav, S/O Late Raj Kishore Yadav
3. Dilip Yadav, S/O Late Raj Kishore Yadav
4. Mukesh Yadav, S/O Late Raj Kishore Yadav All are Resident of vill-Chandaur
Gauth,P.S-Sour Bazar,Distt.-Saharsa
5. Shankar Yadav, Son of Late Bankey Yadav Resident of vill-Aroha, P.S-Sour
Bazar,Distt.-Saharsa
6. Ramesh Yadav, Son of Battan Yadav Resident of vill-Chandaur ,P.S-Sour
Bazar,Distt.-Saharsa
7. Murtaza Khan, Son of Rahmat Khan Resident of vill-Sour Bazar,P.S-Sour
Bazar,Distt.-Saharsa
8. Akhlakh Khan, Son of Rahmat Khan Resident of vill-Sour Bazar,P.S-Sour
Bazar,Distt.-Saharsa

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.22 of 2015)

For the Appellant/s : Mr. Subodh Kumar Sinha-Advocate

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

(In CR. APP (SJ) No.56 of 2015)

For the Appellant/s : Mr. Subodh Kumar Sinha-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 24-08-2017



Cr. Appeal (S.J.) No.22 of 2015 wherein Rahmat Khan is the appellant as well as Cr. Appeal (S.J.) No.56 of 2015 wherein Bijay Kumar Yadav @ Bijay Yadav, Sanjay Yadav @ Sanjay Kumar Yadav, Dilip Yadav, Mukesh Yadav, Shankar Yadav, Ramesh Yadav, Murtaza Khan and Akhlakh Khan are the appellants arise out from the common judgment of conviction and sentence dated 11.12.2014 passed by the 2nd Additional Sessions Judge, Saharsa in Sessions Trial No.122 of 1999, convicting appellant, Rahmat Khan for an offence punishable under Section 326 of the I.P.C. and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo S.I. for three months, appellant Rahmat Khan further convicted along with other appellants for an offence punishable under Section 148 of the I.P.C. directing each of them to undergo R.I. for two years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo S. I. for three months, with a further direction to run the sentences concurrently so far Rahmat Khan is concerned, have been heard together and are being decided by a common judgment.

2. Arvind Kumar Bhagat (PW-6) filed written report on 25.12.1997 disclosing therein that Khesra No.639, Khata No.125 Area 11 Kattha lying at Saur Bazar happens to be his land on the basis of a



sale deed of year 1905. Today, at about 10.30 a.m. Sanjay Yadav, Dilip Yadav, Mukesh Yadav, Raj Kishore Yadav, Vijay Yadav, Ragho Yadav, Shankar Yadav, Ramesh Yadav, Rameshwar Yadav, Rahmat Khan, Khalil Khan and Kako Khan along with 30-40 unknown persons came over four tractors and began to plough his field. On getting information, he rushed to the spot where he found Sanjay Yadav, Ramesh Yadav armed with three nut (locally made firearm), Vijay Yadav armed with gun, Rahmat Khan armed with Farsa and Kako Khan armed with spear while rest were armed with lathi. On protest led by him, they began to abuse and during midst thereof, on an order of Vijay Yadav, Rahmat Khan gave Farsa blow over his head as a result of which, he became injured, fell down, then thereafter, others assaulted him with lathi. It has also been asserted that the accused persons intent to dispossess and for that, Title Suit No.97 of 1997 has been filed by them wherein vide order dated 03.12.1997, injunction has been granted.

3. Saur Bazar P. S. Case No.203 of 1997 was registered followed with an investigation as well as submission of chargesheet leading to trial which ultimately met with the conclusion, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-



examination as well as statement recorded under Section 313 of the Cr.P.C. is that though the forefather of Rahmat Khan executed sale deed in favour of prosecution party, but as consideration money was not paid on account thereof, the aforesaid negotiation did not materialize as a result of which, got aforesaid sale deed rescind. The land remained under their possession which by virtue of sale deed, they have sold away in favour of co-accused, Vijay Yadav, Sanjay Yadav and others. To substantiate the same, three DWs have also been examined viz. Umi Yadav, Md. Taslim and Jawahar Lal Mandal. Defence has also exhibited some document to substantiate its case, which is marked as Exhibit-A plaint of Title Suit No.97 of 1997, Exhibit-B and B/1 certified copy of sale deed nos.10889 and 10888.

5. In order to substantiate its case prosecution had examined altogether eight PWs, who are PW-1 Naresh Bhagat, PW-2 Mahabir Paswan, PW-3 Krishna Mandal @ Kishun Mandal, PW-4 Fali Swarnkar, PW-5 Dhruv Kumar Bhagat, PW-6 Arvind Kumar Bhagat, informant, PW-7 Dr. Bipin Kumar and PW-8 Kartik Prasad Singh. Side by side, had also exhibited the documents, which are marked as Exhibit-1 signature of witness over fard-bayan, Exhibit-2 original injury report, Exhibit-2/1 supplementary injury report.

6. From the record, it is evident that some sort of controversy persists having version and counter-version. Moreover,



after having presence of Title Suit No.97 of 1997 filed on behalf of prosecution party for declaring the sale deed executed by the appellant Rahmat Khan executed in favour of other appellants null and void, in the aforesaid background, presence of other appellants on the basis of aforesaid sale deed is found duly acknowledged. Apart from this, from Para-12 of the plaint of Title Suit No.97 of 1997 (Exhibit-A), it is evident that prosecution party themselves admitted dispute since the Year 1986-87, relating to fixation of rent which the appellant Rahmat Khan got in his favour. Furthermore, as suggested to PW-6, the informant that though sale deed was executed in favour of forefather of prosecution party, which never been honoured in the background of the fact that consideration money was not paid and so, it got rescind, apart from the fact that no delivery of possession was given to them. Therefore, it has to be seen in whose possession the land happens to be. The aforesaid finding will ultimately guide the result.

7. In order to ascertain the aforesaid aspect, PW-6, Arvind Kumar Bhagat, the informant had at Para-9 stated that land was purchased from grandfather of Rahmat Khan. That sale deed was shown to the I.O. during course of investigation. That sale deed exists with regard to two Bigha and 12 Kattha of land which he is going to file in Court, but the reason best known to the prosecution that sale deed has not been filed. In Para-17, he had stated that disputed land



was not at all ploughed by him since before. He had planted Potato in the aforesaid field at an earlier occasion. PW-5 Dhruv Kumar Bhagat is his uncle, who in Para-2 had stated that as Rahmat Khan executed sale deed in favour of other appellants with regard to land under dispute. Therefore, he had filed Title Suit No.97 of 1997 and Title Suit No.98 of 1997 for annulling the aforesaid sale deed. At Para-2, he had admitted litigation coming since before amongst the parties. PW-4 Fulo Swarnkar in Para-3, had stated that the land under dispute is barren for the last 11 Years. In Para-4, he had stated that at the time of occurrence, the P.O. land was barren land, it was never ploughed since before. While PW-2 Mahabir Paswan at Para-4 had stated that the land was being ploughed by one tractor for the last half an hour. I.O. has not been examined on account thereof, the actual status of the P.O. is not at all found surfaced, more particularly in the background of inconsistent version of the PWs as referred above. When the matter is taken together with the finding recorded by the learned lower Court whereunder appellant Rahmat Khan has been convicted and sentenced for an offence punishable under Section 326 of the I.P.C. as well as Section 148 I.P.C. along with other allied Sections. The evidence of PW-7 Dr. Bipin Kumar is to be taken note of, who had found the injuries caused by the hard and blunt substance and if taken together with the evidence of prosecution witnesses, only PW-4 is the witness,



who had explained the same, though injured PW-6 himself, not. The foresaid inconsistency as well as being completely confused on the score of exclusive physical possession over the land under the dispute.

8. In *Hallu and others vs. State of Madhya Pradesh reported in (1974) 4 SCC 300*, it has been held:-

"11. The postmortem report prepared by Dr. N. L. Jain shows that on the body of Jagdeo were found three bruises and a hematoma. On the body of Padum were found four lacerated wounds and two bruises. According to the eye-witnesses the two men were attacked with lathis, spears and axes but that clearly stands falsified by the medical evidence. Not one of the injuries found on the person of Jagdeo. and Padum could be caused by a spear or an axe. The High Court however refused to attach any importance to this aspect of the matter by saying that the witnesses had not stated that the miscreants dealt axe blows from the sharp-side or used the spear as a High Court axes and spears may piercing weapon"., According to the have been used from the blunt side and therefore the evidence of the eye-witnesses could safely be accepted. We should have thought that normally when the witness says that an axe or a spear is used there is no



warrant for supposing that what the witness means is that the blunt side of the Weapon was used. If that be the implication it is the duty of the prosecution to obtain a clarification from the witness as to whether a sharp-edged or a piercing instrument was used as a blunt weapon.”

9. As such, the conviction and sentence recorded by the learned lower Court would not survive. That being so, the same is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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