

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.8 of 2015

Arising Out of PS.Case No. -135 Year- 2010 Thana -BAIKUNTHPUR District- GOPALGANJ

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1. Bhanu Tiwari
2. Sonu Tiwari
3. Bhutti Tiwari All Sons of Krishkant Tiwari Resident of Village-Mahua,P.S-
Baikunthpur,District-Gopalganj

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kr. Pandey, Advocate

For the Respondent/s : Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-11-2017

Appellants, Bhanu Tiwari, Sonu Tiwari and Bhutti Tiwari have been found guilty for an offence punishable under Section 341 IPC and sentenced to undergo RI for 15 days, under Section 324 IPC, sentenced to undergo SI for six months with a further direction to run the sentences concurrently vide judgment of conviction, order of sentence dated 04.12.2014 passed by Additional Sessions Judge-III, Gopalganj in Sessions Trial No. 302/11/213/2014.

2. PW-3, Ashok Tiwari while was admitted at PHC, Baikunthpur on 15.12.2010 at about 6:00 PM gave his Fard-e-beyan alleging *inter alia* that on the same day at about 4:00 PM, while he was sitting at his Darwaza, cow of Sonu Tiwari was grazing his potato/mustard crops whereupon his mother gone to chase and during course thereof, there was altercation in between his mother as well as



Sonu Tiwari who began to abuse his mother. He rushed and forbidden him. Whereupon, Bhanu Tiwari armed with Chhura, Sonu Tiwari armed with Farsa and Bhutti Tiwari with Lathi came, abused and then Bhanu gave Chhura blow causing injury over his head, finger of his right hand. His mother rushed in rescue who was also assaulted by Farsa by Sonu Tiwari. His father who had just arrived from his shop, came in rescue who was also assaulted by Bhutti with Lathi, as a result of which his hand fractured. Bhutti Tiwari also took away Rs. 32,600/-. On hue and cry villagers rushed whereupon accused persons fled away.

3. On the basis of the aforesaid Fard-e-beyan, Baikunthpur PS Case No. 135/2010, was registered whereupon, investigation commenced followed with submission of charge-sheet which happens to be the basis of trial which ultimately concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, nothing has been adduced in their defence.

5. In order to substantiate its case, prosecution had examined altogether 6 PWs out of whom PW-1, Nag Narayan Tiwari, PW-2, Lal Kumari Devi, PW-3, Ashok Tiwari, PW-4, Pawaru Prasad, PW-5,



Lallan Tiwari, PW-6, Rajdeo Singh. Ext-1 is signature of informant over Fard-e-beyan. There also happens to be non production of any kind of oral or documentary evidence at the end of the defence.

6. After going through the evidence, it is apparent as per Fard-e-beyan, that informant was assaulted by Bhanu Tiwari with Chhura while his mother Lal Kumari Devi was assaulted by Farsa by Sonu Tiwari and his father was assaulted by Bhutti Tiwari with Lathi. He also took away Rs. 32,600/-. Furthermore, there happens to be specific disclosure that the occurrence took place at his Darwaza. On that very score, PW-1 at para-11 had stated that the occurrence took place at his Darwaza, PW-2 during her examination-in-chief had stated the place of occurrence to be her Darwaza and PW-3 at para-4 that Maar-peet took place in the potato field. When the evidence of PW-4, Investigating Officer has been gone through, it is evident from the examination-in-chief alone that the place of occurrence happens to be the field belonging to the accused near his house. That means to say, place of occurrence has completely been changed. Not only this, when the evidence of PW-4, para-4 is taken into consideration, he had stated that the potato field was trampled in an area of 5-10 Dhurs. That lies east to the house of accused persons. That means to say, there happens to be conflicting version over place of occurrence and for that, prosecution failed to explain the same. In likewise manner,



prosecution also failed to suggest to the Investigating Officer PW-4 that he, in collusion of accused persons shown the place of occurrence to be filed of accused instead of Darwaza of informant. That means to say, no occurrence took place at the Darwaza of the informant.

7. Now coming to the manner of occurrence, it is evident that at an initial stage there happens to be specific disclosure at the end of informant, PW-3, that he was assaulted by Bhanu Tiwari with Chhura, his mother was assaulted by Sonu Tiwari with Farsa and his father by Bhutti Tiwari with Lathi. During course of evidence, PW-1 had stated that Bhanu Tiwari had given four blows of Chhura over Ashoka. When he had gone in rescue, he was assaulted by Bhutti. When his wife rushed whereupon, Sonu had given Farsa blow. PW-2, another victim had said that informant, Ashok was assaulted by Sonu with Lathi. She rushed, she was assaulted by Bhanu with Chhura/knife and when her husband came in rescue, he was assaulted by Bhutti by Lathi as a result of which he sustained fracture of his hand. PW-3 had stated that Bhanu assaulted her mother with Chhura over her head when he rushed in rescue, he was also assaulted by Bhanu with Chhura. When his father came in rescue, he was assaulted by Bhutti by Lathi.

8. So far inconsistency amongst the evidences of PWs are concerned, it is evident from para-7 of PW-1 that he had categorically



stated that whatever was stated by him was not recorded by the police. PW-4, the Investigating Officer had not been suggested like so. In the aforesaid background, when para-8 has been gone through it happens to be contradiction but the aforesaid contradiction has not been supported by the Investigating Officer. Para-9, 10 and 12, there happens to be cross-examination over the manner of occurrence. When the same is taken together with the evidence of PW-2, para-4, it is evident that she had not claimed to have fallen after sustaining injury rather she remained standing. She had not escaped from the place of occurrence. In para-5, she had stated that Bhaun pierced Chhura. In para-6, she had further stated that on an uproar, Jagdish as well as her son came and then her son took her away to hospital where she was treated. Police came and recorded her statement whereupon she had put her thumb impression.

9. PW-3, informant at para-4 had stated that when he came at the P.O., his mother was already injured. Blood was coming out from her head. He had not inquired from his mother as to how blood was coming out. He lifted his mother to the hospital. At that very time, his mother was conscious. Then again said that he inquired from the accused persons why they have assaulted like so, whereupon, accused persons began to give indiscriminate Lathi blows, as a result of which, he rushed to the hospital. He reached at the hospital along



with mother. His father reached at the hospital 10 minutes after their arrival on motorcycle. He and his mother had gone to the hospital by motor. In para-5, he had stated that he entered into scuffled with the accused persons whereunder only lathi and phatta were hurled. He had denied the suggestion that during course of scuffle they had fallen down.

10. Considering the aforesaid nature of inconsistent evidence which not only relates to the P.O. rather also relates to manner of occurrence. Furthermore, doctor also not been examined whereupon nature of injury could not be brought up on record. PW-5 and PW-6 have not supported the prosecution version. That being so, the judgment impugned did not find favour and is, accordingly set aside.

11. Consequent thereupon, appeal is allowed.

12. Since appellants are on bail, they are discharged from the liability of the bail bond.

(Aditya Kumar Trivedi, J)

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