

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.396 of 2015

Arising Out of PS.Case No. -25 Year- 2008 Thana -KUDRA District- BHABHUA (KAIMUR)

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1. Birendra Paswan Son of Bigan Paswan
 2. Sudarshan Paswan Son of late Jhallan Paswan.
 3. Thakur Paswan Son of Shiv Murat Paswan.
 4. Sanju Paswan son of Manidhar Paswan
 5. Bigan Paswan Son of late Sadar paswan.
 6. Rajbansh Paswan son of Basit Paswan.
 7. Tulsi Paswan Son of late Sukhdeo Paswan
 8. Haridwar Paswan son of Amawas Paswan.
 9. Manidhar paswan Son of Bigan Paswan. all resident of village Ramdihara(Chhotaka Nimdihra), P.S. Kudra, District Kaimur at Bhabua.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Tribhuwan Narayan, Advocate
For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 28-06-2017

Appellants Birendra Paswan, Sudarshan Paswan,
Thakur Paswan, Sanju Paswan, Bigan Paswan, Rajbansh Paswan,
Tulsi Paswan, Haridwar Paswan and Manidhar Paswan have been
found guilty for an offence punishable under Sections 341, 323,
504 of I.P.C. Appellant, Birendra Paswan has further been found
guilty for an offence punishable under Section 325 of I.P.C., for
which all the appellants have been directed to undergo S.I. for 7
(seven) days under section 341 I.P.C., to undergo S.I. for 3 (three)
months for an offence punishable under Section 323 of IPC and
further, sentenced to undergo S.I. for 6 (six) months under Section



504 of the IPC and appellant, Birendra Paswan was further sentenced to undergo R.I. for 2 years and 6 months with fine of Rs. 5,000/- (five thousand), in default thereof, to undergo S.I. for 3 months, additionally, under Section 325 with a further direction to run the sentences concurrently by the Adhoc Additional Sessions Judge, Kaimur at Bhabhua vide judgment of conviction and order of sentence on 17.06.2015 in connection with Sessions Trial No. 503/19 of 2010/2013.

2. P.W.5, Dayashankar Rastogi had filed a written report on 14.02.2008, alleging, inter alia, that on the same date at 1:00 P.M., he along with his family members Ramesh Chandra Rastogi, Ajay Rastogi, Vinit Rastogi and Santosh Rastogi came at Choteka Nimdihra where their cultivable land lies. During course of inspection, they found son of Bigan Paswan engaged in construction of *Samudayik Bhawan* over his land lying by the side of his land whereupon, they protested, over which, Birendra Paswan abused and went to his house. He returned back along with other co-accused namely Bigan, Sanju, Manidhar, Rajbansh, Tulsi, Sudarshan, Haridwar, Thakur armed with *lathi*, *Garasa*, out of whom, Bigan Paswan gave *garasa* blow over head of Ajay Rastogi, as a result of which, he became injured, blood oozen out from the head, then Birendra Paswan gave iron rod blow over arm



of Ajay Rastogi, as a result of which, it got fractured. Sanju Paswan gave *lathi* blow over Ramesh Chandra Rastogi, Manidhar Paswan gave *lathi* blow over Vinit Rastogi. Tulsi and Sudarshan assaulted the informant Dayashankar Rastogi. Thakur assaulted Santosh with *lathi*. On hue and cry, villagers began to assemble whereupon, accused persons fled away. During course of occurrence, Bigan Paswan also snatched away Rs. 1,000/- as well as the wrist watch of Ajay Rastogi.

3. On the basis of the aforesaid written report, an F.I.R. bearing Kudra PS Case No. 25/2008 was registered followed with investigation and after submission of charge-sheet, trial commenced, concluded in a manner, the 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 of Cr.P.C. is that of complete denial. However, neither any D.W. nor document had been exhibited.

5. In order to substantiate its a case, prosecution had examined altogether 7 P.Ws., out of whom, P.W.1 Ajay Rastogi, P.W.2 Ramesh Chandra Rastogi, P.W.3 Santosh Kumar Rastogi, P.W. 4 Vinit Kumar Rastogi P.W. 5 Daya Shankar Rastogi, P.W. 6 Baijnath Tiwary and P.W.7 is Dr. Sudarshan. Side by side, also



exhibited Ext, 1 signature of the informant upon written report, Ext. 2 to 2/4 requisitions for injury report of five injured persons, Ext. 3 formal F.I.R., Ext. 4 to 4/4 are injury report of respective injured persons. As stated above, nothing has been adduced on behalf of the defence.

6. From the written report, it is evident that some sort of confusion was persisting in the mind of the informant, P.W. 5, and that happens to be the reason behind that he was not at all confident whether plinth was dug over his land and so incorporated that '*Samudayik Bhawan*' was being constructed by son of Bigan Paswan by the side of his land over his land. Perhaps, the informant was not at all convinced with regard to activities being carried out at the end of the accused over his land or outside his land and in the aforesaid facts and circumstances of the case, first of all, the evidence of informant is to be taken up, who has been examined as P.W.5. He has deposed that on the alleged date and time of occurrence, he along with Ramesh Chandra Rastogi, Ajay Rastogi, Vineet Rastogi, Santosh Rastogi have gone to see their field when they came over their land, they found Birendra Paswan, son of Bigan Paswan engaged in construction of a '*Samudayik Bhawan*' and for that, plinth was being dug near about his field. Again corrected, inside the field whereupon they



protested whereupon, Birendra Paswan came to his house and thereafter, Bigan, Birendra, Tulsi, Haridhar, Manidhar, Sanju, Thakur (all 9 persons) came. Bigan came near Ajay Rastogi and incite others to assault. Bigan also gave *gadasa* blow over head of Ajay Rastogi as a result of which he sustained injury, blood oozed out. Birendra gave an iron rod blow over hand of Ajay Rastogi as a result of which it got fractured. Sanju assaulted Ramesh over his hand, waist with danda, Manidhar assaulted Vinit. The informant was assaulted by Sudarshan and Tulsi as a result of which they became unconscious, Santosh was assaulted by Thakur, Rajbansh. Bigan snatched away Rs.1,000/- from Ajay Rastogi and Birendra a wrist watch. Then thereafter, they all disappeared. The informant gone to the P. S. on vehicle, where he had given written report. Thereafter, they were referred to hospital where they were treated. In para-6 of his examination-in-chief, he has further stated that the land for which an occurrence had taken place, happens to be their ancestral land. During cross-examination at para-8, he had stated that accused persons were not constructing their houses. In para-9, he had stated that accused persons were claiming the land to be there over which they were constructing '*Samudayik Bhawan*'. He had further stated that measurement was done on the same day as well as at previous occasion also. In para-10, he had stated that he



understood that the accused persons encroached over his land for construction of '*Samudayik Bhawan*'. In para-11, he had further stated that he insisted for measurement whereupon accused persons have disclosed that they, after measuring the land, are engaged in construction of '*Samudayik Bhawan*'. In para-14, he had stated that he is missing the names of independent witnesses.

7. To appreciated the evidence of informant properly, evidence of the I.O., P.W.6, should also be appreciated conjointly, who had deposed that after registration of the case, he took up investigation, he took statement of witnesses and then, visited the place of occurrence which happens to be *Gairmajarua* land or *Aam Jamin*, belonging to the State of Bihar whereupon, '*Samudayik Bhawan*' was going to be constructed. He had properly identified the P.O. land and further disclosed that on account of obstruction put up by the prosecution party occurrence took place.

8. Even during cross-examination at para-8, he had reported that plinth was dug over the land belonging to the State. In para-9, he had also deposed that he did not find digging of plinth beyond the *Gairmajarua/Aam Land*, that means to say, land of prosecution party was never encroached upon and on account thereof, there was no occasion for prosecution to obstruct. Even they had any



kind of grievances; they would have taken legal recourse by informing police, which they never did.

9. Although, there happens to be absence of case and counter case, nor the defence had suggested the witnesses in same manner. But, from the evidence of P.W. 5 as well as P.W. 6 the I.O., it is apparent that accused persons have not encroached upon land of prosecution party and on account thereof, prosecution party was not justified in their activity and only to explain the same, had stated that accused persons have encroached upon their land.

10. In the aforesaid background, the evidence of other witnesses are to be seen. P.W.1 had stated that he along with others had gone to the place of occurrence, where he found Birendra Paswan, son of Bigan Paswan engaged in digging plinth over his land for which he was forbidden. After abusing as well as threatening, he gone to his house and then returned back along with others and further, narrated the event, occurrence in same way like P.W. 5. At para-7, he had narrated the boundary of his land as his land lies east to the place of occurrence, west side-road, north side- road, south-land of himself. At para-10, he had stated that at the place of occurrence, none other than informant was present. Again corrected that before occurrence, only one son of Bigan Paswan was present. Again, corrected that at the time of



occurrence, only informant as well as accused persons were present. P.W.2, had deposed that when they reached at the place of occurrence at the alleged time of occurrence, he found, Birendra Paswan, son of Bigan Paswan, engaged in construction of '*Samudayik Bhawan*' over his land. They enquired why '*Samudayik Bhawan*' is being constructed over his land, again corrected, he was digging plinth, over which he began to abuse and then, he went to his house and returned back along with other co-accused and then narrated the occurrence. During cross examination, at para-5, he had deposed that accused persons are claiming his land. At para-7, he had controverted that accused persons were claiming that this land belongs to them so, they will construct the building. In para-8, he had stated that Bigan Paswan was present since before at the place of occurrence, others came later on. P.W.3, had deposed that on the alleged date and time of occurrence, he was over his field along with Daya Shankar Rastogi, Ramesh Chandra Rastogi, Vinit Rastogi and Ajay Rastogi. He found Birendra Paswan engaged in digging plinth whereupon, they resisted. He was engaged in such activities for that construction of '*Samudayik Bhawan*' over his land. They entered into verbal altercation whereupon, Birendra Paswan gone to the house, came along with others duly armed and then narrated



the occurrence. During cross examination at para-11, he had deposed that they have gone to land where dispute was going on with accused persons. Accused persons were claiming the land area. Digging of plinth was confined to the area claimed by the accused persons.

11. P.W.4, had deposed that when they reached at the place of occurrence, they found Birendra Paswan engaged in digging plinth in his land. In spite of Government land lying in front of his land, Birendra was engaged in digging plinth in his land, whereupon, they protested, verbal altercation took place. Then, Birendra Paswan gone to his house and came along with other accused persons, duly armed and then, narrated the occurrence. During cross examination, no specific question relating thereto was confront.

12. P.W.7 is the Doctor, who had examined the injured. So far as the informant is concerned, only complain of pain as well as swelling sustained by him was found and in likewise manner, relating to injured Ramesh Chandra Rastogi, Vinit Kumar Rastogi, Santosh Rastogi. With regard to Ajay Kumar Rastogi, he found with one lacerated wound over mid of scalp 1 ½ x 1/4 x 1/4" inch, pain over right shoulder, x-ray was taken which shown a fracture of left shoulder relating to the injury no.3. In the opinion of doctor,



is the injuries were caused by hard and blunt substance. At an initial stage as is evident, convict Birendra Paswan was charged independently under Section 325 of the IPC, while they all were charged under Section 307/149, 323,341, 504 of the IPC. Out of which the learned lower court found the appellants guilty in a manner as indicated above.

13. After going through the impugned judgment, it is evident that learned lower court had not considered the real status of the place of occurrence and in the aforesaid background, the activity of the prosecution party as indicated above, could not properly been adjudged. It is apparent that the P.O. Land was not belonging to the prosecution party rather State of Bihar, whereupon '*Samudayik Bhawan*' was being constructed and for that, plinth was being dug and so, it is the prosecution party, who shorn over appellants. In the aforesaid background, when the evidences of witnesses have been scrutinized, it is apparent that they are not consistent over to each other, more particularly assault. Furthermore, the objective finding of the I.O. relating to P.O. also did not corroborate the allegation. In likewise manner, the Doctor, P.W-7, who did not find sharp cutting injury over P.W-1, though claimed by them and further, presence of inconsistency amongst the witnesses relating to Bigan and



Birendra, at first instance. Having presence of prosecution party the P.O. land inurbane manner coupled with absence of independent witnesses grew some sort of doubt over the authenticity of prosecution version.

14. It is needless to remind that the evidence of the injured witness lies on upper pedestal, but where their activity is found inappropriate, as well as spiky, then in that event corroboration by independent witness is found necessary. From the judgment impugned, it is apparent that the learned lower Court had not perceived the conduct of the prosecution party in consonance with the P.O., on account thereof, the judgment impugned did not justify its finding. Accordingly, judgment impugned is set aside. Appeal is allowed. The appellants are on bail. Hence, they are discharged from its liability.

(Aditya Kumar Trivedi, J)

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Uploading Date	
Transmission Date	

