

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.64 of 2015**

Arising Out of PS.Case No. -53 Year- 2005 Thana -DHAMDAHA District- PURNIA

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1. Yugal Murmu Son of Anup Lal Murmu Resident of vill-Kishan Toli(Santhal Tola),P.S-Mirganj,Distt.-Purnea

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Bikaramdo Singh, Adv  
Mr. Anil Kumar Roy, Adv

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

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 07-08-2017**

Sole appellant Yugal Murmu has been found guilty for an offence punishable under Section 324 IPC and sentenced to undergo RI for 2 years as well as fined of Rs. 5,000/- in default thereof, to undergo SI for two months, under Section 148 IPC, sentenced to undergo RI for 2 years as well as fined of Rs. 5,000/- in default thereof, to undergo SI for two months with a further direction to run the sentences concurrently, while no sentence has been inflicted for an offence punishable under Sections 147 and 323 IPC vide judgment of conviction and order of sentence dated 13.01.2015 passed by 3<sup>rd</sup> Additional Sessions Judge, Purnea in Sessions Trial No. 179/2006.

2. PW-6, Hakim Murmu gave his Fard-e-beyan on 14.05.2005 at about 6.00 PM, disclosing therein that while he along



with his son, Baijnath Murmu (PW 2), were getting the field ploughed by a tractor, accused persons, namely, Anup Lal Murmu, Yugal Murmu (appellant), Tala Murmu, Chitan Murmu, wife of Chaitan Murmu, wife of Baijun Murmu, Maran Moy Devi and Majhli Devi variously armed came and directed to stop the tractor. On query made by him, it has been disclosed that informant was assaulted by Chaitan Murmu and Tala Murmu by means to Lathi who also assaulted his son, Baijnath Murmu. His brother was assaulted by Gumda Murmu with Garasa while Malik Murmu (PW 3) was assaulted by Garasa by the appellant. Then thereafter, they were taken to the clinic of private doctor where they were examined, treated and then thereafter, the informant came at the police stations where he gave his Fard-e-beyan.

3. After registration of Dhamdaha (Meerganj) PS Case No. 53/2005, police took up investigation and during course thereof, got the respected injured examined afresh, took statement of witnesses, inspected the place of occurrence and after concluding the same, submitted the charge-sheet whereupon, cognizance of an offence was taken, facilitated the trial meeting with ultimate result, subject matter of the instant appeal.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is of complete denial. Furthermore, it has been pleaded that both



the parties are descendents of common ancestor and on that very score, there happens to be land dispute. On the alleged date and time of occurrence, the prosecution party illegally encroached upon the land over which a proceeding under Section 144 CrPC was going on, on account thereof, ploughing over the same field was resisted by the members of the accused persons whereupon prosecution party brutally assaulted for which accused have instituted a case only to save their skin from counter case, this case has been instituted with false and frivolous allegation. To substantiate the same, apart from documentary evidence four DWs have also been examined, namely, DW-1, Dhano Marandi, DW-2, Sri Lal Marandi, DW-3, Hari Lal Yadav and DW-4, Anup Lal Murmu couple with Ext-4, 4B.

5. In order to substantiate its case, prosecution had examined altogether 9 PWs out of whom PW-1, Bindeshwari Yadav (hostile), PW-2, Baijnath Murmu, injured, PW-3 Malik Murmu, injured, PW-4, Annu Murmu, PW-5, Balram Yadav, PW-6, Hakim Murmu, informant/injured PW-7, Dr. Rajesh Bharti, PW-8, Hopan Devi, PW-9, Ganesh Mahto. Side by side also exhibited Ext-1 to 1/4, Injury Report. As stated above, apart from examination of four DWs, defence had also exhibited Ext-A, Notice under Section 144 CrPC, Ext-B, order passed in connection with counter-case whereunder



cognizance has been taken.

6. From the record, it transpires that it happens to be a dispute amongst own family and that happens to be reason behind absence of independent witnesses. PW-2 in para-6, had disclosed that his grandfather Gunga Murmu and grandfather of appellant were full brothers. It has also been admitted that land dispute survives amongst the parties over partition. PW-6, informant in his cross-examination at para-3 had stated that on an earlier occasion, a proceeding under Section 144 CrPC was drawn relating to land under dispute. However, none of the injured has been able to disclose Khata and Khesra number with exact boundary of the P.O. land. It is also evident from PW-2, (para-9), PW-3 (para-16), PW-4, (para-14), PW-6 (para-7) that the accused persons have also launched a case with regard to the aforesaid occurrence whereunder they have alleged that the members of prosecution party brutally assaulted them. In the aforesaid background, the crux of the case happens to be with regard to proper identification of the place of occurrence inconsonance with the activity of the respective parties who happens to be aggressor and who had defended. Admittedly, the Investigating Officer has not been examined. That being so, apart from having an opportunity to justify the status of the party, the identity of the P.O. land, possession over the P.O. land, pendency of litigation since before relating thereto,



though admitted, but could not be able to demolish the same as against ocular evidence, appellant has also been deprived of to get the contradiction having in the evidence of the witnesses which happens to be material one as, PW-2 (para-11), PW-3 (para-10), PW-4, (para-9), PW-5 (para-2), PW-8, (para-6), properly, legally taken on record. That means to say, the right as well as interest of appellant is found prejudiced.

7. Furthermore, it has also been evident that doctor who had examined the alleged injured, has not been examined. Instead thereof, Dr. Rajesh Kumar (PW 7) has been examined who happens to be the doctor who was posted at Referral Hospital, Dhamdaha (Meerganj) who on police requisition examined the respective injuries of the injured which he had found stitched since before and so, he was unable to identify the nature of the injuries apart from pain and swelling. That being so, the allegation so put forward by way of ocular evidence could not get support by medical evidence.

8. Considering the totality of the event inconsonance with non examination of the doctor as well as I.O., it looks unsafe to concur with the findings recorded by the learned lower court even having presence of injured whose status on account of aforesaid deficiencies could not be properly found identified. Consequent



thereupon, the same is set aside.

9. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

**(Aditya Kumar Trivedi, J)**

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