

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.82 of 2015**

Arising Out of PS.Case No. -89 Year- 1999 Thana -TARAIYA District- SARAN

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1. Upendra Singh, Son of Sita Ram Singh
 2. Lal Babu Singh @ Alagu Singh, son of Vokil Singh
 3. Sanjay Singh, son of Raghubansh Singh All resident of village Pachaurar, PS. Taraiya, Distt. Siwan (Chapra)

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Prasad-Advocate
Mr. Kapildeo Singh-Advocate
For the Respondent/s : Mr. Abhay Kumar-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 05-09-2017

Appellant, Upendra Singh, Lal Babu Singh @ Alagu Singh and Sanjay Singh have been found guilty for the offences punishable under Section 341 of I.P.C. and sentenced to undergo S.I. for one month, under Section 323 I.P.C. and sentenced to undergo S.I. six months, under Section 325 of I.P.C. and sentenced to undergo R.I. for two and half years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo S. I. for two months, additionally with a further direction to run the sentences concurrently, as well as period of custody during trial should be set off in accordance with Section 428 Cr.P.C. vide judgment of conviction and sentence dated 16.01.2015 passed by the Additional Sessions Judge-9th, Saran at



Chapra in Sessions Trial No.100 of 2004/ 2870 of 2014.

2. PW-3 Babu Lal Singh gave his fard-bayan on 22.08.1999 at about 4.30 p.m. while he was admitted at Referral Hospital, Taraiya disclosing therein that on the same day at about 3.00 p.m. while he was sitting in front of Jyoti Medical Hall near Mahabir Temple located at Pachraur Bazar and was reading newspaper as he had gone to shave, all of a sudden, his co-villager as well as neighbour Upendra Singh, Satya Narayan Singh, Algu Singh @ Lalbabu Singh, Sanjay Singh armed with rod came and began to assault. He fell down and then thereafter, Sanjay Singh pierced rod in his stomach with an intention to kill. Satya Narayan Singh had assaulted over his right leg in between knee as well as ankle. Algu Singh inflicted severe injury over his right hand, which was fractured since before and for that, treatment was going on. Upendra Singh damaged his left hand. While he was lying over the ground, Sita Ram Singh and Vakil Singh were provoking to assault, whereupon all the four again assaulted. So many persons including Shambhu Nath Singh, Jagat Narayan intervened into the matter. During course thereof, Sanjay Singh took away Rs.4,000/- from his underwear. His family members and other took him to his Bathan and from there, he was taken to police station on jeep. Seeing his condition, he was referred to hospital. It has also been disclosed therein that for an occurrence dated 14.08.1999, he had



approached the police station in order to record his fard-bayan. At that very time, Officer-in-charge had abused him as well as also threatened to assault and further, chased him away. For which, he had complained before the Deputy Superintendent of Police, Marhaura.

3. After registration of the case, investigation commenced and concluded by way of submission of chargesheet against the appellants only while Satya Narayan Singh, Sita Ram Singh and Vakil Singh were not sent up for trial. The learned lower Court took cognizance of an offence, whereupon trial commenced and concluded against the appellants in a manner as indicated above, 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 of complete denial. Furthermore, it has also been pleaded that both the parties are on litigating term since before the occurrence whereupon instant case has been filed. Neither any DW has been examined nor any chit of papers has been adduced on their behalf.

5. In order to substantiate its case, prosecution had examined altogether nine witnesses, who are PW-1 Shambhu Nath Singh, PW-2 Shivanti Devi, PW-3 Babu Lal Singh, informant of the



case, PW-4 Kashi Nath Singh, PW-5 Dr. Gautam Singh, PW-6 Md. Abbas Khan, PW-7 Arjun Kumar Singh, PW-8 Dhananjay Kumar Singh and PW-9 Dr. Sanad Kumar Singh. Side by side, had also exhibited the document, which are marked as Exhibit-1 signature of informant over fard-bayan, Exhibit-2 signature of A.S.I. over formal F.I.R., Exhibit-3 injury report, Exhibit-4 fard-bayan, Exhibit-5 formal F.I.R., Exhibit-6 series, X-ray plates, report, Exhibit-7 series, prescription.

6. Learned counsel for the appellants has submitted that occurrence is of the year 1999. It has also been submitted that conviction has been recorded under Section 323, 341 and 325 of the I.P.C. and in proportionate way, appellants have been sentenced to undergo S.I. for six months, S.I. for one month and R.I. for two and half years as well as fined appertaining to Rs.1,000/- in default thereof, to undergo S.I. for two months, additionally, with a further direction to run the sentences concurrently. Consequent thereupon, maintaining the conviction, sentence be modified so far Section 341 as well as 323 I.P.C. by inflicting fine and in likewise manner, under Section 325 I.P.C. as sentenced already undergone with fine which may be enhanced from Rs.1,000/- in proportionate way which the appellants are ready to pay in order to compensate the informant. Furthermore, it has been submitted that considering the age of the



respective appellants, who at the time of occurrence were at tender age in consonance with the existing land dispute, being Pattidars, do justify the submission for modification of the sentence.

7. On the other hand, learned Additional Public Prosecutor opposed the prayer and submitted that in case, submission of appellants is considered, then in that circumstance, as per evidence of PW-5 Dr. Gautam Singh, it is apparent that seven injuries have been found including that of fracture whereupon the informant, victim might have incurred heavy expenses in meeting out with the medical expenses and so, fine be accordingly, imposed so that victim be able to get himself duly compensated.

8. So far sentencing policy is concerned, it stands to in proportionate to the nature of allegation offences whereunder conviction has been recorded, coupled with other ancillary events. In ***Sushil Ansal vs. State through C.B.I. with Gopal Ansal vs. State through C.B.I. with Harsarup Panwar vs. State through C.B.I. reported in (2015) 10 SCC 359***, it has been held:-

“16. We have duly considered the matter. It hardly needs to be mentioned that an appropriate sentence has to be awarded by taking into consideration the gravity of offence, the manner of commission, the age of the accused and other mitigating and aggravating circumstances. The sentence should neither be



excessively harsh nor ridiculously low.”

9. Considering the rival submission as well as going through the record in consonance with the finding having recorded by the learned lower Court coupled with the sentences having inflicted there for, it goes out of controversy with regard to presence of seven injuries over the person of the informant/ victim including that of compound fracture of right leg, though others are simple. Moreover, the learned counsel for the appellants is correct in stating that the nature of the offence having identified by the learned lower Court in consonance with the date of occurrence that of 22.08.1999, the submission has got merit, whereupon maintaining the conviction as recorded by the lower Court, sentences are being modified whereunder each of the appellants is fined of Rs.500/- (five hundred) under Section 341 I.P.C. and in default thereof, to undergo S.I. for one month, each of the appellants is inflicted fine of Rs.1,000/- (One thousand) under Section 323 of the I.P.C. and in default thereof, to undergo S.I. for two months, under Section 325 of the I.P.C., the sentence so inflicted by the lower Court is modified as period already undergone enhancing the quantum of fine whereunder each of the appellants is directed to pay fine appertaining to Rs.1,00,000/- (One lac) and in default thereof, to undergo S.I. for one year. Fine should be deposited within one month. In case, the fine amount is deposited,



then in that event, half of the amount will be paid to the informant, Babu Lal Singh (PW-3), which the learned lower Court will pay on proper identification by way of noticing PW-3. This appeal is disposed of in terms as indicated above.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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