

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.315 of 2015**

Arising Out of PS.Case No. -93 Year- 2006 Thana -MANJHI District- SARAN

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1. Surya Prakash Singh son of Sri Navnath Singh R/o- Village- Maripurkalah, P.S. Manjhi, District- Saran.

2. Ramesh Singh, son of Sri Navnath Singh R/o- Village- Maripurkalah, P.S. Manjhi, District- Saran. Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Kaushik, Advocate

For the Respondent/s : Mr. S. A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 01-11-2017

Appellants, Surya Prakash Singh and Ramesh Singh have been found guilty for an offence punishable under Section 324 IPC and each one has been sentenced to undergo RI for 2 years vide judgment of conviction and order of sentence dated 13.05.2015 passed by Additional Sessions Judge-III, Saran at Chapra in Sessions Trial No. 769/2008.

2. PW-4, Daya Nand Singh filed a written report on 11.10.2006 alleging inter alia that at an earlier occasion he had kept four bags of wheat in the granary of appellants. On 10.10.2006, he had gone to demand the aforesaid bags of wheat whereupon, the accused persons began to abuse. In the aforesaid background, today, i.e. on 11.10.2006 at about 6:00 AM while he was returning after meeting nature's call and as soon as reached in front of house of appellants, Surya Prakash Singh and Ramesh Singh near Brhama Asthan, they began to abuse and further threatened that in case, he would visit today relating to demand of wheat then in that event, he



will be murdered. On his protest, Ramesh pushed as a result of which, he fell down and then, thereafter, Surya Prakash gave spade blow with an intention to kill striking over his head. Blood oozed out. On hue and cry, the persons of the surrounding rushed in rescue.

3. On the basis of aforesaid written report, Manjhi PS Case No. 93/2006 has been registered followed with an investigation as well as submission of charge-sheet after completion of the same, which happens to be basis for trial which ultimately concluded in a manner, subject matter of instant appeal.

4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the CrPC is that of complete denial. Furthermore, it has also been pleaded that no such type of occurrence had ever taken place rather the prosecution party committed theft whereupon appellants have launched criminal case against them and only to shield their skin, got this case filed as a counter blast. Though, no document concerning counter case has been exhibited but from the evidence of the witnesses it is apparent that they have had admitted this fact.

5. In order to substantiate its case, prosecution had examined altogether seven PWs out of whom, PW-1, Prashuram Singh, PW-2, Mukhram Singh, PW-3, Ram Krishna Singh, PW-4, Daya Nand Singh, PW-5, Shailendra Kumar Singh PW-6, Dr. Ashok Kumar Singh, PW-7, Bhairav Bharti . Side by side had also exhibited Ext-1, signature of informant over written report, Ext-2, written report, Ext-3, Injury report.



6. Neither any DW nor any kind of documentary evidence has been adduced on behalf of appellants.

7. It has been submitted on behalf of the appellants that judgment of conviction and sentence recorded by the learned lower court happens to be perverse in the background of the fact that I.O. has not been examined. Non examination of the I.O. has caused serious prejudice to the interest of the appellants as, there happens to be material development in evidence of witnesses which the appellants have been deprived of to bring on record, legally and in likewise manner, even having been admitted at the end of all the prosecution witnesses with regard to pendency of a criminal case having at the end of the appellants, would have exposed truthfulness of either of the two versions. Furthermore, it has also been submitted that the road which happens to be alleged place of occurrence was brick soiling one and so, probability of sustaining of injury as found by the doctor though superficial in nature might have on account of fall over the corner of the brick and the pointed portion might have been responsible for causing such injury which could have properly explained at the end of the I.O. only and so, the cumulative effect including that of inconsistency, exaggeration having in the evidence of witnesses, did not find favour towards the finding recorded by the learned lower court.

8. Furthermore, it has also been submitted that none of the witnesses had stated that they were knowing since before regarding passing of informant, PW-4 through the aforesaid road and



the appellants were waiting for him with an intention to cause hurt. Apart from this, the narration of the occurrence as stated by the PWs also did not suggest that both the appellants have had carried common intention or shared common intention to assault informant PW-4. In the aforesaid background, the conviction of appellants Ramesh Singh under Section 324 IPC is found not at all justified. In its continuity, it has also been submitted that even accepting the version at a glance, on account of absence of motive, intention, knowledge as well as having specific averment at the end of the informant, PW 4 that only one blow was given, in the background of dispute having amongst the parties would not justify the infliction of imprisonment rather, considering the occurrence that of year 2006, spending such a long interval facing pain of trial as well as pendency of this appeal absence of criminal antecedents entitle the appellants to avail the benefits as prescribed under Probation of Offenders Act.

9. Learned APP opposed the submissions and submitted that mere filing of case at the end of the appellants withholding the document clearly suggests that his case happens to be counter blast to the present case whereupon defence version would not be liable to be accepted. So far occurrence is concerned, it has been submitted that PWs-1, 2 and 4 categorically stated that appellant, Surya Prakash Singh to be the author of the injury and so, he has rightly been convicted and sentenced for under Section 324 of the IPC. So far appellant, Ramesh Singh is concerned, considering the nature of evidence, his conviction relating to Section 324 of the IPC would



need intervention and could be modified. So submitted that the appeal filed on behalf of Surya Prakash Singh is to be dismissed while relating to Ramesh Singh, the same should be partly allowed.

10. Learned APP is correct in his submissions that in spite of having been flashed during course of cross-examination which the prosecution witnesses had admitted, defence had not filed/brought up his counter version. Furthermore, it has not been suggested that the case having been instituted at the end of appellant happens to be earlier than the present case, nor case number has been mentioned and so, the court is under completely dark with regard to manner of the counter version. In likewise manner, the court also failed to locate whether it happens to be a police case or a complaint case. Had it been a police case then in that event, it would have a bearing so for non examination of Investigating Officer is concerned.

11. Be that as it may, the first aspect happens to be with regard to motive. As admitted by the witnesses, it is evident that the appellants have launched a case relating to theft of wheat against the prosecution party including the witnesses while there happens to be allegation at the end of the prosecution that informant PW-4 had kept four bags of wheat at the granary of the appellants. The purpose for keeping the aforesaid wheat was for seed. When it was kept, not mentioned. Even during course of examination-in-chief had not specified. Though, PWs-1, 2 and 3 who have been examined on behalf of prosecution and happen to be own kith and kin of PW-4, the informant had accepted that they also have granary, but, the informant



never intended to avail facility at their end on other hand, covered long distance in order to kept the wheat for preservation at the granary of appellants, that too, without having close proximity is another circumstance, to be seen as plausible motive.

12. Now coming to the other aspect, PW-6, the doctor had found injury over person of informant (PW 4) which is as follows:-

1. Sharp cutting wound right side of the forehead 1 ½” x 1/6”x 1/6”, 2. pain in right shoulder, 3. pain in right side of chest.

Nature of injury- Simple. Injuries no.2 and 3 might have been caused by hard and blunt substance while injury no.1 by sharp cutting weapon.

13. Though during cross-examination, attention of the doctor has not been drawn whether such kind of injury could be possible by a spade, more particularly, in the background of disclosure having been made by the PW-1 wherein he has stated that breadth of spade was 7-8 inch and thickness of its edge happens to be less than 1”. Then in such circumstance, if the injury, as alleged by the prosecution is accepted, then in that event, it would not be in the dimension as perceived by the doctor.

14. In the background of aforesaid event, when the ocular evidence is gone through, it is evident that PWs-1, 2 and 4 have supported the allegation while PW-3 had stated that the accused persons indulged in push and pull with Daya Nand Singh and during course thereof, they assaulted by means of spade. He had not spoken



with regard to falling of Daya Nand Singh over the road as well as striking by Surya Prakash thereafter, with the spade over his head. PW-3 had identified the place of occurrence under para-3 of his cross-examination as North-South, Road, East- he himself as well as informant, West-Field. PW-1 at para-2 had identified the place of occurrence as North-South, Road, East-School and Brahm Asthan, West-House of Surya Prakash Singh.

15. Now coming to the manner of occurrence, PW-1 had stated that after hearing uproar he rushed to the place of occurrence and had seen Ramesh and Surya Prakash abusing informant, during course thereof, Ramesh pushed and then Surya Prakash gave spade blow causing injury over head of the informant. PW-2 had also deposed in similar manner. PW-1 had not identified the exact place though shown the boundary of the place of occurrence as disclosed hereinabove but PW-2 at para-3 had stated that the occurrence took place over the road while PW-4, informant at para-8 had stated that on the alleged date and time of occurrence he met with accused persons at the Darwaza of accused. Accused persons abused him at that very place and he was assaulted at that very place as a result of which, he fell down over the road. So far location of the house is concerned, in para-6 of his cross-examination he had stated that the house of the accused persons lies 100 metres away south to his house. He had further stated that adjacent east to the house of accused, there happens to be road which runs north to south. Middle School as well as Lower Primary School happens to be adjacent east to the road. One



school is 50 yards away from the other. So, from the evidence of PWs as referred hereinabove, it is apparent that they are not consistent with regard to the occurrence.

16. It has been settled at rest that evidence of injured witnesses lies at upper pedestal in contravention to the normal witnesses but, when there happens to be case and counter case, all the witnesses happen to be kith and kin, place of occurrence happens to be fluctuating one, motive is found shaky, then in that circumstance, the evidence of injured witness is to be seen with care and caution and that being so, the genuineness of the prosecution case is found doubtful. Consequent thereupon, the findings recorded by the learned lower court did not justify its concurrence, as such, the same is set aside. Appeal is allowed.

17. Since both the appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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