

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.317 of 2015

Arising Out of PS.Case No. -23 Year- 2011 Thana -BAUNSI District- BANKA

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1. Bipin Kumar S/o Chandeshwari Mandal.
 2. Lalan Kumar S/o Chandeshwari Mandal.
 3. Parwati Devi W/o Chandeshwari Mandal.

All resident of village - Kushmaha, P.S. - Bounsi, District - Banka.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance:

For the Appellant/s : Mr. Ajay Mukherjee, Adv.

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

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 02-11-2017

Appellants Bipin Kumar, Lalan Kumar, Parwati Devi have been found guilty for an offence punishable under Section 325/34 IPC and each one has been directed to undergo R.I. for three years, under Section 323/34 IPC and each one has been sentenced to undergo R.I. for six months, 341/34 IPC and each one has been sentenced to undergo S.I. for one month with a further direction to run the sentences concurrently vide judgment of conviction and sentence dated 25.05.2015 passed by Third Additional Sessions Judge, Banka in Sessions Trial No.113/2012.

2. PW.6, Sunaina Devi filed written report on 11.03.2011 alleging inter alia that on the same day at about 02:00 PM her son Rahul Kumar, aged about 10 years had gone to ease himself during midst of way Bipin Kumar caught hold him and scolded on the pretext that he has come to uproot the gram plant. He threw him over the ground as a result of which her son began to cry attracting herself



who, forbidden Bipin. Over this, Bipin Kumar, Lalan Kumar and Parwati Devi began to abuse and further, inflicted lathi blow over her head with an intention to kill as a result of which she sustained injuries over her head, waist, hand. On hue and cry villagers came whereupon, accused persons fled away.

3. On the basis of the aforesaid written report Bounsi P.S. Case No.23/2011 was registered followed with an investigation, submission of charge sheet paving the way for trial which ultimately concluded in a manner, 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. It has further been suggested to the informant PW.6 that she had sustained fracture on account of fall at her house. However, neither ocular nor documentary evidence has been adduced on behalf of appellant.

5. In order to substantiate its case prosecution had examined altogether seven PWs, PW.1-Ravindra Jha, PW.2-Amit Sah, PW.3-Punam Devi, PW.4-Himanshu Shekhar Jha @ Himanshu Jha, PW.5-Dr. Mritunjay Prasad Singh, PW.6-Sunaina Devi and PW.7-Raj Kapur Kushawaha as well as also exhibited Ext.1 Series-Injury report/supplementary injury report, Ext.2-Formal FIR, Ext.3-Endorsement over written report. As stated above, neither ocular nor documentary evidence adduced on behalf of appellant.



6. PW.5 is the doctor who had examined Sunaina Devi on 11.03.2011 itself while he was posted at Referral Hospital, Bounsi as Medical Officer and found the following injuries:

- (i) A lacerated wound on occipital region of scalp of dimension 4" x skin deep.
- (ii) A diffused swelling of left hand and forearm.

Injury No.1 has been found simple in nature while, with regard to Injury No.2, opinion was reserved and the patient was referred to J.L.N.M.C.H, Bhagalpur where she was x-rayed, treated and as per report, supplementary injury report was issued by him showing fracture of shaft of left Ulna whereupon, found grievous caused by hard and blunt substance. During cross-examination, nothing substantial has been elicited from the witness save and except that these injuries could be caused on fall over hard substance.

Therefore, presence of injury over the person of informant Sunaina Devi is not at all found duly challenged.

7. PW.6 is the Sunaina Devi, injured herself. She had stated that on the alleged date and time of occurrence, she was at her house. Her son Rahul Kumar had gone to Bahiyar to ease himself along with Nandlal Kumar at the field of Manoj Yadav and at that very moment, Nanadlal Kumar had plucked gram from the field of Bipin Mandal whereupon, Bipin Mandal abused. He was joined by Lalan Kumar and Parwati Devi. They have not said anything to



Nandlal but her son. Then thereafter, Bipin threw her son Rahul on the ground twice, thrice as a result of which, he sustained hurt. He became unconscious. She scolded Bipin why he has assaulted her son whereupon, he gave lathi blow over her leg as a result of which, she fell down. Then thereafter, Bipin, Lalan and Parwati began to assault her. During course thereof, she tried to avert the blow by her hand as a result of which, her left hand fractured. She also sustained injury over her head. They also assaulted over her waist and other parts of body. For sometime, she fainted. She was taken to P.S. where she had recorded her fardbeyan thereafter she was taken to hospital and from there she was referred to Mayaganj, Bhagalpur where she had undergone treated for a month. She had further disclosed that Rahul was not treated. She had shown scar mark. She identified the accused. During cross-examination at para-3 she had shown genealogical table wherefrom it is evident that both the parties are closed Gotiya. In para-4 she had stated that there happens to be no land dispute amongst them. In para-5, she had admitted that husband of Parwati and father of Bipin as well as Laln namely Chandeshwari happens to be in government service at Aurangabad but, his family is residing at the native place. In para-6 she had further stated that Bipin resides at the village while Lalan studied at Bhagalpur. Bipin was also studying at an earlier occasion. For the present, what he is doing, she is unaware. In para-9 there happens to be contradiction relating to her further statement and the same is found corroborated from the



evidence of the I.O. PW.7 para-8 relating to presence of Nandlal only. In para-10 she had stated that after sustaining lathi injury she fell down. The first blow was given at left leg. The injury was shown to the doctor. She had further stated that she had not shown other injuries after removing cloth. In para-11, she had stated that she had sustained single lathi blow over head. She had further stated that she is unable to say who had assaulted on which part of body. They all assaulted conjointly. She had not counted the blow. In para-12 she had stated that P.O. lies by the side of her house. She had shown boundary thereof as North-House of Bihari Mandal, South-Aaganbari Kendra, East-Nilambar Jha, Chandeshwari Jha and then Bahiyar, West-Her own house. In para-13, she had stated that accused persons attacked upon her during course of quarrel. She had further stated that she had cordial relation with her Gotiya. On the alleged date, no male members were present. In para-14 she had stated that as during course of assault she was not in a position to see so, unable to say who had come. In para-16 she had stated that villagers forcibly took her thumb impression over the compromise petition. She had not compromised the case. In para-17 there happens to be suggestion that it is false to say that she had implicated the accused persons falsely. She had also denied the suggestion that as she slipped and sustained fractured of her hand at her house for that, non is responsible.

8. PW.7 is the I.O. he had deposed that on the alleged date and time of occurrence he was ASI at the Bounsi P.S. He was



entrusted with the investigation of Bounsi P.S. Case No.23/2011. During course of investigation, he took further statement of the informant and then thereafter, proceeded towards the place of occurrence which happens to be Kacchi village road in front of joint house of Sunaina Devi as well as Sitabi. He had shown the boundary of the P.O. as North-Road, South-barren land of Gopal Sah, East-Barren land belonging to Bihar Sarkar occupied by Sitabi Mandal, West-Joint house of informant as well as Sitabi. He had recorded statement of Anil Sah, Ravindra Jha, Himanshu Shekhar Jha, Tuntun Mandal. He had conducted raid at the house of accused persons but were found absent. He had also examined Punam Devi on 12.3.2011. Procured injury report, supplementary injury report and on account of transfer, handed over charge on 08-07-2011. He had exhibited the written report, formal FIR, endorsement over the written report. During cross-examination at para-5 he had stated that the written report having been filed by the informant was handed over to him by the Officer-in-charge on 11.03.2011 after 04:30 PM but he had not mentioned the time in the case diary. At that very time, informant was present. He is not remembering presence of others. In para-6, he had stated that though, he had inspected the injury having over person of informant but he had not mentioned the same in the case diary. He had not mentioned the parts of the body where injuries were found. He had not mentioned in the case diary that he had instructed informant to go to hospital. He had not mentioned the fact on whose



instruction she had gone to hospital. In para-7 he had stated that Sunaina Devi was not along with him. In para-8 as stated above happens to be contradiction that too relating to presence, activity of the Nand Lal only. In para-9, he had stated that he was not aware with the fact that whether son of informant was examined or not. He had not seen the aforesaid child though, tried to. He had not tried to locate Nandlal. In para-10 he had further stated that he had not seen the field wherefrom gram was uprooted.

9. PW.1 and PW.4 happens to be father and son. From their evidence, it is apparent that though they tried to substantiate the prosecution case but there happens to be some sort of variance. As, PW.1 had disclosed assault by means of iron rod. PW.1 at para-6 had shown boundary North-Field of Krishna Mohan Sah, South-Road, East-House of Bihari Mandal, West-House of Informant. PW.4 had not shown assault by means of iron rod. In para-10 he had shown the boundary of the place of occurrence, North-House of Bihari Mandal, South-House of Informant, East-Land of Nilambar Jha, West-Government Land.

10. PW.2 had deposed that on the alleged date and time of occurrence while he was at Gali, had seen son of Sunaina Devi uprooted gram shrubs belonging to Bipin Kumar whereupon, Bipin scolded and then, began to assault with lathi as a result of which he sustained injuries over his head. Blood oozen out. Mother of Bipin namely Parwati Devi and brother Lalan Kumar had also assaulted



Sunaina Devi as a result of which Sunaina Devi sustained injury over her head. Then had asserted that all the three had assaulted with lathi. When villagers came, all the accused fled therefrom. During cross-examination in para-6 he had admitted inter se relationship amongst prosecution party as well as accused. In para-7, he had stated that altercation was going on near the house in a gali. At that very time he had heard uproar. He had seen altercation as well as assault. Then shown boundary of the P.O. North-Field of Late Jagdish Sah, South-Road, East-House of Bihari Mandal, Makuni Mandal, field of Nilambar Jha, West-House of Prabhu Mandal. At para-9 he had stated that the house of Parwati Devi lies after 2-3 houses from the place of occurrence. In para-10, he had further stated that altercation in between Bipin and Sunina took place near the house of Sunaina. He had further stated that her son had sustained injury over his leg. Occurrence took place for ten minutes. He tried to intervene whereupon, accused jointly opposed. He was not assaulted. Bipin had struck over the head of Sunaina. He is not remembering how many blows were given over the head of Sunaina but, he had seen the injury over her head. In para-11, he had further stated that he along with Himanshu Shekhar, Tuntun Mandal, Punam Devi and others were present at the place of occurrence during course of occurrence. He denied the suggestion that as the accused persons had complained against his wife who happens to be Aaganbari Sevika on account thereof, he deposed against them.



11. PW.3 is Punam Devi daughter of informant. She had stated that on the alleged date and time of occurrence she was at her Naihar. Parwati devi, Bipin Kumar, Lalan Kumar assaulted her mother with lathi as a result of which she sustained injury over her head as well as got her hand fractured. Aforesaid assault was in the background of the fact that while her brother Rahul Kumar had gone to ease, accused persons began to say that he had uprooted gram shrubs whereupon, Bipin Mandal threw her brother on the ground. Her mother intervened whereupon she was assaulted. Her mother became unconscious as a result of assault whereupon, accused persons fled away. Then thereafter, they have taken mother to hospital wherefrom referred to police station and then again they came to hospital. From Bounsi PHC her mother was referred to Bhagalpur where she was treated for a month. Identified the accused. During cross-examination at para-3, there happens to be cross-examination relating to her family. At para-4, she had stated that at the time of occurrence she was washing cloth inside her house. After hearing hue and cry, she came out and found her mother unconscious. Blood was oozing out. Mob was there. Somebody Bandaged the wound and then her mother was taken to hospital. Her mother regained sense at the hospital. First of all, police had recorded statement of her mother. Her statement was also recorded by the police. In para-6, she had stated that one day thereafter her mother was shifted to Bhagalpur where, she was treated for a month.



12. Learned counsel for the appellant has submitted that prosecution failed to substantiate its case on account of flaw persisting thereto. The first and foremost happens to be that professional witnesses have been introduced at the end of the informant maliciously and to substantiate the same referred evidence of PW.1 as well as PW.4, who are father and sons and further from their evidences, their activities are very much exposed. Then it has been submitted that PW.3, daughter of informant admittedly is not an eyewitness to occurrence which, during course of cross-examination is found duly substantiated. It has also been submitted that PW.2 also could not be accepted as an eye witness to occurrence on account of sketchy nature of evidence. Then coming to the evidence of PW.6, informant, it has been submitted that she also happens to be unreliable on account of having introduction of Nandlal for the first time during course of evidence and to that extent, PW.7 the I.O. had substantiated the same. In its continuity, it has also been submitted that neither prosecution had explained with regard to non-examination of Rahul nor, he was ever medically examined in the background of the fact that though informant had not deposed like so but PW.2 had stated that he was assaulted by lathi over his head as a result of which, he sustained injury over head wherefrom blood had oozen out.

13. It has also been submitted that investigation also happens to be faulty one because of the fact that motive of the



occurrence which happens to be uprooting/plucking of gram plant from the field of appellant Bipin was not at all visited by the I.O. In likewise manner, it has also been submitted that who had shown place of occurrence to the I.O. is not on the record and that happens to be reason behind that inconsistently persist over proper identification of the alleged place of occurrence. In the aforesaid background, mere presence of injury as narrated by PW.5 doctor is not going to scare the prosecution from its down fall and that being so, it is a fit case whereupon judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

14. On the other hand the learned Additional Public Prosecutor while refuting the submission has submitted that it is pious duty of the court to separate the grain from chaff. That means to say, truthfulness be searched out from the evidence and the aforesaid exercise is permissible where there happens to be some sort of exaggeration in the evidence of the PWs which happens to be a natural phenomena as, happens to be influenced by so many factors including the time gap wherein, now the trial are being conducted. Furthermore, it has also been submitted that in terms of Section 134 of the Evidence Act, it is the quantity not a quality. Non-examination of Rahul is not going to axe upon the fate of the prosecution nor the discrepancy has been found in the evidence of other PWs over the assault as well as motive in the background of the fact that informant including other PWs had not been suggested at the end of the



appellant that Rahul had not uprooted the gram shrubs from his field. Furthermore, from the suggestion it is evident that they have admitted presence of fracture of hand and for that, suggested that on account of fall inside the house she had sustained the same so, presence of injury over the person of informant is admitted one. Furthermore, during cross-examination, the defence could not be able to demolish her evidence and that being so, taking into account the evidence of informant along with medical evidence coupled with objective finding of the I.O., it is fit case wherein appeal is fit to be dismissed.

15. Injury over the person of informant is found duly substantiated by the PW.5, doctor who has not been discredited on that very score. If the same is taken together with the suggestion having at the end of the appellant to the PW.6, informant, it is evident that same is admitted one. In the aforesaid background when the evidence of the witnesses have been gone through, it is evident that even excluding of evidence of PW.1-Ravindra Jha, PW.2-Amit Sah, PW.3-Punam Devi, PW.4-Himanshu Shekhar Jha @ Himanshu Jha, informant PWs happens to be consistent over her assault though, tried to show the innocence of her son by introducing the Nandlal and to that extent, there happens to be development at their end which is not at all found crucial to the credibility of PW.6. That being so, the learned lower court has rightly convicted the appellants for the offences as indicated above in consonance with the sentence so inflicted.



16. That being so, instant appeal sans merit and is, accordingly dismissed. Appellants are on bail, hence their bail bonds are cancelled, directing them to surrender before the learned lower court within four weeks to serve out the remaining part of sentence failing which, the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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