

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.325 of 2015**

Arising Out of PS.Case No. -293 Year- 2009 Thana -MAHUA District- VAISHALI(HAJIPUR)

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1. **Ram Naresh Singh**, son of Kailash Singh, resident of village-Hakimpur, P.S. Mahua, District-Vaishali.
 2. **Rakesh Singh**, son of Bindeshwar Singh, resident of village-Baksama, P.S.-Garaul, District-Vaishali.
 3. **Manoj Singh**, son of Nagendra Singh, resident of village-Baksama, P.S. Garaul, District-Vaishali.
 4. **Nagendra Singh**, son of Late Charitar Singh, resident of village-Baksama, P.S. Garaul, District-Vaishali.
 5. **Akhilesh Singh**, son of Jagdish Singh, resident of village-Baksama, P.S. Garaul, District-Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Satish Narain Singh-Advocate

For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 06-11-2017

Appellants, Ram Naresh Singh, Rakesh Singh, Manoj Singh, Nagendra Singh, Akhilesh Singh along with acquitted accused namely Arvind Singh, Bindeshwar Singh and Vidyanand Singh were put on trial, on account of submission of chargesheet relating to Mahua P. S. Case No.293 of 2009 leading to Sessions Trial No.162 of 2012 and after concluding the trial, the appellants named above, have been found guilty for an offence punishable under Section 147 of the I.P.C. and sentenced to undergo S.I. for three months, under Section 447 of the I.P.C. and sentenced to undergo S.I. for three months, under Section 341 of the I.P.C. and sentenced to undergo S.I. for one



month, under Section 323/ 149 of the I.P.C. and sentenced to undergo S.I. for six months with a further direction to run the sentences concurrently by the learned Sessions Judge, Vaishali at Hajipur.

2. PW-4 Braj Kishore Singh gave his fard-bayan while he was admitted at P.H.C. Mahua on 14.07.2009 at about 11.30 p.m. alleging inter alia that his village-Baksawa happens to be adjacent to village-Hakimpur where his sasural lies. On the same day at about 9.00 p.m., he received information that his mother-in-law was being assaulted by some persons whereupon, he along with his wife Dharmsheela Devi (PW-1) and son Chandan Kumar (PW-3) rushed. At about 10.00 p.m. when he reached at his sasural, he saw his mother-in-law Shanti Devi was being assaulted by his three Gotia Ram Naresh Singh, Manoj Singh and Nagendra Singh. When he intervened, the accused persons were joined by 10-12 persons, who challenged and attempted to catch. He, in order to save himself as well as his family members gone inside the house, along with his wife and son gone followed by Ram Naresh Singh, Manoj Singh, Nagendra Singh, Akhilesh Singh, Jagdish Singh, Bindeshwar Singh, Arvind Singh, Rakesh Singh, Vidyanand Singh armed with lathi, Saval, Chhura and further, began to assault him as well as his son, mother-in-law as a result of which, his mother-in-law became badly injured, his wife sustained fracture of her left hand, injury over waist, he



sustained injury over his head and his son Chandan Kumar also sustained severe injury on account of Saval blow over his head. During course of occurrence, the aforesaid persons were assisted by 10-12 unknown persons, to whom he claimed identification. It has further been disclosed that as no male descendants happens to be, on account thereof, his mother-in-law had executed a deed in favour of his wife appertaining to 1 ½” Bigha which the accused persons intend to grab and in the aforesaid background, they have assaulted all of them. It has further been disclosed that the accused persons dragged him as well as his son to their Darwaza and locked them in a room. They were also saying that these two be eliminated. The Kathara O.P. was informed and after whose arrival, the accused persons released them. Then thereafter, they were taken to P.H.C. Mahua where they are being treated while his son Chandan Kumar has been referred to P.M.C.H. for specialized treatment. It has also been disclosed that during course of occurrence, the accused persons snatched away chain, ear-ring of his wife, Rs.10,000/- from him as well as Rs.25,000/- from the box of his mother-in-law.

3. 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 on the alleged date and time of occurrence, the



prosecution party on being protested by them with regard to execution of a deed in favour of Dharmsheela Devi by Shanti Devi relating to the land belonging to them pounced upon them, brutally assaulted on account of which, Mahua P. S. Case No.294 of 2009 was registered. Only to safeguard their interest, this case has falsely been instituted. Furthermore, to substantiate the same, one DW has also been examined along with exhibits of the documents viz. Exhibit-A and C, F.I.R. of Mahua P.S. Case No.294 of 2009, Exhibit-B, certified copy of order dated 10.06.2011 passed by the D.C.L.R. Mahua in connection with Mutation Appeal No.131 of 2009-10.

4. In order to substantiate its case, prosecution had examined altogether seven PWs, out of whom, PW-1 Dharmshila Devi, PW-2 Shanti Devi, PW-3 Chandan Kumar, PW-4 Braj Kishore Singh, PW-5 Dr. Arun Kumar, PW-6 Upendra Kumar, second I.O. and PW-7 Sita Ram Singh, the first I.O. of the case. Side by side, had also exhibited the documents viz. signature of informant on the fard-bayan, Exhibit-2 series, injury report of respective injured, Exhibit-3 case diary, Exhibit-4 fard-bayan, Exhibit-5 endorsement over fard-bayan and Exhibit-6 formal F.I.R. Defence had also examined one DW namely Radhakant Tiwari (formal) as well as had also exhibited, Exhibit-A and C F.I.R. of Mahua P.S. Case No.294 of 2009 and Exhibit-B order dated 10.06.2011 passed in connection with Mutation



Appeal No.131 of 2009-10.

5. It has been submitted on behalf of learned counsel for the appellants that though after considering the evidence adduced on behalf of prosecution, remaining three accused namely Arvind Singh, Bindeshwar Singh and Vidyanand Singh have been acquitted. The same fate happens to be persisting against these appellants also on account of infirmity which the learned lower Court rightly considered against the acquitted accused, but overlooked the same during course of consideration of interest of these appellants. It has further been submitted that conduct of the prosecution is to be seen, who after having been admitted at the end of PW-1 Dharmshila Devi that accused persons also sustained injury, they also were treated at P.H.C. Mahua, became vigilant and declined to affirm the same, though presence of counter-case has already been admitted. Furthermore, they have also admitted the dispute persisting on account of execution of document in favour of Dharmshila Devi by Shanti Devi. It has also been pleaded that there happens to be specific case at the end of the appellants that the land, which was transferred in favour of Dharmshila Devi relates with joint family property and that happens to be reason behind that in spite of repeatedly asked for submission of document during course of cross-examination, the prosecution had not produced the document. In the aforesaid factual aspect, it has been



submitted that the manner of occurrence as suggested by the prosecution happens to be incorrect on the other hand supports the genesis of defence case and on account thereof, appellants are entitled for acquittal, more particularly, persistence of inconsistent version of the prosecution in consonance with failure on the part of the prosecution to properly identify the place of occurrence. So, submitted that judgment of conviction and sentence recorded by the learned lower Court happens to be bad, illegal and is fit to be set aside.

6. On the other hand, the learned Additional Public Prosecutor controverted the submission having made on behalf of learned counsel for the appellant and submitted that defence version will come into rescue only when prosecution case is found deficient one on one score or other. In this case, the examination of doctor conclusively proves regarding presence of injuries over the person of injured and for that, PW-1 to PW-4, who are injured, have duly substantiated. Apart from the fact that I.O. (PW-7) by way of objective finding had corroborated the prosecution version. That being so, the appeal is fit to be dismissed.

7. After going through the evidence of PW-5, Dr. Arun Kumar, it is evident that he, on account of being posted at P.H.C. Mahua as Medical Officer, had examined the injured on 14.07.2009



and found the following:-

Braj Kishore Singh

- I) *A lacerated wound over left side of forehead of size 2" x ½" x ½".*
- II) *A lacerated wound over right side of forehead of size 1 ½" x ½" x ¼".*

All the injuries simple in nature caused by hard and blunt substance.

Chandan Kumar

- I) *A swelling over left parietal region of scalp of size 2" x 2" and injury was caused by hard and blunt substance and the patient was sent to Patna P.M.C.H. for C.T. Scan.*

Though nature of injury has not been disclosed but caused by hard and blunt substance.

Dharmsheela Devi

- I) *One lacerated wound over lower end of right forearm of size 2" x 2" and on X-ray of its right forearm fracture of lower 1/3 of right ulna was found and so, the nature of injury was opined as grievous, caused by hard and blunt substance.*



Shanti Devi

I) *Only lacerated wound over left side of forehead
of size 1 ½" x ½" x ¼".*

Simple in nature caused by hard and blunt substance.

During course of examination, it is evident that defence had not cross-examined him with regard to injuries having over appellants' side. In likewise manner, suggestion has been given to him that being a co-villager, he issued the injury report on being influenced at the end of the prosecution party. Moreover, having some sort of minor lapses at his end, the report happens to be properly substantiated. No document has been adduced on behalf of prosecution regarding treatment having at P.M.C.H. relating to Chandan and so, nature of injury sustained by him could not be properly opined.

8. Now, coming to oral evidence, it is apparent from the evidences of all the PWs that Ram Charittar Singh happens to be the common ancestor, who had three sons namely Nagendra Singh, Kailash Singh and Sadhu Saran Singh. Nagendra Singh as well as sons of Kailash Singh happens to be appellants' side. While Dharmshila Devi, daughter of Sadhu Saran Singh, who died leaving behind six daughters is the prosecution. It is also evident that Ram



Charittar Singh had two marriages. Sadhu Saran Singh, Kailash happens to be from first marriage while Nagendra Singh happens to be from second marriage. It is also evident that Ram Charittar Singh during course of his lifetime had executed document in favour of Chania Devi, his second wife relating to some land. Though no document has been filed on behalf of prosecution, but it has been suggested that the document created by Shanti Devi (PW-2) in favour of Dharmshila Devi (PW-1) happens to be relating to the aforesaid land. In the background of aforesaid family tree as well as admitted fact with regard to creation of the document firstly by Ram Charittar Singh in favour of Chania Devi, secondly Shanti Devi in favour of Dharmshila Devi, now one has to proceed to appreciate the evidence. Moreover, none of the two documents as referred above have been produced.

9. PW-1 had stated that on the alleged date and time of occurrence, she along with her husband, son was at her sasural. They received information regarding assault over her mother whereupon, she along with her husband and son came to the place of her mother at village-Hakimpur which happens to be adjacent village to her sasural. When they reached there, they saw Nagendra Singh, Ram Naresh Singh, Manoj Singh being indulged in assaulting her mother. On alarm, other persons also joined them, but on account of darkness, she



was unable to identify. Accused persons attempted upon them to assault thereupon, they all gone inside the house being followed by the accused persons, out of whom, Nagendra Singh dragged her son and gave Saval blow over his head. Ram Naresh Singh dragged her husband to his house where inflicted Chhura blow. Nagendra Singh snatched away cash from the possession of her husband. Her husband became unconscious and was in pool of blood. She was assaulted by Saval, lathi as a result of which, she sustained fracture of her left hand. They have also snatched away chain, ear-ring, Rs.25,000/- from the box of her mother. Villagers came and rescued them and then, they were taken to Kathara O.P. then to Hospital. Villagers had rescued her husband from the grip of accused persons. Identified the accused. During cross-examination at Para-8 to Para-11, there happens to be cross-examination relating to their branch. At Para-12, she had admitted that accused Nagendra Singh had also instituted a case against them relating to the same occurrence. In Para-14, she had admitted that it was a dark night. She had further admitted that wife of Nagendra Singh, wife of Ram Naresh Singh sustained injury, but immediately explained that they sustained injuries during course of scuffle having amongst them. They were not assaulted by the prosecution party. In Para-15, she had admitted that accused persons were also treated at Hospital. In Para-16, she had stated that on



account of darkness, she was unable to disclose how many persons were involved during course of occurrence.

10. PW-2 is the mother of PW-1 namely Shanti Devi. She had stated that on the alleged date at about 9.30 p.m., Nagendra Singh, Manoj Singh, Ram Naresh Singh and others intruded inside her house and began to assault in the background of the fact that she had given her land to daughter, son-in-law. She begged, but the accused persons did not pay heed to it. She was assaulted. Her daughter's son, son-in-law, daughter came to her place. Manoj Singh gave Saval blow over her daughter's son as a result of which, blood oozed from his nose and mouth. Nagendra Singh assaulted her daughter as a result of which, she sustained fracture of her hand. Her son-in-law, who hidden himself in his own protection, was caught hold by the accused persons and dragged to their place. He was given three Chhura blow. All the accused persons also assaulted her. Accused persons also taken away chain, ear-ring, cash from her daughter as well as son-in-law. They also took away Rs.25,000/- from her box. They were taken to Mahua hospital and from there, her daughter's son was referred to P.M.C.H. Then had stated that this case has been instituted by the son-in-law. During cross-examination from Para-9 to Para-15, there happens to be cross-examination relating to her family status. In Para-16, she had admitted that Nagendra Singh had also instituted a case against her



son-in-law, daughter's son and others. She had shown ignorance with regard to assault, injuries over the person of wife of Ram Naresh Singh as well as Nagendra Singh and further, were admitted at Mahua for treatment under Para-17 and 18. She had shown place of occurrence as under Para-19, North-did not remember, South-land of Nagendra Singh, East-land of Jagdish Singh and West-road. In Para-20, she had further stated that blood had fallen over the ground. In Para-21, she had stated that her son-in-law, daughter's son, daughter were at Baksama wherefrom they came. When they came, she was lying. She had shown the place where she was assaulted. Then thereafter, they brought a vehicle and took her away. In Para-22, she had stated that accused persons are not inclined to part with the land. In case accused persons give possession over the land, then in that event, she will withdraw the case. In Para-24, there happens to be contradiction.

11. PW-3 is the Chandan Kumar, who had stated that on the alleged date and time of occurrence, he along with his mother, father was at his house. At about 9.00 p.m., they received information regarding assault over his maternal grandmother whereupon he along with his mother, father gone to the place of his maternal grandmother where they saw Nagendra Singh, Naresh Singh and Manoj Singh were standing with lathi and were saying to assault. All the three persons



chased them to assault. Then had said that Naresh, Nagendra and Manoj Singh gave lathi blow, but who had given stroke, he had not seen. He became unconscious. Later on, he came to know that accused persons assaulted his mother as a result of which, she sustained fracture of her hand. They have also assaulted his father. So many villagers were there, but could not identify them. During cross-examination at Para-5, he had admitted presence of counter-case, but failed to divulge whether they were admitted at Mahua hospital and treated. In Para-7, he had admitted that all the accused persons happen to be from the same family that of his mother. Para-10 and Para-11, there happens to be contradiction. In Para-12, he had stated that first of all, he was assaulted. In likewise manner, Para-14 and 15 also happens to be the contradiction.

12. PW-4 is the informant, son-in-law of PW-2, husband of PW-1 and father of PW-3. He had deposed that on the alleged date and time of occurrence at about 9.00 p.m. he received information regarding assault of her mother-in-law by her Gotia, whereupon he had gone there, he reached there at 9.00 p.m. and saw, Naresh Singh, Manoj Singh, Akhilesh Singh, Rakesh Singh and others having indulged in assaulting. He intervened, whereupon 15-20 persons attacked upon him. He rushed inside the house. Nagendra Singh stroke by Saval blow over Chandan. Naresh Singh caught hold



him and dragged to his place, Manoj Singh gave blow over hand of his wife. He was given Chhura blow over head as a result of which, he sustained injury over his head, blood oozed out. The motive for occurrence has been shown as accused persons became aggrieved on account of execution of document by his mother-in-law in his favour. After arrival of the police, accused persons fled away. They have also taken away Rs.10,000/- from his possession as well as Rs.25,000/- from a box belonging to his mother-in-law. Then had exhibited the fard-bayan etc., identified the accused. During cross-examination at Paras-7, 8, 9, 10, 11, there happens to be cross-examination over family status. At Para-13, he had denied the suggestion that he got same land executed in his favour, which was executed by Ram Charittar Singh in favour of Chania Devi. In Para-14, he had stated that aforesaid document is presently not in his possession. After getting the same, he will file. In Para-15, there happens to be reference towards Mutation Proceeding fought amongst the parties and further, getting the appeal's order in their favour. At Para-17, he had admitted presence of counter-case, but in Para-18, he had shown ignorance with regard to presence of injuries over the person of wife of accused and for that, they were admitted at Mahua Hospital. In Para-19, he had stated that he is unable to disclose the name of the person, who had informed him regarding assault over mother-in-law.



In Para-21, he had disclosed the P.O. as East-Chandradeep Singh, West-road, North-land of Kaushal Singh and South-land of Nagendra Singh. In Para-24, he had stated that when he reached at the place of his mother-in-law, she was standing at her darwaza. He had seen sign of assault over her person. In Para-25, he had stated that he had no talk with Shanti Devi. In Para-26, he had stated that his son Chandan Kumar sustained injury over darwaza while he was dragged by Naresh Singh to his house. In Para-30, he had admitted that none of the villagers are witness in this case. In Para-31, he had stated that occurrence took place within 5-10 minutes, none of the villagers had come at the place of occurrence.

13. PW-6 is the part I.O., who had simply submitted chargesheet.

14. PW-7 is the main I.O., who after registration of the case was entrusted with the investigation. Accordingly, he had visited the place of occurrence which happens to be the house of PW-2, Shanti Devi. He had shown the boundary of the house North-land of Sunil Singh, South-house of Naresh Singh, East-land of Chandradeep Singh and West-concrete road and then, house of Kaushal Singh. He took statement of the witnesses, procured injury report. As he was transferred, handed over charge to the Officer-in-charge. During cross-examination, he had admitted that he had not



seen blood spot at the P.O. Paras-6 and 7, there happens to be contradiction relating to Dharmshila Devi as well as Chandan Kumar.

15. From the evidence available on the record, it is evident that case and counter-case relating to same occurrence has already been admitted by the prosecution witnesses. Furthermore, having admitted at the end of PW-1 that wife of Nagendra Singh and Manoj Singh had sustained injury and for that, they were admitted at Mahua hospital, all the other witnesses escaped to answer properly, simply showing ignorance relating thereto. It is surprising that all of them including PW-1 were admitted at the same hospital and so, they might have seen them. Considering that admission at their end could adversely affect upon their plea, as it will tantamount to a case of free fight, declined to accept injury though presence of counter-case for the same occurrence had been admitted. The probability of the manner of occurrence also to be seen in the background that after coming to know about activity of accused person, PW-1, PW-3, PW-4 rushed from their place, in the aforesaid background, the natural conduct would be to give a lesson for misdeeds, and on account thereof, free fight could not be ruled out. And that happens to be reason behind declining of prosecution party over presence of injury as well as treatment provided at Mahua P.H.C. where they too were admitted. Apart from this, when the evidence of the witnesses are taken together



in consonance with the evidence of doctor (PW-5), it is evident that the allegation having attributed for assaulting the informant (PW-4) by means of Chhura is not at all found by the doctor. In likewise manner, there happens to be inconsistency amongst the witnesses with regard to the assailant over the concerned injury such as PW-1 identified Nagendra Singh to be the assailant of Chandan Kumar by means of Saval while PW-2 had admitted that Manoj Singh assaulted Chandan Kumar by means of Saval. Chandan Kumar had not alleged specifically against any of the accused to have inflicted Saval blow rather had had alleged that Naresh Singh, Nagendra Singh and Manoj Singh, who were armed with lathi, have had inflicted while PW-4 had identified Nagendra Singh to be the author of injury over the person of Chandan Kumar. In likewise manner, there also happens to be inconsistency in the prosecution version as some of them inferring the police officials, who come and rescued them while some had not. Moreover, the same is not at all corroborated by the I.O. The most important aspect happens to be that no source of identification and that happens to be reason behind that save and except own family members by the PW-1, PW-2, PW-3 while PW-4, informant named others also. Giving anxious consideration of facts of the case, it is found and held that prosecution had suppressed the real genesis as well as manner of occurrence.



16. Consequent thereupon, the judgment impugned would not survive as a result of which, is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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