

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.542 of 2002

Arising Out of PS.Case No. -19 Year- 1992 Thana -Dandkhora District- KATIHAR

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1. Basudeo Uraon, Son of Sri Panchu Uraon
 2. Panchu Uraon, Son of Late Bandhan Uraon
 3. Sundar Uraon, Son of Sri Rati Uraon
 4. Jamuna Rishi, Son of Bundel Rishi @ Dahu Rishi
 5. Harsa Rishi, Son of Sri Bhogal Rishi @ Mangan Rishi
 6. Tetuwa Rishi, son of Sri Bhogal Rishi @ Mangan Rishi

All are residents of village – Khirkhirria, P.S.-Dandkhora, District-Katihar.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae.

For the Respondent/s : Mr. Bipin Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 03-11-2017

Heard learned Amicus Curiae for the appellants as well as learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the Judgment and Order of conviction and sentence dated 10.09.2002 passed by Presiding Officer, Additional Court-II, Katihar in Sessions Trial No. 199 of 2001 / 152 of 1992 arising out of Dandkhora P.S. Case No. 19 of 1992, whereby the learned trial court convicted the accused, namely, Panchu Uraon, Harsa Rishi, Sunder Uraon, Tetuwa Rishi and Jamuna Rishi for the offence punishable under Sections 447 and 324/149 of the Indian Penal Code and Basudeo Uraon for the



offence punishable under Sections 326, 324/149 and 447 of the Indian Penal Code and released all the accused persons barring Basudeo Uraon on probation bond and sentenced Basudeo Uraon to undergo R.I. for five years under Section 326 of the Indian Penal Code, R.I. for one year under Section 324/149 of the Indian Penal Code and R.I. for six months under Section 447 of the Indian Penal Code. All the sentences were directed to run concurrently.

3. Factual matrix of the case is that Dandkhora P.S. Case no. 19 of 1992 was instituted under Sections 447, 342, 323, 324 and 307/34 of the Indian Penal Code against Panchu Uraon, Basudeo Uraon, Shravan Uraon, Jamuna Rishi, Harsa Rishi, Telwa Rishi and Sunder Uraon on the basis of the written report of Rajeshwar Prasad Mandal, Son of Late Umraon Mandal, Resident of Village-Thapkol, P.S.-Dandkhora, District- Katihar with the allegation in succinct that he has purchased 3.41 acre land bearing Khata No. 31 Khesra No. 205-206 through sale deed and has been cultivating the said land for the last five years. He had cultivated tisi crop on the said land at present. On 14.03.1992 at around 8 AM, he witnessed accused persons harvesting his tisi crop. Then he, his brothers, namely, Rambilas Mandal and Jageshwar Mandal rushed to his field and forbade them from harvesting his crop. Thereupon, Pachu Uraon gave order to eliminate them, whereupon Panchu Uraon assaulted on



his head by means of farsa inflicting bleeding head injury to him, Basudeo Uraon gave arrow blow to his brother Rambilas Mandal on his stomach while Shravan Uraon gave arrow blow to his another brother Jageshwar Mandal on his rib. Jamuna Rishi, Harsha Rishi, Tetuwa Rishi and Sunder Uraon assaulted them by means of lathi. Binod Mandal, Ramdeo Mistry, Nityanand Mandal, Ganga Uraon, Brahmdeo Uraon and others witnessed the occurrence and saved their lives.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet under Sections 447, 342, 323, 324 and 307/34 of the Indian Penal Code against the aforesaid accused persons.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused persons and committed the case to the court of sessions and on transfer finally the case came in the *seisin* of Presiding Officer, Additional Court-II, Katihar for trial. During the pendency of the case, accused Shravan Uraon passed away, hence proceeding against the said accused was dropped. Thus, six accused persons faced the trial.

6. Charge against the accused Panchu Uraon was framed under Section 324 of the Indian Penal Code and charge



against the accused Basudeo Uraon was framed under Section 326 of the Indian penal Code. Charge against the accused persons, namely, Panchu Uraon, Basudeo Uraon, Sunder Uraon, Yamuna Rishi, Harsha Rishi and Tetuwa Rishi was framed under Sections 447 and 307/149 of the Indian Penal Code. Charges were read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses namely, Nityanand Mandal as PW-1, Binod Kumar Mandal as PW-2, Brahmdeo Uraon as PW-3, Jageshwar Mandal as PW-4, Rambilas Mandal as PW-5, informant Rajeshwar Prasad Mandal as PW-6, I.O. Thethar Sah as PW-7 and Dr. Rajdeo Prasad Singh as PW-8. The prosecution has also filed and proved several documents by way of documentary evidence.

8. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. In buttress of their case, in ocular evidence the accused persons have examined two witnesses, namely, Panchu Uraon as DW-1 and Dr. S. M. Thakur as DW-2. In documentary evidence, they have filed and proved sale deed dated 22.05.1990 executed by Ram Narain Bhagat and others in



favour of Zero Devi, wife of Srawan Uraon marked as Exhibit-A and sale deed dated 22.05.1990 executed by Ram Narain Bhagat and others in favour of Mira Devi, wife of Basudeo Uraon marked as Exhibit-A/1.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts have preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned Amicus Curiae for the appellants that Nityanand Mandal (PW-1), Binod Kumar Mandal (PW-2) and Brahmdeo Uraon (PW-3) happen to be the chance witnesses and not the eye witnesses of the occurrence as as per the account of the informant they had arrived at the place of occurrence after culmination of the occurrence responding halla made by the injured while PW-4 Jageshwar Mandal, PW-5 Rambilas Mandal and the informant PW-6 Rajeshwar Prasad Mandal happen to be the own brothers and they are highly interested witnesses of the case.



Prosecution party is on inimical terms with the appellants. Prosecution case does not stand corroborated by any independent witness of the occurrence. The land in question is hailing to accused persons as proved by Exhibit-A and Exhibit-A/1 and it is the prosecution party who had descended at the filed of the appellants and assaulted them. Regarding the said occurrence, appellants have filed a case against them and in order to save their skin from the said case, they have filed this false and frivolous case against the appellants. Prosecution has not filed any document indicating that the property in question is hailing to him. Thus, genesis of the occurrence does not stand established by the prosecution. As per the prosecution case, the informant and his brother Rambilas Mandal and Jageshwar Mandal have been assaulted at the place of occurrence but I.O. has not found any blood stain at the place of occurrence. The said aspect of the case insinuates that no such occurrence took place at the place of occurrence. Thus, prosecution has utterly and miserably failed to substantiate its case beyond all reasonable doubts by adducing trustworthy, reliable and convincing ocular and documentary evidence. Hence, impugned judgment and order of conviction and sentence is liable to be set aside.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of



conviction and sentence submitted that the injured sustained injury at the hand of the accused persons and they were examined by the doctor and the doctor appearing in this case as PW-8 has corroborated the aforesaid injury. The injured witnesses PW-4, 5 and 6 happen to be natural eye witnesses of the occurrence and they have substantiated the occurrence. Hence, considering the facts and circumstances of the case and materials available on record, learned lower court has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this criminal appeal has no substance in it and is liable to be dismissed.

14. From perusal of the record, it appears that PW-1, namely, Nityanand Mandal, PW-2, namely, Binod Kumar Mandal and PW-3, namely, Brahmdeo Uraon have made an abortive bid to support the prosecution case claiming themselves to be the eye witnesses of the occurrence by stating in their respective examination-in-chief that on halla they arrived at the place of occurrence and witnessed Panchu Uraon assaulting on the head of Rajeshwar Mandal by means of farsa, Basudeo Uraon assaulting Rambilas Mandal by means of arrow inflicting injury in his abdomen, Shravan Uraon assaulting Jageshwar Mandal by means of arrow inflicting injury in his rib. Other accused persons assaulted them by means of lathi. But the informant (PW-6) has stated in Para-



6 of his cross-examination that the accused persons assaulted by means of arrow. First of all, the arrow hit Rambilas Mandal, second arrow hit Jageshwar Mandal. He did not escape by that time rather he remained there and made halla. Then witnesses arrived there and intervened the occurrence. Then accused persons left the scene. The aforesaid statement of the informant eloquently indicates that the aforesaid witnesses had not arrived at the place of occurrence at the time of occurrence rather they had arrived at the place of occurrence responding halla made by the informant after culmination of the occurrence. Thus, the aforesaid witnesses do not happen to be the eye witnesses of the occurrence.

15. So far as PW-4, PW-5 and PW-6 are concerned, it appears that they happen to be informant and own brothers of the informant and the injured of the case. They have supported the prosecution case of assaulting them by means of farsa, arrow and lathi by the accused persons, but from perusal of the injury report, it appears that the doctor has not found any injury on the persons of the aforesaid injured inflicted by means of lathi as alleged by the said witnesses.

16. From perusal of Exhibit-A and Exhibit-A/1, it appears that Ram Naraian Bhagat and others have executed the sale deed dated 22.05.1990 in favour of Smt. Zero Devi, wife of accused



Shravan Uraon marked as Exhibit-A and Ram Naraian Bhagat and others have executed another sale deed dated 22.05.1990 in favour of Mira Devi, W/o appellant Basudeo Uraon marked as Exhibit-A/1. The said sale deeds are regarding property in question bearing Khata No. 31 and Khesra No. 205 & 206. Thus, from perusal of the aforesaid documents, it appears that the property in question belongs to the appellants. Prosecution has not filed any documentary evidence to establish that the aforesaid property in question is hailing to it. As property in question is belonging to the appellants, naturally crops on it must have been cultivated by them. The informant in Para-9 of his cross-examination has admitted the filing of the case by the appellant Panchu against them regarding same date of occurrence stating that in order to save his skin from the case filed by them, accused Panchu has lodged a case of assault against them regarding the same date of occurrence. PW-1 has also stated in Para-13 of his cross-examination that Panchu has filed a case against Rajeshwar, Jageshwar and Rambilas which is pending in the court. PW-2 Binod Kumar Mandal has stated in para-13 of his cross-examination that Panchu has filed a case against Rajeshwar and Rambilas Mandal. The aforesaid aspects of the case candidly indicate that on the date and time of occurrence actually prosecution party had descended the property in question to harvest the crops cultivated by the appellants



and assaulted them regarding which appellant Panchu Uraon has filed a case of assault against the prosecution party and they might have sustained injury in the said occurrence. Thus, the prosecution party appears to be aggressor. Hence, genesis of occurrence does not stand established by the prosecution.

17. PW-1 Nityanand Mandal has stated in Para-6 of his cross-examination that property dispute is pending between both the parties and both the parties are claiming the property in question to be of their own by purchasing the same. PW-1 has stated in Para-9 of his cross-examination that he had witnessed that vest of Ram Bilas was stained with blood. He had seen blood on the attire of Rajeshwar. Blood was fallen on the earth. PW-2 has stated in Para-6 of his cross-examination that the vest of Ram Bilas was stained with blood. PW-3 has stated in Para-6 of his cross-examination that shirt and dhoti of Rajeshwar were stained with blood and vests of Ram Bilas and Jageshwar bore the hole and PW-5 has stated in para-11 of his cross-examination that the blood was fallen on the attire and earth. I.O. seized the blood stained attire. The informant has stated in Para-7 of his cross-examination that vest of Jageshwar and Ram Bilas Mandal was stained with blood and it also bear the hole and the blood was fallen on the earth. I.O. seized the vest in the hospital. But from perusal of the testimony of the I.O. recorded in the case as



PW-7, it appears that I.O. has not stated about falling any blood on the earth at the place of occurrence and seizure of any blood stained soil and blood stained attire of the injured by him. Thus, aforesaid aspect of the case creates serious doubt about the prosecution case.

18. As as per the F.I.R., besides the aforesaid three witnesses, namely, Nityanand Mandal, Binod Kumar Mandal and Brahmdeo Uraon, Ramdeo Mistry, Ganga Uraon and others had also witnessed the occurrence. PW-1 has stated in Para-7 of his cross-examination that around 175 persons had arrived at the place of occurrence, but aforesaid witnesses who happen to be independent material witnesses of the occurrence have not been examined by the prosecution and no explanation has been assigned by the prosecution for their non-examination. Hence, adverse inference is drawn against the prosecution.

19. As per the prosecution case and the statement of the informant and witnesses, both the parties are on inimical terms as land dispute is pending between them. Animosity cuts both the edges. But in view of the aforesaid contradiction between the prosecution case and the medical evidence regarding injury, not corroborating the prosecution case by any independent eye witness of the occurrence, not establishing of genesis of the occurrence and PW-4, PW-5 and PW-6 being the highly interested witnesses of the case,



false implication of the appellants due to aforesaid animosity cannot be ruled out.

20. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy, reliable and cogent ocular and documentary evidence. Hence, the appellants are entitled to get the benefit of doubt. Therefore, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellants are acquitted from all the charges levelled against them. As the appellant Basudeo Uraon is on bail, he is discharged from the liability of his bail bonds. Accordingly, this appeal is allowed.

21. Let a copy of first and last page of the judgment be furnished to the Amicus Curiae free of cost and the prescribed fee of the Amicus Curiae be paid by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
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