

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.333 of 2002

Against the judgment of conviction dated 19th June, 2002 and the order of sentence dated 20.06.2002 passed in Sessions Trial No.95 of 1995 arising out of Sadar P.S. Case No.115 of 1994 by the Sessions Judge, Darbhanga.

-
1. Prem Lal Mahto @ Ganaur Mahto, son of Sri Ram Krishan Mahto
 2. Ram Sajivan Mahto, son of Sri Kallar Mahto
 3. Ram Jattan Mahto, son of Sri Kallar Mahto
 4. Kallar Mahto, son of Sri Ram Krishan Mahto
 5. Binod Kumar Mahto, son of Sri Prem Lal Mahto

All are resident of village-Gehumi, P. S.-Sadar, District-Darbhangha.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Animesh Kr. Mishra, *Amicus Curiae*
For the Respondent/s : Mr. S. A. Ahmad, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 16-09-2017

The five appellants herein, namely Prem Lal Mahto @ Ganaur Mahto, Ram Sajivan Mahto, Ram Jattan Mahto, Kallar Mahto and Binod Kumar Mahto have filed this appeal challenging the impugned judgment dated 19th June, 2002 passed by the Sessions Judge, Darbhanga in Sessions Trial No.95 of 1995 for offences under Sections 147, 323, 452, 436, and 114 read with Section 436 of the Indian Penal Code (hereinafter referred to as 'the Code'). All the five appellants have been convicted under Section 147 of the Code to undergo two years rigorous imprisonment. They are also convicted under Section 323 of the



Code and sentenced to undergo one year rigorous imprisonment. Similarly, all the five have been convicted under Section 452 of the Code to undergo three years rigorous imprisonment. However, Ram Jatan Mahto, and Binod Kumar Mahto and Kallar Mahto have also been convicted under Section 380 of the Code to undergo two years rigorous imprisonment and fine of Rs.500/- each, in default rigorous imprisonment for one month and appellant No.2 Ram Sajivan Mahto has been convicted to undergo seven years rigorous imprisonment and fine of Rs.1000/-, in default rigorous imprisonment for six months for an offence under Section 436 of the Code and appellant No.1 Prem Lal Mahto @ Ganaur Mahto for offence under Section 114 read with the Section 436 of the Code to undergo five years rigorous imprisonment and fine of Rs.500/- in default rigorous imprisonment for three months.

As far as appellant No.1 Prem Lal Mahto @ Ganaur Mahto and appellant No.4 Kallar Mahto are concerned, reports have been received from the Superintendent of Police, Darbhanga on 29.08.2017 enclosing therewith the documents like the death certificates which go to show that appellant No. Prem Lal Mahto @ Ganaur Mahto has died on 25.04.2012 and appellant No.4 Kallar Mahto has died on 30th March, 2014. Accordingly, the appeal so far as it pertains to these appellants, namely appellant



No.1 and appellant No.4 are concerned, stands abated and this Court proceeds to consider the issue with regard to conviction of appellant No.2 Ram Sajivan Mahto, appellant No.3 Ram Jattan Mahto and appellant No.5 Binod Kumar Mahto.

It is the case of the prosecution that on 27.06.1994, the deceased appellant No.1 Prem Lal Mahto @ Ganaur Mahto had filed a case against the informant Shree Narain Mahto and various other persons in the Court of C.J.M. Darbhanga and when Shree Narain Mahto received information about this visited the house of Prem Lal Mahto on 05.07.1994 at about 5 in the evening to enquire from him with regard to lodging of a false case. It is said that appellant Prem Lal Mahto, since dead, started abusing him and, thereafter exchange of hot words continued between them. Prem Lal Mahto, thereafter, is said to have called his men, like Kallar Mahto, Ram Sajivan Mahto etc. and seeing this the informant went away from the place around 5.15 P.M. Thereafter, it is said that all the appellants came to his house with *lathis* and *Bhala* etc. entered inside his house, looted rice, wheat and *Masoor* etc. from the house, assaulted Shree Narain Mahto and thereafter, at the instance of accused Prem Lal Mahto, appellant Ram Sajivan Mahto set fire on the dwelling house of the complainant which was burnt.



Based on the aforesaid FIR and complaint lodged by the informant Shree Narain Mahto, the prosecution in question was launched.

In the trial, seven witnesses were examined on behalf of the prosecution, they were P.W.1 Shatrughna Mahto, P.W.2 Ramanand Mahto, P.W.3 Shree Narain Mahto, the informant, P.W.4 Jhamoli Mahto, P.W.5 Bishun Mahto, P.W.6 Md. Shabbir Ahmad, the doctor, who examined the injuries sustained by the informant Shree Narain Mahto and P.W.7 Ramjee Singh, the Investigating Officer. P.W.5 Bishun Mahto is said to have turned hostile and all the other prosecution witnesses supported the case of the prosecution.

From the statement of the informant P.W.3 Shree Narain Mahto and the other witnesses it is seen that Binod Mahto is said to have assaulted Shree Narain Mahto with *lathi* on his chest, accused Kallar Mahto is said to have assaulted him with *lathi* on his thigh and the remaining accused assaulted him with fists and slaps. Thereafter, it is said that Ram Jatan Mahto took away 1 ½ Mauns of wheat, Binod Mahto took away 1 *Maun* of rice, Kallar Mahto took away 20 Kg of *Masoor* and at the instance of accused Prem Lal Mahto, appellant No.3 Rajivan Mahto set fire on the house.



The defence of the appellants are that they have been falsely implicated. A case was registered against Shree Narain Mahto in the Court of Chief Judicial Magistrate, Darbhanga and P.W.1 Shatrughna Mahto has admitted that accused Prem Lal Mahto had filed a case against him prior to the date of institution by Shree Narain Mahto. There are also evidence available on record to indicate that there were various litigations between the parties prior to occurrence of this incident also.

As far as injury sustained by the complainant P.W.3 Shree Narain Mahto is concerned, from the statement of P.W.6. Dr. Md. Shabbir Ahmad, the doctor, and the medical evidence, there are only tenderness on the chest and three places of the body and the injuries are shown to be simple in nature.

Learned counsel for the appellants, who is appearing on the basis of legal aid provided to the appellants, took us through the statement of various witnesses and argued that the entire case is concocted, all the witnesses belong to the same family. They are related to each other and it is a case of false implication. Learned counsel referred to the statements of independent witnesses and indicates that when the incident took place which went on 4 to 5 minutes, various people had assembled in the premises, but surprisingly, no independent witness, except the interested witness



has been examined. Reference in this regard is made to the statement of P.W.1 Shatrughna Mahto, who admits about assembling in the area, seeing the fire. Similar statement is recorded by P.W.2 Ramanand Mahto and, therefore, learned counsel submits that when independent witnesses were available, non- examination of these independent witnesses vitiates the entire trial.

That apart, placing reliance on the judgments of the Hon'ble Supreme Court in the case of **Ranvir Yadav v. State of Bihar** [(2009) 6 SCC 595]; **Tara Singh v State** [AIR 1951 SC 441]; and **Sukhjit Singh v State of Punjab** [(2014) 10 SCC 270], learned counsel took through the statement of the accused persons under Section 313 Cr. P.C. and argued that the law laid down by the Hon'ble Supreme Court in the aforesaid cases have not been complied with and, therefore, the entire trial stands vitiated on this count alone.

I have heard learned counsel for the parties at length and perused the record. As serious and detailed arguments were advanced with regard to trial being vitiated on account of the requirement of Section 313 Cr. P.C. not being fulfilled, I propose to deal with this issue first. Available in the record of the trial Court from page 15 onwards are the statements of the accused



persons under Section 313 Cr.P.C. The statements are at page 15, 16, 17, 18 and 19. Each page consisting of the statement of each accused person and only three questions are asked to the accused persons. The questions are in the cyclostyle form, the typed copy are carbon of each other and similar and identical questions have been asked to each of the accused person and in the handwriting, identical answers are written to each question. The first question is that evidence has come on record with regard to incident that took place on 05.07.2000 in village Gehumi under Police Station Sadar, District Darbhanga with respect to the complainant Shree Narain Mahto by forming an unlawful assembly and assaulting him and thereafter taking away rice, wheat and Masoor from his house. The second question is that on the same day, the evidence has come that the house of Shree Narain Mahto was burnt by putting it on fire and the third question is do you have to say anything in defence? The accused persons denied the same.

From the aforesaid, the manner in which the statement under Section 313 Cr. P.C. is recorded it is clear that the requirement of law as laid down by the Supreme Court in the case of **Sukhjit Singh** (supra); **Ranvir Yadav** (supra) and **Tara Singh** (Supra). have not been complied with. The requirement of law laid down by the Supreme Court indicates that the requirement of Section



313 Cr. P.C. and its compliance is not an empty formality. If the compliance has not been made properly by putting to the accused the circumstances existed against him and he has not given a proper opportunity to explain all the circumstances, the entire trial stands vitiated. The principle laid down in the aforesaid cases read as:-

In the case of **Ranvir Yadav** (supra), it has been laid down by the Hon'ble Supreme Court that the purpose of Section 313 Cr.P.C. if scrutinized in its entirety would establish that it contemplates bringing to the notice of the accused incriminating materials available against him and thereafter putting questions to him based on these materials, it is held by the Hon'ble Supreme Court that the requirement of Section 313 Cr.P.C. is not an empty formality. It is held in the said case that the incriminating material, if not brought to the notice to the accused and is not given an opportunity to explain the same, tantamounts to a serious lapse on the part of the trial Court making the entire conviction based on such a trial vitiated in law.

In the case of **Tara Singh** (supra), the provision as is existed in the year 1951, i.e. Section 342 Cr.P.C. was taken note of and it has been held that it is not proper compliance of this statutory provision by merely reading out questions and putting



them to the accused and directing him to answer. It is held that the whole object of the Section is to afford to the accused a fair and proper opportunity to explain the circumstances which appear against him and it is held that if the requirement of this Section is not properly complied with, the error is so gross that it causes grave prejudice to the accused.

Both the aforesaid cases and two more cases of the Hon'ble Supreme Court on the issue in question, namely **Hate Singh Bhagat Singh v. State of Madhya Bharat** [AIR 1953 SC 468] and **Ajay Singh v. State of Maharashtra** [(2007) 12 SCC 341] have been considered by the Hon'ble Supreme Court in the case of **Sukhjit Singh** (supra) and the Hon'ble Supreme Court after evaluating the legal principle has held that the whole object of Section of 313 Cr.P.C. is to afford to the accused a fair and proper opportunity of explaining the circumstances which appear against him and, therefore, the questions put to him must be fair and must be couched in a form that he is able to appreciate and understand them and explain them. The purpose of this section is to draw an attention of the accused to the specific point in the charge and in the evidence which has come against him and he should be granted an opportunity to explain the same. The



Hon'ble Supreme Court holds that if this requirement of law is not met, the entire trial stands vitiated and conviction unsustainable.

If the case in hand is analyzed in the backdrop of the aforesaid requirement of law and the compliance of Section 313 Cr. P.C. made as available at page 15 to 19 are taken note, it would be clear that the requirement of law, as laid down by the Hon'ble Supreme Court, has not been complied with and, therefore, it is sufficient enough to hold the entire trial as vitiated.

Apart from the aforesaid, if the medical evidence available on record is taken note of, it is seen that only injury sustained is tenderness and simple injury and there are evidence available on record to show that both the parties were having inimical relationship and appellant no.1 Prem Lal Mahto, since dead, had filed a criminal case against the informant and complainant in the Court of the Chief Judicial Magistrate just a few days before the incident in question took place which was pending on the day when the incident took place. That apart P.W. 1 Shatrughna Mahto and P.W.2 Ramanand Mahto have admitted in their cross-examination that in Sessions Trial No.126 of 1996 he had deposed against the appellants and had also given evidence in four other cases and based on the same, a plea was made that he is a habitual and professional witness and is not narrating the correct fact.



That apart, with regard to theft of the materials in question and seizure of the material, no seizure list is available on record and even in the case diary, the Investigating Officer admits that no seizure memo is available. P.W.7 Ramjee Singh is the Investigating Officer and he has deposed that he had not produced any seizure memo, nor is there any material adduced with regard to the burnt item seized from the house. The learned Trial Court after analyzing the statement of this witness, does record a finding that the investigation, particularly with regard to the property stolen and burning of the house, has not been properly done. Learned Trial Court also takes note of the previous enmity between the parties, but taking note of the evidence of the doctor says that the statement of the witnesses cannot be brushed aside.

Once the evidence that has come on record that both parties have inimical relation, the investigation was not properly done, independent witnesses were not examined, only interested witnesses were examined and when the entire trial stands vitiated in view of the breach of Section 311 Cr.P.C. as indicated hereinabove, it is a case where the conviction cannot be sustained in the facts and circumstances that have come on record and, therefore, this Court has no hesitation in allowing the appeal so far as it now relates to appellant No.2 Ram Sajivan Mahto, appellant



No.3 Ram Jattan Mahto and appellant No.5 Binod Kumar Mahto, setting aside the conviction, acquitting them of all the charges levelled against them and discharging them from the liabilities of their bail bonds.

Accordingly, this appeal is allowed so far as it now relates to appellant No.2 Ram Sajivan Mahto, appellant No.3 Ram Jattan Mahto and appellant No.5 Binod Kumar Mahto, setting aside the conviction, acquitting them of all the charges levelled against them and discharging them from the liabilities of their bail bonds.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.09.2017
Transmission Date	23.09.2017

