

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.27 of 2015

Arising Out of PS. Case No. -70 Year- 2007 Thana -DEEPNAGAR District- NALANDA (BIHARSHARIFF)

- =====
1. Ranjeet Sao.
 2. Pappu Sao.
 3. Manish Sao.
 4. Pradeep Sao.

All Sons of Lakshaman Sao

5. Usha Devi W/o Lakshaman Sao.

All Resident of Village - Deep Nagar, P.S. - Deep Nagar, District - Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 38 of 2015

Arising Out of PS. Case No. -70 Year- 2007 Thana -DEEPNAGAR District- NALANDA
(BIHARSHARIFF)

- =====
1. Shiv Kumar Sao S/o Late Ramdhari Sao
 2. Sanjay Sao S/o Ramji Sao

Both resident of village Deep Nagar, P.S Deep Nagar, District - Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

(In CR. APP (SJ) No.27 of 2015)

For the Appellant/s : Mr. Bharat Lal, Adv.

Mr. Anil Kumar, Adv.

For the State : Mr. Binod Bihari Singh, APP

Mr. Z. Hoda, APP

(In CR. APP (SJ) No.38 of 2015)

For the Appellant/s : Mr. Bharat Lal, Adv.

Mr. Anil Kumar, Adv.

For the State : Mr. Binod Bihari Singh, APP

Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 28-08-2017

Criminal Appeal (SJ) No.27 of 2015 wherein Ranjeet

Sao, Pappu Sao, Manish Sao, Pradeep Sao, Usha Devi are the

appellants while Criminal Appeal (SJ) No. 38 of 2015 wherein Shiv

Kumar Sao and Sanjay Sao are the appellants arise out against the



judgment of conviction and sentence dated 22.12.2014 passed by Additional Sessions Judge, Vth, Nalanda at Bihar Sharif in Session Trial No.739 of 2007 /116 of 2014 whereupon have been heard together and are being disposed of by a common judgment.

2. Appellants, Shiv Kumar Sao and Sanjay Sao have been found guilty for an offence punishable under Section 307 IPC and each one has been directed to undergo R.I. for ten years as well as to pay fine appertaining to rupees one thousand in default thereof to undergo S.I. for fifteen days while remaining appellants have been found guilty for an offence punishable under Section 323 IPC and each one has been sentenced to undergo S.I. for one year as well as to pay fine appertaining to rupees one thousand and in default thereof to undergo S.I. for two weeks, under Section 337 of the IPC, and each one has been directed to undergo S.I. for six months as well as to pay fine appertaining to rupees five hundred in default thereof to undergo S.I. for one week with a further direction to run the sentences concurrently.

3. PW-5, Brijnandan Prasad Kishore filed written report on 12.06.2007 at about 06:15 PM disclosing therein that on the same day at about 05:30 PM while his wife Kanti Sinha and daughter Indu Kumari were sitting at her eastern *Darwaja*, Sheo Kumar Sao, Ranjeet Sao, Pappu Sao, Manish Sao came and began to abuse. When his wife protested, they all began to assault his wife with lathi and



danda. His daughter Indu Kumari intervened whereupon Pradeep Sao, Sanjay Sao, Usha Devi, Reeta Kumari brick batted whereupon she (Indu Kumari) sustained injury. Furthermore, Sheo Kumar Sao and Sanjay Sao gave lathi blow over head of his wife Kanti Sinha with an intention to kill. They have also snatched away her chain. Land dispute has been shown motive for the occurrence.

4. On the basis of the aforesaid written report, Deep Nagar P.S. Case No.70/2007 was registered followed with an investigation as well as submission of the charge sheet facilitating the trial, subject matter of instant appeal.

5. 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 also been pleaded that the cold storage which has been illegally occupied by the prosecution party belongs to them and for that, on the same day they have (prosecution party) raided their house, assaulted the family members and for that, Deep Nagar P.S. Case No.71/2007 has been registered. Furthermore, defence had also exhibited FIR of counter case as well as other documents as Ext.A to C/1.

6. In order to substantiate its case, prosecution had examined altogether nine PWs, namely, PW.1-Indu Kumari (injured), PW.2-Anjali Kumari @ Kumari Anjali Sinha, PW.3-Kanti Sinha (injured), PW.4-Anjani Sinha @ Mithu Kumari, PW.5-Brijnandan



Prasad Kishore (informant), PW.6-Dr. Surendra Rai, PW.7-Brajbhushan Kishore, PW.8-Baleshwar Paswan, PW.9-Birbadan Singh (Investigating Officer) as well as had also exhibited Ext.1-Signature of PW.5 over written report, Ext.2 Series-Injury report relating to Kanti Sinha as well as Indu Kumari issued by Dr. Surendra Rai (PW.6) as well as by the Investigating Officer (PW.9), Ext.1/1-Endorsement over written report, Ext.3-Formal FIR. X-ray plate has been marked 'Y' to Y/5 for identification. As stated above, defence had exhibited Ext.A-FIR of Deep Nagar P.S. Case No.71/2007, Ext.B-Charge sheet relating to Deep Nagar P.S. Case No.71/2007, Ext.C to C/1 relevant order sheet relating to G.R. Case no.1171 of 2007.

7. After perusal of the evidence having adduced on behalf of prosecution, it is apparent that dispute arose with regard to a cold storage, and the prosecution party happens to be directly involved claiming themselves to be Managing Director as well as Member of Board of Directors. In likewise manner, it is also apparent that accused persons/appellants are claiming the aforesaid cold storage on account of being owner of the land over which cold storage stood. Furthermore, it is apparent that land was taken on leave in the year 1984 for fifteen years, which already expired, even then prosecution party did not vacate the same and so, presence of prosecution party has been shown to be that of trespasser. In the aforesaid background, the only responsible witness who could have enlightened the issue



appears to be PW.5, the informant, himself, and for better appreciation, his evidence is taken on priority basis.

8. PW.5 had deposed that he happens to be informant. Occurrence is of 12-06-2007 at about 05:30 PM. At that very time he was at his house being at mohalla Deep Nagar. His wife Kanti Sinha, daughter Indu Kumari were sitting at eastern darwaja. At that very time Sheo Kumar Sao, Pradeep Sao, Pappu Sao, Manish Sao, Ranjeet Sao, came at his darwaja and began to abuse Kanti Singh as well as Dr. Indu Kumari which was resisted by his wife, as a result of which, they all began to assault his wife with lathi and danda. On account of assault, his wife became injured. His daughter Dr. Indu tried to save her mother whereupon Sanjay Sao, Pradeep Sao, Usha Devi, Reeta Kumari and others pelted stone as a result of which, she became injured. Then thereafter, Sheo Kumar Sao, Sanjay Sao gave lathi blow over head of Kanti Devi with an intention to kill as a result of which, she sustained injury thereupon. Sanjay Sao snatched away chain from her neck. The motive for occurrence has been shown as land dispute. After the occurrence, he had gone to P.S. where he filed written report which Ramashray Prasad had scribed on his dictation. He, after finding it correct, put his signature (exhibited). He had further stated that his daughter as well as wife were treated at Sadar Hospital, Biharsharif. Identified the accused.

9. During cross-examination at para-8, he had stated that



he along with family members resides at Deep Nagar, within the campus of Sarvodaya Cold Storage. In para-9, he had denied the suggestion that he has got illegal possession over Sarvodaya Cold Storage. In para-10 he had stated that he had purchased the same. He had further stated that he had purchased the land from stake holders of the aforesaid cold storage. He had purchased in the year 1996. Then corrected the same by stating that he had not purchase the cold storage rather he had purchased its share. He had further stated that the land was taken on lease in the year 1984 which was only for fifteen years.

10. He had further stated in para-11 that at the time of occurrence he was in field. After hearing utterance of his wife, he came to place of occurrence. At that very time, co-accused was abusing. When he reached at the place of occurrence, only four accused persons were present while from his side seven persons were present. It took 1-2 minutes. There was no free fighting. Again said that marpit took place for 4-5 minutes. He tried to intervene but was threatened by the accused, whereupon forbidden himself. In para-12 he had stated that there was stake of brick particles at some distance from his darwaja. Brick particles were not thrown inside his house. None of the accused persons gone inside his house. In para-13, he had stated that only Sheo Kumar Sao had lathi in his hand. Sanjay had snatched away ornaments. In para-16 he had admitted that there happens to be counter case at the end of accused Sheo Kumar Sao



wherein he happens to be on bail. In para-22 he had denied the suggestion that no such kind of occurrence had ever took place rather they have raided the house of the accused persons with an intention to snatch the document relating to the cold storage and for that, they have assaulted the family members of the accused persons resulting institution of Deep Nagar P.S. Case No.71/2007. He had further denied the suggestion that with an intention to grab the cold storage which happens to be the property of the accused this false case has been instituted with false and frivolous allegation.

11. From his evidence it has become crystal clear that the prosecution party are not at all owner of the Sarvodaya Cold Storage, the alleged P.O., rather they have purchased the unit, of other sharer though not substantiated by documentary evidence. Furthermore, it is also apparent that the land was taken on lease in the year 1984 which was only for fifteen years. The date of occurrence happens to be of the year 2007 that means to say much after the period of fifteen years and in the aforesaid background, there happens to be no legal document to acknowledge the rightful claim of the prosecution party over Sarvodaya Cold Storage. So far presence of accused of the P.O. is concerned, it is evident that at initial stage only four accused came, however he kept mum with regard to arrival of rest of the accused. Furthermore, he had shown only shoe Kumar to be armed with lathi.

12. In the aforesaid background, the evidence of remaining



PWs are to be seen. PW.1, one of the injured had deposed that on the alleged date and time of occurrence, she along with her mother was sitting at her darwaja. Her father two sisters Anjali Sinha as well as Kumari Anjani and a brother Aashish Kumar were inside the house. Sheo Kumar Sao, Ranjeet Sao, Pappu Sao, Manish Sao, Pradeep Sao, Sanjay Sao, Usha Devi, Reeta Kumari came. Sheo Kumar Sao, Ranjeeta, Paapu and Manish were armed with lathi. Sanjay was also armed with lathi while rest were carrying brick as well as stone. They began to abuse her mother whereupon she protested. Sheo Kumar Sao, Ranjeet Sao, Pappu Sao, Manish Sao began to assault her mother. Sheo Kumar Sao and Sanjay Sao gave lathi blow over head of her mother. She tried to save her mother whereupon Pradeep Sao, Sanjay Sao, Usha Devi, Reeta Kumari assaulted her with brick as well as stone she also became injured. She along with her mother were taken to Bihar Sharif Hospital where they were treated. Sanjay Sao snatched chain. During cross-examination at para-6 she had stated that she has got own land at mohalla Deep Nagar. Rent receipt is being issued in name of company. No land happens to be in name of her parents. In para-7 she denied that she along with her family members have illegally occupied Sarvodaya Cold Storage. In para-8, she had stated that her father happens to be Managing Director of aforesaid cold storage and they are residing therein in that capacity. She had further stated that she will file document to substantiate status of her father. She had further stated that she happens to be one



of the member of the cold storage regarding which, she has got document but, could not file. In para-9 she had admitted the counter case. In para-10 she had stated that when she saw the accused persons, at that very time they were 2-3 hands away from them. Pradeep had assaulted her. Sanjay Sao had assaulted over head of his mother. Her mother sustained only one injury over her head. then had said that Sheo Kumar Sao also assaulted over head of her mother. In para-12 she had stated that her brother as well as other sisters witnessing the occurrence at a distance of ten steps and so, they have not sustained injury. Then thereafter there happens to be contradiction.

13. PW.2 is Anjali Kumari @ Kumari Anjali Sinha, sister of PW.1. She had deposed that on the alleged date and time of occurrence, she was inside her house along with her father, mother Kanti Devi, sister Indu Kumari, younger sister Anjani Sinha and younger brother Aashish Kumar. At that very time, Sheo Kumar Sao, Sanjay Sao, Pappu Sao, Pradeep Sao, Ranjeet Sao, Manish Sao, Usha Devi and Reeta Kumari came at her house and began to abuse. Her mother protested whereupon all the accused began to assault. Her mother was assaulted by Sanjay Sao, Sheo Kumar Sao, Pappu Sao, Ranjeet Sao and Manish Sao by means of lath. Her mother sustained injury over her head. Sanjay Sao and Sheo Kumar Sao inflicted lathi blow as a result of which she sustained injury over her head. Her sister was assaulted by Pradeep Sao, Sanjay Sao, Usha Devi and



Reeta Kumari by means of brick as well as stone. They have assaulted with an intention to kill her mother as well as sister. Sanjay Sao snatched away chain. During cross-examination of para-3, she had stated that accused persons are resident of same locality. She happens to be over the land since 1987 which they procured on lease. Jageshwar Prasad, Director took on lease from Munna Sao but what period and on what amount assent, she is not remembering. She is unable to say whether rent was ever paid or not. She had further stated that her father was Managing Director of aforesaid cold storage. He is the person who could say about termination of the lease. In para-4 she had stated that all the disputes relate with aforesaid Sarvodaya Cold Storage. In para-5 she had stated that accused persons have also instituted counter case. In para-9 she had stated that accused persons are claiming the land over which cold storage is standing and not the cold storage. In para-11 she had stated that at present the cold storage is no more in function. She denied the suggestion with regard to their presence as unlawful as well as the counter version happens to be the truthful version of the occurrence and this case has been instituted as a counter blast to save their skin.

14. PW.3 is another injured, Kanti Sinha. She deposed that on the alleged date and time of occurrence she was at eastern darwaja along with her daughter Indu as well as her husband. At that very time Sheo Kumar, Ranjeet, Pappu, Manish Sao, Pradeep Sao, Sanjay Sao, Usha Devi and Reeta Devi came near them. Usha devi and Reeta



Devi have brick and stone in their hands while rest were armed with lathi. They began to abuse whereupon, she protested as a result of which, they all began to assault. Sheo Kumar Sao and Sanjay Sao gave lathi blow over her head. Pappu Sao and Ranjeet gave lathi, stone over her leg as well as right thumb. As a result of which she became injured. Indu was also assaulted as a result of which she also became injured. She was assaulted by Usha, Reeta, Sanjay and Pradeep. They were taken to Sadar Hospital, Biharsharif where they were treated. Sanjay Sao snatched away her chain. During cross-examination she had stated in para-2 that she resides at Sarvodaya Cold Storage Deep Nagar which has been purchased by her husband. In para-3 she had admitted that accused persons are claiming the land. Then had stated that there happens to be three gates at Sarvodaya Cold Storage. One gate is closed while eastern as well as western gates are open. After coming inside through eastern gate, there happens to be godown and then thereafter field. At para-4 she had stated that occurrence took place at eastern gate. First of all Ranjeet and Sheo Kumar Sao came and then rest accused came. First of all Sheo Kumar Sao and Ranjeet abused. Her husband arrived two minutes after arrival of the accused. In para-5, she had denied that after arrival of her husband there was free fight. She said that only accused persons assaulted. Then had said that her husband did not come outside out of fear. Then had shown ignorance with regard to presence of counter case as well as having been bailed out. In para-7



she had admitted that accused Sheo Kumar Sao was also at hospital, but he was not treated there. She had further admitted that at the time of her presence at the police station, she had also seen the accused persons at the police station. In para-11 she had stated that cold storage is closed since 1988-89. She had further stated that she will file document relating to their ownership, over the Sarvodaya Cold Storage. In para-12 she had claimed herself to be Managing Director of the cold storage.

15. PW.4 is another daughter of PW.3 as well as PW.5. She had deposed that on the alleged date and time, she along with her father, sister Anjali Sinha, brother Aashish Kumar were sitting inside house. Her mother Kanti Sinha and another sister Indu Kumari were at eastern side. She heard abusive sound whereupon they all came out from the house. She had seen Sheo Kumar Sao, Manish Sao armed with lathi, Reeta Kumari, Usha Devi, Pradeep Sao, Sanjay Sao armed with brick as well as stone and were abusing her mother, as well as sister. On protest at the end of her mother they all began to assault her mother with danda. Her sister Indu Kumari was assaulted by Usha Devi, Sanjay Sao, Pradeep Sao, Reeta Kumar by means to brick as well as stone. When they protested they were threatened. During cross-examination at para-3 she had stated that she was not sitting at darwaja since before the occurrence. Her father was inside the house. Sheo Kumar Sao was shouting. When she reached at the place of occurrence, all the accused were present. In para-6 she had stated that



they all are residing within the campus of Sarvodaya Cold Storage which had purchased by her father, but she is unable to say from whom and in which year. She had further stated that she happens to be one of the member of the cold storage but she is unable to disclose any kind of activity relating to aforesaid cold storage. In para-7 she had shown the boundary of the place of occurrence as North-Accused, South-Building of Cold Storage, East-barren land of Arjun Prasad, West- rest part of storage. In para-11, she had denied presence of counter case and in likewise manner, at para-12 she had controverted the claim of the accused persons.

16. PW.7 is son of PW.3 as well as PW.5 who had stated that on the alleged date and time of occurrence, he was at his house along with his sister Anjani Singh, Anjali, Indu, mother and father. His mother as well as sister Indu were sitting at Darwaja. Sheo Kumar Sao, Ranjeet Sao, Pappu Sao and Manish came and began to abuse his mother whereupon, his mother protested as a result of which all the four began to assault with danda and lathi. She became severely injured. His sister Dr. Indu came in rescue who was assaulted by Pradeep Sao, Sanjay Sao, Reeta Sao and Usha Devi. During course thereof, Pradeep Sao, Sanjay Sao assaulted Indu Devi with lathi while Reeta Sao and Usha Devi assaulted with brick as well as stone. Then thereafter Sheo Kumar Sao assaulted his mother with lathi with an intention to kill. They have also snatched away chain. During cross-examination he had stated that his whole family



reside at cold storage. He is unaware with regard to the fact whether aforesaid cold storage has been purchased or not. He is only knowing that this cold storage belongs to his father. He is residing in the said cold storage since long. The cold storage is defunct, then had shown ignorance with regard to counter case. He had further stated neither he nor his father was assaulted. At the time of occurrence they were present there. He had further shown ignorance with regard to dispute amongst the parties relating to the aforesaid cold storage.

17. PW.8 is Baleshwar Paswan who had stated that he knew with regard to occurrence wherein Kanti Sinha and Indu Kumari were assaulted. He had not seen the occurrence whereupon he was declared hostile. During cross-examination he stated that this cold storage belongs to father of the accused.

18. PW.9 is the Investigating Officer. He deposed that after registration of the case, investigation was entrusted to him. He had recorded further statement of informant, statement of respective injured family members. Issued injury report relating to respective injured and send the injured to hospital. He had inspected the place of occurrence which happens to be eastern darwaja of the cold storage. He had further identified the same as North-Accused Sheo Kumar Sah, South-Rest part of Cold Storage, East-barren land of Arjun Prasad, West-rest part of storage. He also recorded statement of other witnesses, received the supervision note. Received the injury report



and submitted charge sheet. Furthermore, prosecution had himself drew attention towards the statement of PW.8, Baleshwar Paswan whereupon he had stated that Baleshwar had stated before him that there was free fight amongst the parties Brijnandan Prasad Kishore as well as Sheo Kumar. During cross-examination at para-7 he had stated that he had accepted the statement of Baleshwar Paswan whereupon he had gone to see the place of occurrence of the counter case but, failed to disclose with regard to subsequent steps taken by him. He had further stated that he is not remembering whether he had seen the accused persons in an injured condition. He had further stated that he is not remembering whether he was also Investigating Officer of counter case. In para-8 he had stated that although, informant had claimed that he had purchased the cold storage but had not shown any document. In para-10 he had admitted that while accused Sheo Kumar and Pappu were at police station, at that very time statement of Sheo Kumar was recorded whereupon Deep Nagar P.S. Case No.71/2007 was registered.

19. PW.6 is the doctor. He had examined the Kanti Devi on 12.06.2007 and found following injury:

- i) A lacerated wound size 3"x 1/6" x 1/4" in anterior frontal scalp region.
- ii) A lacerated wound over left side of chin size 1" x 1/2" x 1/4"x1/6".
- iii) An irregular lacerated wound in right thumb region just above



the nail.

- iv) A bruise over left mid thigh with defused tenderness patient was advised X-ray of skull and face A.P. and lateral did not reveal any abnormality. X-ray of right hand.

He had also examined Indu Kumari and found the following injury:

- i) Defused swelling with tenderness in left wrists and elbow region.
- ii) Defused swelling with tenderness around left knee.
- iii) Tenderness at multiple places.
- iv) A lacerated injury with irregular cut injury at left distal forearm size 1"x1/4"x1/6".

The most surprising feature coming out from his evidence is that at the time of examination of the respective injured, X-ray was done, X-ray plate was available before him and injury report was issued after properly scrutinizing the same. Subsequently thereof, another X-ray plate was placed which discloses fracture and on account thereof, supplement injury report was issued that too in vagueness without identifying the individual injury to be grievous in nature.

20. After having cumulative analysis of the evidence available on the record as referred above, it is apparent that prosecution had not substantiated by cogent reliable evidence with regard to ownership of the Sarvodaya Cold Storage. Contrary to it,



from the evidence of PW.5 as stated herein above, it is apparent that he had not purchased the land nor the cold storage, rather he purchased shares that too nor shown during investigation nor placed during trial. That being so, no legal right of prosecution could be acknowledged over the land as well as cold storage. Once the story is found duly veiled, then in that circumstances, the whole episode has to be seen with suspicious eye more particularly, when informant himself admitted that had gone, the entity of the cold storage was established over a land which was taken on lease in the year 1984 and the lease was only for fifteen years. That means to say it expired in the year 1999. There happens to be no disclosure with regard to renewal. Hence, presence of prosecution party over the land in question could not be legally entertainable. In the aforesaid background as well as in the background of the finding of the Investigating Officer, PW.9 who failed to locate the brickbat or the stone particles at the place of occurrence, nor found any sign to substantiate the cold storage as habitable coupled with the fact that presence of accused along with prosecution party was duly acknowledged at the P.S. at the same time having version and counter version, injuries having on both sides, whereupon the conduct of the prosecution could not be found above as, it suggest suppression of real genesis as well as manner of occurrence. The conduct of doctor PW.6 happens to be an additional ground which cast doubt over genuineness of conduct of the prosecution.



21. That being so, the judgment of conviction and sentence recorded by the learned lower court happens to be non-sustainable in the eye of law whereupon, is set aside. Both the appeals are allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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