

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.3 of 2007

(Against the Judgment of conviction dated 30.10.2006 and Order of sentence dated 31.10.2006 passed by
the Sessions Judge, Bhagalpur, in Sessions Trial No. 580 of 1999)

1. Shiv Prasad Bhagat, Son of Late Khuttar Bhagat,
2. Prem Lal Bhagat, Son of Shiv Prasad Bhagat,
3. Pawan Kumar Bhagat, Son of Shiv Prasad Bhagat,
4. Bijay Kumar Bhagat @ Bijay Bhagat, Son of Shiv Prasad Bhagat,
All Residents of village Sanokhar, P.S. Sanokhar, District-Bhagalpur.
..... Appellants

Versus

The State of Bihar
..... Respondent

Appearance :

For the Appellant/s : Mr. S.N.P. Sinha, Sr. Advocate
Mr. Jitendra Narain Sinha, Advocate
Mr. Rashmi Bharti, Advocate
For the Respondent/s : Mr. Bipin Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 28-01-2017

The instant Criminal Appeal is directed against the Judgment of conviction dated 30.10.2006 and order of sentence dated 31.10.2006 passed by the Sessions Judge, Bhagalpur in Sessions Trial No. 580 of 1999, whereby the Appellants Prem Lal Bhagat, Pawan Kumar Bhagat and Bijay Kumar Bhagat have been convicted under Section 307 I.P.C. and Appellant Shiv Prasad Bhagat has been convicted under Sections 307 and 114 of I.P.C. and sentenced to undergo Rigorous Imprisonment for three years.

2. The prosecution case, in brief, as narrated by informant P.W.10 Hamid Ansari in his fardbeyan recorded by S.I. Abdul Quyum Khan, Sanokhar Police Station is that on 26.06.1998



informant Hamid Ansari (P.W.10) was returning to his house from Sanokhar Hat after purchasing the vegetables and when he reached near the house of Appellant No.1 Shiv Prasad Bhagat then he called him and made complaint that why he cut the ridge of his field on which informant Hamid Ansari (P.W.10) replied that he has purchased the land. Appellant No.1 Shiv Prasad Bhagat started to abuse. On protest made by informant Hamid Ansari (P.W.10), the appellants Prem Lal Bhagat, Pawan Bhagat and Bijay Bhagat armed with Garansi and iron rod came and surrounded him. Appellant No. 1 Shiv Prasad Bhagat ordered to kill. The Appellant Prem Lal Bhagat caused injury through Garanshi at the head of the informant Hamid Ansari and he fell down then other appellants also assaulted him. On raising hulla by the informant Hamid Ansari, villagers Md. Jamaluddin (P.W.2), Md. Saheed Ansari (P.W.3), Md. Salim Ansari (P.W.1) and Mabood Ansari (P.W.7) reached there and rescued the informant Hamid Ansari. Due to assault, informant sustained injury at his head, leg and right side of eye.

3. The prosecution examined altogether 12 witnesses in support of its case. Out of which P.W.6 Praduman Sah, P.W.8 Ram Narayan Bhagat and P.W.9 Nand Kishore Pandey have not supported the prosecution case and they have been declared hostile.

On the other hand, defence also examined two witnesses, namely, D.W.1 Gouri Shankar Bhagat and D.W.2



Shankar Prasad Sah, who stated that on the date of the occurrence the informant (P.W.10) Hamid Ansari fell down on the well near the door of the appellants and sustained injuries.

4. P.W.1 Salim Ansari has stated in his evidence that on 26.06.1998, in the evening, when he was returning to his house after purchasing vegetables from market and Hamid Ansari was ahead to him. When Hamid Ansari reached at the door of the appellant Shiv Prasad Bhagat then Shiv Prasad Bhagat called to Hamid Ansari and asked why he cut ridge of his field. Thereupon, Hamid Ansari (P.W.10) told that he cut his ridge of his own field, on which appellant Shiv Prasad Bhagat started to abuse and asked his sons Vijay Bhagat, Premlal Bhagat and Pawan Bhagat to kill. At that time, Premlal Bhagat caused injury through Garansa to Hamid Ansari (P.W.10) then he fell down and thereupon Shiv Prasad Bhagat, Pawan Bhagat and Vijay Bhagat caused injury to him by means of iron rod.

In cross-examination, this witness stated that at the time of occurrence no one was going along with the Hamid Ansari (P.W.10) and he has not heard the sound of hulla and no occurrence took place. As such, the evidence of this witness as eye witness of the occurrence is doubtful.

5. P.W.2 Md. Jamaluddin has also stated that on 26.06.1998, when he reached at the door of the Shiv Prasad Bhagat (Appellant No.1) then saw that Shiv Prasad Bhagat asked



to Hamid Ansari (P.W.10) why he cut the ridge on which Hamid Ansari (P.W.10) told that he cut the ridge of his own field, which has been purchased by him. Thereafter, Shiv Prasad Bhagat started to abuse and also asked to his three sons to kill him. Then appellant Premlal Bhagat caused injury through Garansa at right side of forehead, then Hamid Ansari (P.W.10) fell down. Thereafter Shiv Prasad Bhagat, Pawan Bhagat and Vijay Bhagat also caused injury to him by means of iron rod near the eye and hand in which Hamid Ansari (P.W.10) sustained fracture injury at his hand. This witness has stated in his cross-examination that the land of Hamid Ansari (P.W.10) and the appellants are adjacent to each other. This witness has denied the suggestion of the defence that he had not stated before the Police that he has not seen the occurrence. He has also denied the suggestion of defence that he has not stated before the Police that Md. Saheed Ansari (P.W.3), Salim Ansari (P.W.1), Mishree Yadav (P.W.4), and Bipin Bhagat (not examined) had not seen the occurrence.

6. P.W.3 Saheed Ansari has stated in his evidence that on 26.06.1998, in the evening, when he was coming from Sanokhar market to his house, then saw that the Shiv Prasad Bhagat (Appellant No.1) called Hamid Ansari (P.W.10) at his door and made complaint that why he cut the ridge of the field. Thereupon, Hamid Ansari told that he cut the ridge of his own land, then Shiv Prasad Bhagat started to abuse and asked his sons to kill



him. Thereafter, Premlal Bhagat, Shiv Prasad Bhagat, Pawan Bhagat and Vijay Bhagat started to cause assault to Hamid Ansari (P.W.10) on which he fell down and sustained injury. This witness has stated in his cross-examination that when he reached at the place of occurrence there was gathering and Hamid Ansari was lying on the ground. As such, he is not the eye witness of the occurrence, rather he reached at the place of occurrence after the occurrence.

7. P.W.4 Mishree Yadav has stated in his evidence that in the evening of 26.06.1998, when he was coming from Post office then he saw Shiv Prasad Bhagat (Appellant No.1) called to Hamid Ansari (P.W.10) at his door and made complaint about cutting of the ridge. Thereupon, Hamid Ansari told that he cut the ridge of his own field then Shiv Prasad Bhagat started to abuse and ordered to kill. Then Premlal Bhagat, Pawan Bhagat, Vijay Bhagat and Shiv Prasad Bhagat surrounded to Hamid Ansari. At that time, Premlal Bhagat caused injury through Garansa at the head of Hamid Ansari, others also caused injury through iron rod. This witness has stated in his cross-examination that he had stated before the Police that when he was coming to Post office then saw that Shiv Prasad Bhagat was abusing to Hamid Ansari (P.W.10), on protest of Hamid Ansari, Shiv Prasad Bhagat asked to kill, thereupon, Shiv Prasad Bhagat, Premlal Bhagat, Pawan Bhagat and Vijay Bhagat surrounded and started to cause assault to Hamid Ansari (P.W.10).



This witness has further stated in his cross-examination that when he reached near Hamid Ansari (P.W.10) he saw him with pool of blood. As such, P.W.4 Mishree Yadav is not the eye witness of the assault of Hamid Ansari (P.W.10).

8. P.W.5 Mani Bhagat has stated in his evidence that on 26.06.1998 in the evening, he was purchasing the vegetables then he heard hulla at the door of the Shiv Prasad Bhagat then he reached there and saw that Shiv Prasad Bhagat, Premlal Bhagat, Pawan Bhagat and Vijay Bhagat were assaulting to Hamid Ansari (P.W.10) through Garansa and iron rod in which Hamid Ansari sustained injuries. This witness further stated in his cross-examination that he had given the statement before the Police after two days of the occurrence and stated before him that Shiv Prasad Bhagat, Pawan Bhagat and Vijay Bhagat were armed with iron rod, whereas appellant Premlal Bhagat was armed with Garansa and on raising alarm by him Ram Narayan Bhagat, Mishri Yadav (P.W.4) Mahboob (P.W.7 and Bipin Bhagat had come.

9. P.W.7 Mahbood Ansari has claimed as eye witness of the occurrence in his examination-in-chief. He has denied the suggestion of the defence that he had stated before the Police that he had not seen the occurrence.

10. P.W.10 Hamid Ansari is the informant of this case. He has stated that on 26.06.1998, in the evening, when he was returning to his house after purchasing the vegetable and



reached near the house of the Shiv Prasad Bhagat (Appellant No.1) then he called him and asked why ridge has been cut. Thereupon, he replied that he amalgamated land in his own land by cutting the ridge. Thereupon, Shiv Prasad Bhagat started abusing to him and called his sons and order to kill. Then Premlal Bhagat caused injury through Garansa at right side of head then he fell down. Thereupon, Pawan Bhagat caused swelling injury at his eye, Vijay Bhagat caused fracture injury at his wrist and Shiv Prasad Bhagat also caused injury to his right knee. On hulla, the witnesses came and saved him. After sustaining injury, he become unconscious and he was rushed to Police Station where Police recorded his statement on which he put his thumb impression. Thereafter, he was rushed to Kahalgaon Hospital, but he was not admitted there and he was rushed to Mayaganj Hospital where he remained under treatment in between 26.06.1998 to 14.07.1998. This witness stated in para 3 of his cross-examination that in Kahalgaon Hospital while Doctor had seen his injury but his treatment was not done there and his treatment was started in Mayaganj Hospital, Bhagalpur. In cross-examination in para 9 this witness denied the suggestion of the defence that he fell down near the well and sustained injury.

From the evidence of P.W.10, it is apparent that while he was rushed to Kahalgaon Hospital from Police Station, but he was not treated there and he was sent to Mayaganj Hospital, where



his treatment was started and he was admitted there in between 26.06.1998 to 14.07.1998.

11. P.W.11 Dr. B.D. Goel has stated that on 26.06.1998, while he was posted as Resident Surgeon at JLMCH, Bhagalpur, he examined Hamid Ansari (P.W.10), son of Madho Ansari of village and P.S. Sanokhar, District-Bhagalpur at about 11.35 P.M and found the following injuries:

(i) Right eye – Chemosis of eye lids and sub-conjunctival hemorrhage. Pupil Senui dilated, lens sub luxated, Tension-normal, Fundus as seen through the aphakic portion to be normal.

He proved the Medical Report as Ext.1. According to him, the nature of injury was grievous and patient was referred to him by Medical Officer, PHC, Kahalgaon and other details may be obtained from there. He stated in his cross-examination that he did not find any fracture on the person of the injured and he did not get any X-ray of injured and such injury cannot be the cause of death normally.

12. P.W.12 Dr. Rakesh Kumar has stated in his examination-in-chief that on 26.06.1998, he was posted as Resident Surgical Officer at JLNMCCH, Bhagalpur and on that day at about 10.25 P.M. he examined Abdul Hamid, son of Madho Ansari of village Sanokhar, P.S. Sanokhar, District-Bhagalpur and found the following injury:

(i) Stitched wound 2" long over right partial region.



(ii) Stitched wound 1 ½" long over right posterior perital region.

(iii) Stitched wound 1" long over right side of occiput.

(iv) Stitched wound ½" long over right side of forehead.

(v) Swelling with blackening of right eye.

(vi) Defused tender swelling of right forearm.

(vii) Abrasion 1 ½" X ¼" over right knee

(viii) Abrasion 1 ½" X ½" over right elbow.

He further stated that the patient was referred to him from PHC Kahalgaon vide Registration No. 166E, Dated 26.06.1998. Opinion regarding nature of injuries and weapon used can be obtained from PHC, Kahalgaon. On 15.07.1998 X-ray report and x-ray plats were placed before him, but no apparent boney lision (fracture of bone) was found on his skull and right forearm. X-ray report and plate of right hand with wrist shows fracture of third, fourth and fifth mutacarpals. He further stated that he has given evidence on the basis of Photostat copy of injury report. In cross-examination, he stated that neither the X-ray plate nor original injury report is available before him. The injury report prepared by him is incomplete.

From the evidence of P.W.12, it is clear that while he found eight injuries on the person of Hamid Ansari (P.W.10) out of which four injuries were stitched wound and opinion regarding injury can be obtained from PHC Kahalgaon and original injury report was not before him.

13. From the evidence of P.W.10 Hamid Ansari, it is



apparent that after recording his fardbeyan, he was rushed to Kahalgaon, but treatment was not given to him there and he was rushed to Mayaganj, Bhagalpur, where his treatment was started and he was admitted there in between 26.06.1998 to 14.07.1998. P.W.12 Dr. Rakesh Kumar stated that P.W.10 Hamid Ansari was referred to him from PHC Kahalgaon vide Reg. No. 166E, dated 26.06.1998, but opinion regarding nature of injuries and weapon used can be obtained from PHC, Kahalgaon. As such the evidence of P.W.11 that the injury report and nature of injury can be obtained from PHC, Kahalgaon is contrary to the evidence of P.W.10 informant as he has clearly stated that he was not treated there and his treatment was started at Mayaganj, Bhagalpur, which clearly creates serious doubt about the manner of the occurrence as alleged by the prosecution. The injuries as sustained by P.W.12 it might be possibility of that injury caused due to falling of the informant near the well of the appellant, which is the defence of the prosecution also as stated by D.W.1 and D.W.2. The defence has drawn the attention of P.W.2, P.W.4, P.W.5 and P.W.7 regarding their statement recorded by the I.O in which they had not claimed as eye-witness, but the I.O has not been examined by the prosecution. As such, evidence of P.W.2, P.W.4, P.W.5 and P.W.7 could not be relied upon as eye-witnesses.

14. Having considered the facts and circumstances of the case and the discussion made above, I am of the view that



the prosecution has not been able to prove its case beyond all reasonable doubts against the appellants and, as such, they are entitled to get the benefit of doubt.

15. In the result, the impugned Judgment of conviction and Order of sentence is set aside and the appeal is allowed. The appellants are acquitted of the charges. The appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Rajendra Kumar Mishra, J)

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CAV DATE	
Uploading Date	
Transmission Date	

