

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.128 of 2015**

Arising Out of P. S. Case No. -123 Year- 2013 Thana -NAWADA District- NAWADA

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1. Bachchu Choudhary, S/o Late Bandho Choudhary
 2. Rajballabh Choudhary
 3. Mahesh Choudhary
 4. Rajesh Choudhary, All three S/o Bachchu Choudhary, All Resident of Village /
 Mohalla Par Nawada, Dobhara Par, P.S. Bundel Khun, District Nawada.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Deo Raj-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 10-10-2017**

Appellants, Bachchu Chaudhary, Rajballam Chaudhary, Mahesh Chaudhary and Rajesh Chaudhary have been found guilty for an offence punishable under Section 341/ 34 of the I.P.C. and each one has been sentenced to undergo S.I. for one month, under Section 448/ 34 of the I.P.C. and sentenced to undergo S.I. for six months, under Section 323/ 34 of the I.P.C. and sentenced to undergo S.I. for one month, under Section 354A/ 34 of the I.P.C. and sentenced to undergo S.I. for two years with a further direction to run the sentences concurrently by the Adhoc Additional Sessions Judge-II, Nawadah in Sessions Trial No.200 of 2013/ 161 of 2013.



2. Alka Rani (PW-3) filed written report on 16.03.2013 disclosing therein that on 15.03.2013 at about 2.30 p.m. her neighbour Bachchu Chaudhary, Mahesh Chaudhary, Rajesh Chaudhary and Rajballam Chaudhary made house trespass and began to assault her as well as her elder sister, brother. It has also been disclosed that Rajesh Chaudhary used to see with lecherous eye and in the aforesaid background, he caught hold her hand and pulled over the ground and then thereafter, snatched away her scarf (Dupatta). At that very moment, her father arrived, who was assaulted by Rajesh Chaudhary and Rajballam Chaudhary with khanti, rod and bricks as a result of which, his father sustained injuries over his head. Blood oozed out from the wound. Bachchu Chaudhary assaulted with lathi over his hand as well as leg. Her mother, who happens to be teacher at Kanhai Lal Inter School came from her school and then thereafter, they took away her father to hospital. It has further been disclosed that accused persons assaulted her father with an intention to kill. She had further disclosed that she had made written complaint at Mahila P.S. as well as at Nawada (Bundelkhand) P. S. even then, no case was registered.

3. On the basis of the aforesaid written report, Nawada (Bundelkhand) P. S. Case No.123 of 2013 was registered followed with investigation as well as submission of chargesheet, facilitating the trial which ultimately concluded in a manner, the subject matter of



instant appeal.

4. 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 further been asserted that there happens to be barren land in between houses of both the parties, who are next-door neighbour and for that, they regularly fought as a result of which, this case as well as counter-case has been instituted. Though no documentary evidence has been adduced, but appellant, Bachchu Chaudhary himself examined as DW-1.

5. It has been submitted on behalf of appellants that the judgment impugned suffers from illegality in the background of the fact that in spite of admission at the end of the prosecution witnesses that a case had also been drawn up at the end of the appellants relating to same occurrence, on account thereof, would have considered that the version so propounded by the prosecution happens to be intermingle with falsehood. Furthermore, it has also been submitted that presence of appellants at the western boundary of the house of the prosecution party intervened by a Gali has been admitted with regard thereto, both the parties were on strained relationship which happens to be the initial prosecution version, though subsequently been wrapped during course of evidence with a malafide intention in order to give a



different kind of version with regard to the occurrence and for that, referred evidence of I.O. (PW-6). It has also been submitted that though some sort of allegation has been attributed at the end of the informant, Alka Sharma against appellant Rajesh Chaudhary, but to substantiate the same, neither any event has been disclosed nor any kind of activity taken out at the end of the prosecution party in order to corroborate the same. It has also been submitted that no independent witness has been examined though the place is densely populated, without any explanation, is another circumstance creating doubt over genesis as well as manner of occurrence, more so, in the background of pendency of counter-case. Furthermore, It has also been submitted that considering both the parties as neighbour, the learned lower Court would not have inflicted sentence that too, in harsh manner rather should have let off the appellants giving the privilege of Probation of Offenders Act.

6. On the other hand, the learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that from the evidence of doctor (PW-7), it is apparent that PW-2 Arvind Kumar had sustained injury and for that, all the prosecution witnesses consistently held the appellants responsible by way of identifying them as an author. That being so, the judgment of conviction and sentence happens to be in accordance



with law, did not require interference.

7. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1 Amita Kumari, PW-2 Arvind Kumar, PW-3 Alka Rani, informant of the case, PW-4 Rashmi Kumari, PW-5 Prabhat Ranjan @ Gore, PW-6 Anisul Zamakhan, I.O. of the case and PW-7 Dr. Brij Bihari Singh as well as had also exhibited viz. Exhibit-1 written report, Exhibit-1/1 endorsement over the written report, Exhibit-1/2 formal F.I.R., Exhibit-2 injury report prepared by the police and Exhibit-3 injury report issued by the doctor. As stated above, no documentary evidence has been adduced on behalf of appellants. However, appellant Bachchu Chaudhary examined himself as DW-1.

8. Admittedly, prosecution had not examined any independent witness. Whoever been examined as material witnesses, save and except PW-5, who has been tendered at the end of the prosecution, all are own family members. However, from the deposition of the witnesses, it is clear coupled with the fact that the objective finding of the PW-6, I.O. that occurrence took place inside the house and further, there happens to be disclosure at the end of the informant (PW-3) that none of the mohallawala came inside her courtyard, on account thereof, non-presence of independent witness



will not cast any kind of infirmity in the prosecution case on that very score alone. Now, coming to the evidence of PWs, first of all, evidence of PW-3, the informant is to be taken note of.

9. PW-3 during course of her deposition had stated that on 15.03.2013 at about 2.30 p.m., she was at her house along with her elder sister. As her sister was not feeling well on account thereof, she was sleeping in a room while she was cleaning her courtyard. Finding her alone, Rajballam Chaudhary, Rajesh Chaudhary, Mahesh Chaudhary and Bachchu Chaudhary came and began to abuse. Rajesh Chaudhary caught hold her hand with bad intention, gave jerk as a result of which, she fell down over earth. He also snatched her scarf (Dupatta) and tried to outrage her modesty. At that juncture, her father came seeing whom, all of them began to assault her father with Khanti as well as rod. They also assaulted over his head as a result of which, he sustained wound. Bachchu and Mahesh assaulted with brick particles as well as lathi over his hand, leg. There was contusion over his leg thumb. Her father became unconscious, whereupon all accused persons fled away. Her sister and younger brother were also assaulted. She had further deposed that accused persons are notorious persons of the locality and had amorous eye over her. They used to pass lecherous comment, which was protested by her. She had gone to lodge case at Bundelkhand P. S., but as non-presence of police due to



examination, therefore, she had gone to Nawada P.S. where she was directed to carry her father to hospital first and then, come to register a case. She had exhibited her written report. During cross-examination at Para-2, she had stated that altogether four persons were assaulted, out of whom, only her father was treated at Sadar Hospital. Her father was admitted to hospital at about 8.00 p.m. in the night and on the following day at about 2.00 p.m., he was discharged. In Para-3, she had stated that Bachchu Chaudhary happens to be her neighbour and so, none of the mohalla people is inclined to depose. She had further stated that at the time of occurrence, none of mohalla people came. In Para-4, she had stated that occurrence took place inside the courtyard. Blood had fallen over ground. Police had seen the same. Her father had sustained ten injuries and then, disclosed the location. In Para-5, she had stated that her father is not a drunkard, but occasionally consumes. Then had denied the suggestion that her father had sustained injury on account of fall. In Para-6, she had stated that all the accused persons came conjointly. She had further stated that Bachchu Chaudhary happens to be quarrelsome person, whereupon he had some sort of dispute with others, but no case is pending for the same. She had further admitted that on behalf of Bachchu Chaudhary also a case has been instituted. Then had denied the suggestion that in order to grab the land, this case has been filed to coerce the accused to



give up their objection.

10. PW-4 is another sister Rashmi Kumari. She had stated that on 15.03.2013 at about 2.30 p.m. while was asleep in a room of her house on account of feeling unwell and her younger sister Alka Rani was cleaning her courtyard, she heard cry of her sister 'Bachao Bachao', whereupon she came out from the room and then, saw Rajesh Chaudhary was indulged in teasing her sister. He snatched away her scarf and then, thrown her on the ground. She rushed in rescue, whereupon was pushed away. At that very juncture, her father came and gone in rescue to her sister, whereupon Mahesh, Rajballam, Bachchu. Rajballam was armed with khanti, Bachchu armed with brick and Mahesh armed with brick began to assault her father with khanti as a result of which, her father sustained injury over his head. Blood oozen out from the wound. Her father was also assaulted at his different parts of body. When her father became unconscious then thereafter, accused persons fled away. They have assaulted her father with an intention to kill. Then had disclosed that accused persons had evil eye over her. They used to pass comment. Her younger sister had gone to inform the police. Her mother came in the evening. Then thereafter, they had taken away her father to hospital. It has further been disclosed that after departure of her Mummy and Papa, Rajballam and Mahesh again came and shouted at them, if case is



going to be instituted then they will be given a lesson. During cross-examination at Para-2, she had admitted that her house as well as house of accused lies by the side of each other intervened by a small chalk of barren land and for that, she denied that they were on litigating terms. Then there happens to be contradiction. In Para-3, she had stated that her father remained unconscious for 2-3 hours. He regained his sense at the house itself. When he regained sense, then thereafter, shifted to hospital. He was admitted at 8.00 p.m. and was discharged on following day at about 3.30 p.m. In Para-4, she had further stated that she had not filed any case against the accused persons over comment having made by them. In Para-5, she had stated that occurrence took place for half an hour inside her courtyard. She had raised alarm. People came, but she is unable to disclose their name as they have declined to get themselves involved in this case. Then there happens to be suggestion.

11. PW-2 is the father/ injured. He had stated that on 15.03.2013 at about 2.30 p.m., he came at his house along with her son, whereupon he had seen Bachchu, Mahesh, Rajballam and Rajesh Chaudhary present inside his house and were assaulting his daughter, Alka as well as Rashmi. He had also seen Rajesh Chaudhary snatching scarf from Alka and then, threw her on the ground. He had further stated that Rajesh acted in such manner with amorous



intention. He rushed in rescue, whereupon Rajesh assaulted him with Khanti as a result of which, he sustained injury over his head, blood oozed out. Rajballam assaulted with rod over his back, hand, leg, Mahesh and Bachchu assaulted with lathi. When he fell unconscious then thereafter, accused persons escaped there from. He had further disclosed that accused persons had assaulted him with intention to kill. He was treated at Sadar Hospital. He had further stated that still he is suffering from giddiness on account of assault. He had further stated that motive for instant occurrence happens to be keeping lecherous eye over his daughters. During cross-examination at Para-3, he had stated that Bachchu Chaudhary is the father and remaining accused are his sons. He had further stated that accused persons have committed such kind of activity even in presence of their father. In Para-4, he had stated that he regained sense at hospital. How he came at hospital, he was unable to say. On the following morning, he was discharged from the hospital. At Paras-5, 6, 7, there happens to be contradiction.

12. PW-1 is the mother. Admittedly, she was not an eye witness to occurrence, but having been informed by her daughters on the basis thereof, narrated the occurrence. During cross-examination at Para-2, she had admitted that she is not an eye witness to occurrence. At Para-4, she had further admitted that her house as well



as house of appellants is intervened by a Gali. She had further admitted that both the parties are residing over their respective places for the last 50 years. She had denied the suggestion that on account of Gali, both the parties were on strained relationship. She had further stated that the doctor as well as police official gone in camp of accused.

13. PW-7 is the doctor, who had examined PW-2 on 15.03.2013 while he was admitted at Sadar Hospital and found the following injuries:-

I) Mild lacerated wound on back of head ½" in length and superficial.

II) Mild abrasion on chin of mandible.

III) Mild abrasion left by toe.

IV) Mild abrasion on back of right leg just above ankle.

V) Complain of chest pain.

During course of cross-examination, he had admitted that these kinds of injuries could be self-inflicted.

14. PW-6 is the I.O. He had stated that after registration of the case, he was entrusted with the investigation, whereupon took further statement of the informant, visited the place of occurrence



which happens to be courtyard of the informant near handpipe. He had shown the boundary of the P.O. North-Jani Kumar, South-road, West-Gali and then, house of accused, East-. Then had stated that both the parties were on strained relationship on account of strip of land having in between their houses. He took statement of the other witnesses. Issued injury report relating to PW-2, Arvind Kumar, received injury report and then, submitted chargesheet. During cross-examination at Para-2, he had stated that neither he found blood at the place of occurrence nor any mark of violence at the P.O. In Para-3, there happens to be contradiction relating to statement of Rashmi Kumari. In Para-4, relating to statement of Arvind Kumar and in Para-5 relating to evidence of PW-1 that too, relating more particularly snatching of scarf of informant, Alka Rani and in likewise manner, differences amongst the parties concerning strip of land.

15. From the evidence available on the record, it is evident that none of the PWs have been cross-examined over outraging modesty of Alka Rani. Though from the evidence of PW-6, some sort of development on that very score has visualized from the evidence of Rashmi (PW-4), Arvind Kumar (PW-2) and Amita Kumari (PW-1). However, the evidence of Alka Rani happens to be right from inception of the case and remained intact. In likewise manner, happens to be the evidence with regard to assault of PW-2,



Arvind Kumar corroborated by the doctor (PW-7). That being so, the finding recorded by the learned lower Court is found based upon the materials available on the record, whereupon this appeal sans merit and is accordingly, dismissed. Appellants are on bail, hence their bail bonds are cancelled with a direction to surrender before the learned lower Court in order to serve out the remaining part of sentence, failing which the learned lower Court will be at liberty to proceed against them in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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