

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.623 of 2015

Arising Out of PS.Case No. -20 Year- 1999 Thana -SAHEBGANJ District- MUZAFFARPUR

- =====
1. Wakil Miyan Son of Late Rohan Miyan
 2. Rasul Miyan Son of Wakil Miyan, Both residents of Village-Bangra Nijamat, P.S. Sahebganj, District Muzaffarpur.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 669 of 2015

Arising Out of PS.Case No. -20 Year- 1999 Thana -SAHEBGANJ District- MUZAFFARPUR

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Md. Mobarak Miyan @ Mubarak Miyan son of Wakil Miyan Resident of Village-Bangra Nizamat, P.S. Sahebganj, District- Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.623 of 2015)

For the Appellant/s : Mr. Suraj Narayan Yadav, Advocate

: Mr. Upendra Kumar, Advocate Chaubey

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.669 of 2015)

For the Appellant/s : Mr. Suraj Narayan Yadav, Advocate

: Mr. Upendra Kumar, Advocate Chaubey

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 28-11-2017

Since both the appeals arise out of common judgment and order of conviction, they are being disposed of by this common judgment.

2. Md. Jalil (P.W.-7) had lodged the First



Information Report on 24.02.1999 at the clinic of one Dr. Bhartendu Kumar, MIT, Main Road under Sahebganj police station, alleging that on the same day, while the appellants were trying to construct a house on the land belonging to him, he had protested. On such protest, appellants Wakil Miyan and Rasul Miyan assaulted him by means of lathi. Appellant Mobarak Miyan inflicted a dagger blow which hit the informant (P.W.-7) on the left side of his chest. The attack by the dagger was repeated by the appellant Mobarak Miyan and on the second occasion, the informant claims to have been injured on his left soldier. The informant, thereafter fell down on the ground and raised hue and cry which led to the assemblance of local villagers. Amongst the viewers of the occurrence, Md. Islam and Kubar Miyan were named in the F.I.R, both of whom have not been examined during the trial. Another witness viz. Md. Sahid, was examined as P.W. 5, but he has been declared a hostile witness.

3. On behalf of the prosecution, nine witnesses were examined and two witnesses were offered on behalf of the defence. The Trial Court, on perusal of the deposition of the witnesses and materials brought on record, convicted the appellants Wakil Miyan and Rasul Miyan (Cr. Appeal (S.J) No. 623 of 2015) for the offences under Sections 323, 342 and 447 of the Indian Penal Code and sentenced them to undergo R.I. for five months each for the



offences under Sections 323 & 342 of the Indian Penal Code and R.I. for two months for the offence under Section 447 of the Indian Penal Code. The sentences have been, however, directed to run concurrently.

4. The appellant Mobarak Miyan has been convicted for the offence under Sections 342, 447, 324 and 307 of the Indian Penal Code and has been sentenced to undergo R.I. for five months for the offence under Section 342 of the Indian Penal Code, R.I. for two months for the offence under Section 447 of the Indian Penal Code, R.I. for two years for the offence under Sections 324 of the Indian Penal Code and R.I. for four years for the offence under Section 307 of the Indian Penal Code. The sentences with respect to the appellant Mobarak Miyan also have been directed to run concurrently.

5. Md. Amin Miyan who has been examined as P.W. 1 and who is son of the informant/Md. Jalil (P.W.-7) has narrated before the Trial Court that about 6 ½ years ago, the appellants were making an attempt to erect a house and, on protest by his father Md. Jalil, they assaulted Md. Jalil. He has specifically stated that the appellants Wakil Miyan and Rasul Miyan assaulted Md. Jalil by means of lathi, whereas appellant Md. Mobarak Miyan injured the informant by dagger on his left chest and left soldier.



6. Md. Sarif (P.W.-6), who is an independent witness, has also supported the prosecution version and has stated that on hearing the noise from the field, he reached the house of Md. Jalil (P.W.7) and witnessed the occurrence.

7. The informant/injured (P.W.7) has supported the prosecution version and has stated that appellant Wakil Miyan and Rasul Miyan assaulted him by means of lathi, whereas appellant Mobarak Miyan inflicted *Chura* blow leading to injuries on his left soldier and chest.

8. Md. Salim (P.W.8), who is another son of the informant (P.W.7), has also narrated about the occurrence in the same manner.

9. What is required to be seen is as to whether the injuries suffered by the informant (P.W.7) is in consonance with his ocular testimony and of other witnesses. The Medical Officer (P.W.9), who examined the informant (P.W.7), has proved the injury report which is Exhibit-3.

10. The injuries found on the person of the informant (P.W.7) were two in numbers:- (i) Incised wound' 1¼"x ½" left upper abdomen extending from left costal margin down two inch from midline, communicating with a cut 2"x ¼"x ½" which is over left lobe of liver with bleeding (ii) an incised wound of similar



dimension.

11. Injury No. 1 was found to be grievous which could only have been caused by a sharp object.

12. Learned counsel for the appellants has submitted that the prosecution case is absolutely false and because of land dispute, the appellants, who are the agnates of the informant and other witnesses, have been falsely implicated. It has also been submitted that the appellants had purchased a land falling in Khata No. 518, Plot Nos. 2890 and 2891, measuring a total area of 10 decimals and informant had falsely staked his claim over the said land. It has further been submitted that the place of the occurrence also could not be established. Apart from this, it has been argued that the Investigating Officer of this case and the named witnesses in the F.I.R have not been examined and no explanation also has been offered for their non-examination. There has been a delay in lodging of the F.I.R as well.

13. Taking into account the categorical deposition of P.Ws 1, 6, 7 and 8 and P.W.9 having found the injuries suffered by P.W.7 to be in consonance with the ocular testimony, the Trial Court has convicted the appellants Wakil Miyan and Rasul Miyan under Sections 323, 342 and 447 of the Indian Penal Code and appellant Mobarak Miyan under Sections 342, 447, 324 and 307 of



the Indian Penal Code.

14. By order of sentence dated 31.08.2015, appellants Wakil Miyan and Rasul Miyan have been sentenced to undergo R.I. for five months each for the offence under Sections 323, 342 of the Indian Penal Code and R.I. for two months for the offences under Section 447 of the Indian Penal Code. The appellant Mobarak Miyan has been sentenced to undergo R.I. for five months for the offence under Section 342 of the Indian Penal Code and R.I. for two months for the offence under Section 447 of the Indian Penal Code and R.I. for two years for the offence under Sections 324 of the Indian Penal Code and R.I. for four years for the offence under Section 307 of the Indian Penal Code.

15. No fault can be found with the judgment and order of conviction.

16. However, taking into account the relationship between the parties and the land dispute, this Court is of the view that the sentences imposed upon the appellants is on the harsher side and needs to be modified.

17. It has been submitted on behalf of the appellant Mobarak Miyan that he has remained in custody for about two and half years. The other two appellants viz. Wakil Miyan and Rasul Miyan have remained in jail for some time during the period of



investigation.

18. The conviction of the appellants is, therefore, sustained.

19. However, the sentences imposed upon the appellants are modified to the extent of the period they have already undergone.

20. The appeal is dismissed and sentences stand modified as the aforesaid.

21. The appellants Wakil Miyan and Rasul Miyan are on bail. They are discharged from the liability of their bail bonds. The appellant Md. Mobarak Miyan who is in custody is directed to be released forthwith, if not required in any other case.

22. The appeal is partially allowed.

23. A copy of the judgment be communicated to the Superintendent of the concerned Jail for record and compliance.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29/11/2017
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