

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.104 of 2015

Arising Out of PS.Case No. -24 Year- 2010 Thana -AGIAUN BAZAR District- BHOJPUR

1. Kameshwar Singh Son of Late Tilakdhari Singh

2. Babuwa Singh Son of Kameshwar Singh

Both are residents of village - Kothuon, P.S. Agiaon Bazar, District – Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance:

For the Appellant/s : Mr. Surendra Kumar Mishra, Adv.

For the State : Mr. Binay Krishna, Spl.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 18-12-2017

Appellants, Kameshwar Singh, Babuwa Singh vide judgment of conviction and sentence dated 27.01.2015 passed by First Additional Sessions Judge-cum-Special Judge (SC/ST), Bhojpur at Ara in SC/ST Case No.85/2011 arising out of Agiaon Bazar P.S. Case No.24/2010 have been found guilty for an offence punishable under Section 341 IPC and sentenced to undergo S.I. for one month, under Section 323/34 IPC, sentenced to undergo S.I. for six months, under Section 3(i)(x) of the SC/ST (POA) Act and sentenced to undergo S.I. for six months with a further direction to run the sentences concurrently.

2. PW.3, Shri Ram Mushar filed written report on 07.05.2010 alleging inter alia that on 06.05.2010 at about 03:30 PM while he along with his wife Raj Kali Devi was engaged in grazing pigs, at that very moment, Ex-mukhiya Kameshwar Singh and his son Babuwa Singh came, abused “*Sala Mushar Tum Mere Khilaf Janta Darbar Me Dakhal Deta Hai Mai Tum Logo Ko Barbad Kar Dunga*” and then gave two fist blows. His wife rushed in



rescue whereupon, Babuwa Singh caught hold hair of his wife, pushed her on the ground and then, Kameshwar Singh gave leg blow. So many persons of surrounding came seeing whom, both accused fled away. It has also been disclosed that perceiving them as Mushar, Kameshwar Singh used to torture him.

3. After registration of Agiaon Bazar P.S. Case No.24/2010 investigation commenced and concluded by way of submission of charge sheet facilitating the trial which ultimately concluded in a manner, 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 also been suggested that there happens to be dispute in between accused Kameshwar Singh Ex-Mukhiya with the present Mukhiya on account of malfunctioning whereupon, there happens to be misappropriation of government fund and for that, complaint was made before the District Magistrate and as, the District Magistrate failed to take cognizance thereupon, filed CWJC No.17888/2010, and so, the aforesaid Satendra whose wife Punam happens to be the Mukhiya set up the informant and got this case filed. Also adduced ocular as well as documentary evidence in support thereof.

5. In order to substantiate its case, prosecution had examined altogether six PWs who are PW.1-Surendra Singh, PW.2-tetar Mushar, PW.3-Sri Ram Mushar, PW.4-Kishun Mushar, PW.5-Yadubansh Singh, PW.6-Suresh Kumar as well as had also exhibited Ext.1-Formal FIR, Ext.2-Written Report. In likewise manner, defence had also examined four witnesses, namely, DW-



1, Madan Singh, DW.2-Sheoshankar Chaudhary, DW.3-Barmeshwar Singh and DW.4-Sheonath Chaudhary as well as had also exhibited order dated 10.12.2010 passed in CWJC No.17888/2010 as Ext.A.

6. From the written report, it is evident that prosecution had not disclosed the motive though, during course of evidence have thrust the same by disclosing that three or four months prior to the alleged occurrence while they were going to participate in a rally at Patna, Kameshwar Singh and Babuwa Singh forced them to deboard from the bus for which, they had complained before the District Magistrate in Janta Darbar whereupon, the accused persons have committed this offence. However, prosecution had not tried to bring the aforesaid document on record. It is true that where there happens to be eyewitness, motive loses its sanctity. But that has got bearing so far this particular case is concerned as PW.2, who happens to be brother of the informant at para-4 had stated that they were deboarded at about 8-9 AM and this case has been launched with regard thereto. Furthermore, PW.2 at para-9 had stated that aforesaid rally was convened by Male Party while PW.3 at para-11 is inconsistent thereto stating that it was convened by Samta Party. PW.4 at para-4 had stated that rally was convened by Male while PW.5 had not stated on that score.

7. Now coming to the occurrence, from the initial version that means to written report there happens to be simple description without identifying the proper P.O. that informant along with his wife was grazing his pigs in the village itself.



Furthermore, he had disclosed that he was assaulted and when his wife came Babuwa Singh caught hold her hair, threw her on the ground and then, Kameshwar Singh had assaulted. PW.2 at para-1 had simply stated that wife of Shriram was assaulted by Babuwa & Kameshwar Singh. He had not disclosed the exact place where such event had taken place. During cross-examination at para-6 he has stated that Babuwa Singh and Kameshwar assaulted wife of Shriram with fist and slap. He had gone there after hearing sound of uproar. Then had said that, that place happens to be by the side of his house. PW.3, informant had stated that he along with his wife was grazing his pigs over channel lying east to his house where Kameshwar Singh and Babuwa Singh came abused and then assaulted him. On intervention of his wife Babuwa Singh caught hold hair, threw her on ground and then assaulted with fist and slap. On hue and cry villagers came, whereupon the accused persons escaped therefrom. During cross-examination at para-6 and 7 had admitted status of the accused persons and in likewise manner, in para-13 had admitted that he was also involved in MANAREGA activity. At para-8 had stated that at the place of occurrence where he was grazing his pigs 28,29 houses of Mushar happens to be. He had further stated that they were away from their pigs. Further clarified that they were over the road. Their houses lies near the aforesaid road. In para-10 he had stated that accused persons came abusing '*Sala Mushar*' and then firstly assaulted him and then, to his wife. When villagers began to assemble, accused persons fled away. He had further stated that when villagers assembled, then he had gone to institute a case



whereupon police came. He had narrated the incident to the police. Police investigated in the village. Then had asserted that police came on the same day of the occurrence. He had further asserted under para-12 that he was not knowing Bhutan Ram (scribe of the written report). Then again stated that when Darogaji investigated then case was instituted and for that Investigating Officer had taken his LTI. PW.4 had said that on the alleged date and time of occurrence Babuwa Singh and Kameshwar Singh came and assaulted Shri Ram Mushar. Then had stated that Babuwa Singh caught hold wife of Shri Ram Mushar and assaulted. Then had assaulted Shri Ram Mushar and his wife were thrown on ground and then were assaulted on the pretext that he posed himself to be leader of Mushar and abused on that very pretext. In para-4, he had stated that occurrence took place in Badhar. He had gone in Badhar after hearing cry. He had further stated that when he reached at the place of occurrence so many persons were assembled including Shri Ram Mushar and his wife and from them, he came to know that they were assaulted. Then they were taken to hospital where they were treated. In para-8, he had stated that Shri Ram Mushar happens to be their leader.

8. PW.5 had stated that while he was at his Darwaja he had seen Kameshwar Singh and Babuwa Singh coming towards Shri Ram Mushar, at channel and was abusing Kameshwar Singh assaulted Shri Ram Mushar. Babuwa Singh caught hold wife of Shri Ram Mushar, threw her on the ground and then assaulted with leg and fist. Kameshwar Singh had also assaulted wife of Shri Ram Mushar. During cross-examination at para-6 had stated that



Shri Ram Mushar was grazing his pigs east to channel. Then had said Shri Ram Mushar and his wife were grazing their pigs over channel outside village. In para-7, he had stated that while accused persons were abusing the informant and his wife, they were at a distance of forty feet from him. In para-9 he had stated that firstly accused persons abused for 2-3 minutes and then thereafter marpit took place. Shri Ram Mushar and his wife have not tried to escape therefrom. In para-10 he had stated that Shri Ram Mushar and his wife had sustained injury east to channel. After assaulting, accused persons fled away.

9. PW.6 is the Investigating Officer. On which date he had inspected the place of occurrence, had not disclosed. But he had claimed that he inspected place of occurrence during course of investigation and further detailed that the P.O. lies at a distance of 4 KM west to the Police Station at village Kothua, which happens to be channel east to the house of informant. Then had stated that after recording statement of the witnesses, receipt of the supervision note, submitted charge sheet. During cross-examination, he had further stated at para-5 that he had not seen any incriminating material during course of inspection of the P.O. In para-6, he had stated that P.O. lies in the village which he has mentioned in para-3 of the case diary. In para-7 & 8 happens to be contradiction relating to witness Kishun PW.4 as well as Yadubans PW.5.

10. After having analytical scrutiny of the evidence available on the record, it is apparent that victim i.e. wife of Shri Ram Mushar has not examined, nor any kind of explanation has



been furnished on behalf of prosecution. Though, PW.4 had said that informant and his wife was taken to doctor but is not at all supported by any of the witness. Apart from this, there also happens to be inconsistency with regard to place of occurrence as, from the evidence of PW.3, informant it is evident that P.O. happens to be road where he was sitting while according to witnesses, as well as I.O. PW.6, the P.O. happens to be the channel and distance in between is not on record. Apart from this, from the evidence of PW.2 it is crystal clear that he had confined assault over wife of Shri Ram Mushar only while the other witnesses have asserted that Shri Ram Mushar as well as Shri Ram Mushar both were assaulted. Further, it is also evident that the motive for occurrence regarding deboarding from a bus while going to participate in Mahadalit rally is also found not properly substantiated as some of the witnesses claimed it was at the instance of 'Male' while by informant to be organized on behalf of 'Samta Party'. Moreover, the document purported to be filed has not been brought up record. Contrary to it, there happens to be Exhibit-A which suggest that appellant Kameshwar Singh had taken pain by way of filing PIL on account of non taking of action over complain having made by him before the District Magistrate and in the background admission at the stage of the witness that informant happens to be their leader and further admission at the end of PW.3 that he was associated with the MANAREGA, regarding which Ext.A happens to be speaks otherwise. Moreover, manner whereunder filing of case has been narrated by the PW.3, informant also suggest a different story contrary to the evidence of PW.6, Investigating Officer.



11. In the aforesaid facts and circumstances of the case, the inconsistency prevailing amongst evidence of the witnesses did not justly the judgment impugned. Consequent thereupon, same is set aside. Appeal is allowed. Appellants are on bail hence are discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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