

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2 of 2015

Arising Out of PS.Case No. -243 Year- 2008 Thana -BEGUSARAI MUFFASIL District- BEGUSARAI

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1. RAM LALA SINGH SON OF RAM KISHORE SINGH.
2. DEEPAK KUMAR, SON OF RAM BALAK SINGH.
VILLAGE-KHAMHAR, P.S.-BEGUSARAI MUFFASIL, DISTRICT-
BEGUSARAI.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Shubhesh Pandey, Adv.

For the State : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 28-11-2017

Appellants, Ram Lala Singh and Deepak Kumar have been found guilty for an offence punishable under Section 307 of the IPC and sentenced to undergo S.I. for seven years as well as to pay fine appertaining to rupees five thousand in default thereof, to undergo S.I. for two months, additionally, under Section 379 of the IPC and sentence to undergo S.I. for two years, while appellant Deepak Kumar independently has been sentenced to undergo S.I. for one year under Section 354 of the IPC and S.I. for two years under Section 27 of the Arms Act with a further direction to run the sentences concurrently vide judgment of conviction dated 26.11.2014 and order of sentence dated 28.11.2014 passed by Seventh Additional District & Sessions Judge, Begusarai in Sessions Trial No.360/2009.

2. PW.5, Shashikant Singh filed written report on 19.09.2008 alleging inter alia that on the same day at about 06:00



PM while his father Manikant Singh was sitting at his Darwaja, Deepak Kumar and Ram Lala Singh both came in intoxicated condition and attempted to house trespass which was resisted by his father as a result of which, both of them began to abuse. During course thereof, Ram Lala Singh gave sword blow which caused injury over upper portion of left elbow. Blood oozed out. His mother came in rescue who was assaulted by Deepak Kumar. Then thereafter, Ram Lala Singh and Deepak Kumar made house trespass, dismantled articles as well as also took away rupees ten thousand, ornaments from a box. When he rushed, Deepak Kumar took out pistol and fired at him, fortunately he saved. At that very moment Ram Lala Singh and Deepak Kumar threatened that in case you go to Police Station and institute a case, then in that event, he along with his family will be given a lesson. It has also been disclosed that few days ago he sold away straw appertaining to rupees sixteen thousand to Ram Lala Singh which was due. Ram Lala Singh, has disclosed that aforesaid amount has been digested against rangdari.

3. On the basis of the aforesaid written report Begusarai Muffasil P.S. Case No.243/2008 was registered followed with an investigation as well as submission of charge sheet paving way for trial which met with ultimate result, 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 of complete denial. It has also been pleaded that land of appellant Deepak Kumar happens to be adjacent to the



house of the informant which has been sold to Mahendra Sharma and during course of construction of boundary wall by the Mahendra Sharma, the prosecution party objected whereupon, they have taken side of Mahendra Sharma as a result of which, they have been falsely implicated in this false and concocted case. However, neither any DW nor any kind of documentary evidence has been adduced.

5. In order to substantiate its case, prosecution had examined altogether seven PWs out of whom PW.1-Manikant Singh, PW.2-Usha Devi, PW.3-Ram Chandra Singh, PW.4-Dilip Kumar Singh, PW.5-Shashikant Singh, PW.6-Rajballabh Paswan, PW.7-Dr. Ram Rekha as well as had also exhibited Ext.1-Written report, Ext.2 Series-Requisition of injury report, Ext.3-Formal FIR, Ext.4 Series-Injury report relating to Manikant Singh (PW.1) as well as Usha Devi (PW.2).

6. PW.7 doctor who had examined PW.1-Manikant Singh on 20.09.2008 at about 01:15 PM and found the following:-

- (i) Abrasion reddish in appearance 3"x1" on left arm.
- (ii) One abrasion reddish in appearance 4"x1.5" on back of body caused by hard and blunt substance, simple in nature.

He had also examined PW.2, Usha Devi on 20.09.2008 at about 01:10 PM and found the following:



- (i) One tender swelling 1" on left temporal parietal area and reddish in colour.
- (ii) Body and reddish in appearance caused by hard and blunt substance, simple in nature caused within six hours.

7. The aforesaid Exhibit-4 series happens to be over the requisition having been made by the Investigating Officer, PW.6 dated 19.09.2008. That means to say after issuance of requisition by the police under Ext.2 Series, the prosecution party did not take advantage to go to hospital and got themselves treated. The aforesaid finding became doubtful in the background of specific disclosure by informant PW.5 under para-4 of his cross-examination wherein he had stated that he had not seen any kind of injury over the person of his mother. However, he took both of them (parents) for treatment. They both were treated at Sadar Hospital, Begusarai. PW.1 the injured during course of examination-in-chief had stated that he had instituted case at Begusarai Muffasil Police Station and got himself examined/treated at Begusarai. During cross-examination at para-4, he had stated that his treatment was provided at Sadar Hospital, Begusarai.

8. PW.2 during course of her examination-in-chief had disclosed at para-3 that they have gone to hospital in the same night. They remained at hospital whole night. PW.3 had not said anything during his examination-in-chief and that happens to be reason behind that in para-4 of his cross-examination he had stated that he had not taken away Manikant and his wife to



hospital.

9. PW.4 in similar way kept mum during course of examination-in-chief. He was not at all cross-examined on that very score.

10. PW.5 is informant himself and his evidence had already been discussed herein above. So far evidence of Investigating Officer, PW.6 is concerned, he had simply exhibited the requisition having been made by him.

11. From the evidence as discussed above, it is apparent that though others have not disclosed but PW.2, one of the alleged injured had stated that in the night itself they were shifted to hospital where they remained whole night. Was such situation really prevailing, then in that circumstance, the doctor PW.7 would not have disclosed in his injury report time of examination of the both injured on 20.09.2008 at about 01:10 PM as well as 01:15 PM. That means to say there happens to be more than eighteen hours delay in examination of both the injured which is found secretly wrapped at the end of the prosecution. Had there been a genuine conduct, then in that event, PW.7 would have disclosed examination of both the injured on 19.09.2008 in the evening time itself. Furthermore, doctor had found the injury caused within six hours and that being so, completely changed the situation. Such finding, completely cast doubt over the manner of occurrence as flashed on behalf of prosecution.

12. Now come to the evidence of witnesses on that very score, it is evident that PW.1 had stated that Ram Lala Singh and



Deepak Kumar both came in boiled condition, abused and then tried to make house trespass which was resisted by him and during course thereof, Ram Lala Singh gave sword blow which caused injury over the upper part of elbow. When his wife came in rescue, she was caught hold by Deepak Kumar and was thrashed as a result of which she also sustained injury. Then thereafter, both gone inside the house, ransacked, took away one chain, one earring and one nose pin as well as cash appertaining to rupees ten thousand. Same piece of evidence more or less happens to be that of PW.2 Usha Devi, PW.3 Ram Chandra Singh, PW.4-Dilip Kumar Singh and PW.5-Shashikant Singh. The most interesting feature is that none of the inmates of the house has been examined. How the witnesses came to know that accused persons have taken away ornaments, cash, that too from a box, when inmates of the house had not disclosed, is a matter of concerned which the prosecution was expected to explain. In likewise manner, none of the witnesses have stated that they have seen accused Ram Lala Singh armed with sword, Deepak armed with pistol since before. Had there been such kind of activity at the end of appellants, then in that event, the prosecution party would have taken a different recourse. The witnesses have disclosed for the first time that when PW.1 Manikant Singh resisted then Ram Lala Singh gave sword blow. They have not disclosed that Ram Lala Singh was carrying since before or it was provided by somebody else. The aforesaid theme of possessing sword by the Ram Lala Singh is found falsified from the injury report, issued by the doctor PW.7 who had not found injury caused by sharp cutting weapon. During cross-examination of PW.7 the prosecution had



not suggested that in case of blunt edge of the sword such kind of injury could be possible. That being so, whatever been expressed by PW.7 completely rules out the allegation. Furthermore, as per evidence of PW.2 paragraph 3, it is evident that when she came out from her house, she had seen injuries over the person of her husband whereupon, she along with other inmates of the house fallen over him in order to save him. In that circumstance, non-examination of female inmates happens to be prejudicial to the prosecution case. Furthermore, PW.3, Ram Chandra Singh and PW.4 Dilip Kumar Singh have not disclosed with regard to taking away the ornaments, rupees ten thousand from a box. PW.5, informant certainly from his own evidence was not an eye witness to occurrence so far those parts are concerned. Now coming to allegation regarding aiming at him by Deepak, in the facts and circumstances of the case, is found not at all substantiated in legal way.

13. In the aforesaid facts and circumstances of the case, it looks difficult to concur with the finding recorded by the learned lower court. 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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