

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3 of 2009

Arising Out of PS.Case No. -19 Year- 2002 Thana –Sarai Ranjan District- SAMASTIPUR

- 1. Rangi Lal Mahto son of Late Singheshwar Mahto
 - 2. Ram Sewak Mahto son of Ram Bahadur Mahto
 - 3. Ram Prasad Mahto son of Late Baue Lal Mahto
 - 4. Arvind Kumar son of Jai Narayan Mahto
- All residents of Village-Kisanpur Yusuf, P.S. – Sarai Ranjan, Distt – Samastipur

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

Criminal Appeal (SJ) No. 90 of 2009

Arising Out of PS.Case No. -19 Year- 2002 Thana –Sarai Ranjan District- SAMASTIPUR

- 1. Brahmdeo Mahto
 - 2. Jai Narayan Mahto
- Both sons of Bikan Mahto
- 3. Bhushan Mahto, son of Brahmdeo Mahto
- All residents of Village – Kisanpur Yusuf, P.S. – Sarai Ranjan, Distt – Samastipur

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

Appearance :

(In CR. APP (SJ) No. 3 of 2009)

For the Appellant/s : Mr. Dr. Rajesh Kumar Singh, Adv.

Mr. Raghwendra Pratap Singh, Adv.

Mr. Alok Kumar, Adv.

For the State : Mr. S.N. Prasad, APP

(In CR. APP (SJ) No. 90 of 2009)

For the Appellant/s : Mr. Dr. Rajesh Kumar Singh, Adv.

Mr. Raghwendra Pratap Singh, Adv.

Mr. Alok Kumar, Adv.

For the State : Mr. S.A. Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 17-01-2017

The appellants preferred these Cr. Appeals against the judgement and order dated 16.12.2008 passed in Sessions Trial No.



368/2003 by the learned Additional District & Sessions Judge, Fast Track Court IV, Samastipur by which the appellants have been convicted under Sections 147, 148, 149, 448, 341, 323, 324, 307 and 504 of the Indian Penal Code and they have been sentenced to undergo R.I. for ten years under Section 307 of the Indian Penal Code. The appellants were also convicted under Section 147 for two years, three years under Section 148, three years under Section 149, one month under Section 341, one year under Section 448 and for one year Section 323 and three years under Section 324 of the Indian Penal Code, but sentences were directed to run concurrently.

2. The prosecution case in short as alleged by P.W. 8 Dukhwa Devi, in her fardbeyan on 16.03.2002 in government hospital, Samastipur that on 15.03.2002 at about 5.00 in the morning she came out from her house and saw that Mala Devi, wife of Ram Sewak Mahto, and Renu Kumari, daughter of Ram Sewak Mahto, were putting thorns and pieces of glass in their field. The informant asked them not to put thorns and pieces of glass, as her house is situated nearby and children are playing. Mala Devi and Renu Kumari went to her house. Thereafter, Ram Sewak Mahto, Brahmdeo Mahto and Bhushan Mahto, Jai Narain Mahto, Arvind Mahto, Ram Prasad Mahto and Rangi Lal Mahto having armed with different weapons came. Ram Sewak Mahto began to abuse the informant and said that as he is the owner of the land he would put thorns and pieces of glass on his



land. The informant forbade him, on such he went upon to assault the informant. The informant went inside the house, but all the accused persons forced her entry inside the house and assaulted the informant. The informant further disclosed that Brahmdeo Mahto and Bhushan Mahto assaulted her with stick and other accused persons assaulted her with fists and slaps. When Nirmala Devi, her daughter, came to save, Rangi Lal Mahto pulled her sari and assaulted her with fists and slaps. She further disclosed that on alarm Kapildeo Mahto, Ram Subhag Mahto, Suraj Rai, Bhola Mahto, Birju Rai and Pintu Paswan came. The accused persons also took away the box containing money and ornaments.

3. On the basis of the fardbeyan of P.W. 8, Dukhwa Devi, Sarai Ranjan P.S. Case No. 19/2002 was registered on 16.03.2002 under Sections 147, 148, 149, 448, 341, 323, 504 and 379 of the Indian Penal Code. Later on, Section 307 of the Indian Penal Code was added. The Investigating Officer after completion of the investigation, submitted charge-sheet under Section 307 and other sections of the Indian Penal Code. The cognizance of the offence was taken and the case was committed to the Court of Sessions.

4. The case was transferred to the Court of Additional Sessions Judge, Fast Track Court IV, Samastipur for trial. Learned Additional Sessions Judge, Fast Track Court IV Samastipur framed charges against the accused persons under Sections 307, 147, 148,



149, 448, 341, 323, 324, and 504 of the Indian Penal Code. The prosecution altogether examined ten witnesses in support of its case. The defense did not produce any oral or documentary evidence. Learned Additional Sessions Judge, Fast Track Court IV, Samastipur after perusal of the evidence found the appellants guilty under Section 307 and other sections of the Indian Penal Code, as stated above, and sentenced them. The appellants preferred this appeal.

5. Learned counsel for the appellants submitted that the judgement and order of conviction and sentence is bad in law as well as on facts. Dukhwa Devi P.W. 8 in her first statement did not make any specific allegation against any of the accused persons. She simply alleged that Brahmdeo Mahto and Bhushan Mahto assaulted her with stick and other accused persons assaulted her with fists and slaps, but during the course of trial she improved her case a lot and altogether gave a different story of the prosecution. She disclosed that Brahmdeo Mahto assaulted her with *Fhagaria*. Ram Sewak Mahto also assaulted her with sickle. It is further submitted that all other witnesses according to the evidence of P.W.8 are not the eye-witness of the occurrence. They came on the place of the occurrence after the occurrence.

6. Ten P.Ws were examined. Out of which P.W. 2 Pinku Paswan, P.W. 3 Bhola Mahto, P.W. 4 Birju Rai, P.W. 5 Ram Subhag Mahto, P.W. 7 Kapildeo Mahto are the eye-witness of the occurrence,



but according to the evidence of P.W. 8 Dukhwa Devi (informant) the witnesses came on the place of occurrence after the occurrence. Even these witnesses have altogether given a different story of prosecution in their evidence in court. Although, they have not made such statement before the police. P.W. 9 Birendra Prasad Singh, Investigating Officer of the case, has categorically stated in his evidence that the prosecution witnesses did not state that Brahmdeo Mahto assaulted the informant P.W. 8 with *Fhagaria* and that Ram Sewak Mahto assaulted her.

7. It is further submitted that Birendra Prasad Singh the Investigating Officer, has stated in his evidence that on the same day from the side of the accused persons Sarai Ranjan P.S. Case No. 16/2002 was registered. He also investigated the case. When the charge-sheet was shown to P.W. 9 he admitted that he was the Investigating Officer of the case and he submitted the charge-sheet. Learned counsel for the appellants submits that the doctor has not been examined and in absence of the doctor the injury report cannot be considered as evidence and the conviction under Section 307 is illegal.

8. Learned A.P.P. Mr. Satya Narayan Prasad on the other hand, submitted that P.W. 8 the informant is the best witness and her evidence appears to be trust-worthy.

9. The prosecution has altogether examined ten witnesses out



of which Laxmi Sharma P.W. 1 and P.W. 10 Devendra Prasad Singh are formal witnesses.

10. P.W. 8, the informant, has stated in her evidence that when she asked Mala Devi and her daughter Renu Kumari not to put thorns and pieces of glass by the side of the land, they insisted to put the same and they went to their house. Thereafter, all the accused persons came. They further disclosed that Brahdeo Mahto was armed with *Fhagaria*, sickle and Jai Narain Mahto was also armed with *Garasa*. Other accused persons were armed with lathi. When she asked them not to abuse, Jai Narain Mahto assaulted her with *Garasa* on her head. He again assaulted with *Garasa* which hit on her hand. Brahmddeo Mahto assaulted her with sickle on her neck and finger, but it appears from the fardbeyan of Dukhwa Devi that she simply stated that Brahmddeo Mahto and Bhushan Mahto assaulted her with stick and other accused persons assaulted her with fists and slaps. It is evident that P.W. 8 has altogether given different versions in court and she does not appear worth reliable.

11. From the earlier statement of P.W. 8, it is evident that she disclosed that Pinku Paswan, P.W. 2, Bholu Mahto, P.W. 3, Birju Rai P.W. 4, Ram Subhag Mahto P.W. 5, Suraj Rai P.W. 6 and Kapildeo Mahto P.W. 7 came on alarm after the occurrence, but these witnesses have stated in the court that they saw the occurrence and when their attention were drawn towards their statements made before the police,



the Investigating Officer P.W. 9 had stated that they did not make such statement that the accused persons were armed with sickle and *Garasa* and assaulted the informant. It has also come in evidence of P.W. 9 that Sarai Ranjan P.S. Case No. 16/2002 was registered from the side of the appellants, but the prosecution witnesses are silent on the point. It is evident that the prosecution has concealed the material facts and witnesses have narrated a different story about manner of occurrence in court, but they did not disclose at earlier stage, before Investigating Officer P.W. 9. The doctor has also not been examined.

12. Having considered the evidence on record and discussions made above, I find that the prosecution has failed to prove the charges against the appellants beyond all reasonable doubts and their conviction and sentence is bad. Accordingly, these appeals are allowed and the impugned judgement is set aside. The appellants are on bail that they are discharged from their liability of the bail bonds.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
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