

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.596 of 2015**

Arising Out of PS.Case No. -35 Year- 2009 Thana -SARAI RANJAN District- SAMASTIPUR

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Vishwakarma Mahto, son of Late Ram Prahalad Mahto, resident of Village-
Musapur, P.S.- Sarairanjan (Ghataho) District- Samastipur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Kumar Praveen-Advocate

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT**Date: 04-07-2017**

Vide judgment of conviction dated 10.09.2015 and order of sentence dated 11.09.2015 passed by the Additional Sessions Judge-3rd, Samastipur in Sessions Trial No.276 of 2009 found the sole appellant, Vishwakarma Mahto guilty under Section 341 I.P.C. and directed to pay fine appertaining to Rs.500/-, under Section 324 I.P.C. and directed to undergo rigorous imprisonment for one month, under Section 448 I.P.C. and directed to pay fine appertaining to Rs.1,000/-, under Section 307 I.P.C. and directed to undergo rigorous imprisonment for seven years as well as to pay fine appertaining to Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for six months conjointly with a further direction to run the sentences concurrently.



2. On 10.03.2009, PW-6 Pramila Devi, who happens to be mother of injured Rambali Mahto (PW-7) had recorded her fard-bayan alleging inter alia that on account of digging of drainage, there was dispute amongst herself as well as her neighbour Ram Prahlad Mahto whereupon, Manti Devi wife of Ram Prahlad Mahto was constantly abusing. Today, at about 11.30 a.m., Manti Devi chased her daughter Isha Kumari (PW-1) with brick particle to assault followed by her son Dilip Mahto. At the relevant time her another son Rambali Mahto, who was standing in the courtyard after returning from a Barati was given Chhura blow by Vishwanath Mahto, son of Prahlad Mahto over his chest after making criminal trespass on account of which, he became injured. He has been taken to hospital for treatment by the villagers.

3. On the basis of the aforesaid fard-bayan, Sarairanjan (Ghataho) P.S. Case No.35 of 2009 was registered, whereupon investigation commenced and concluded by way of submission of chargesheet paving way to the trial which concluded in a manner, the subject matter of instant appeal.

4. Defence as pleaded as well as visualized from statement recorded under Section 313 of the Cr.P.C. is of complete denial as well as of false implication. Furthermore, it has also been pleaded that victim had sustained self-inflicted injuries, accidentally,



which has been taken as boon to falsely implicate the appellant in the background of animosity prevailing amongst both the family due to illegal activity of the prosecution party by way of digging drainage. However, neither any DW has been examined nor any chit of paper has been adduced on behalf of defence on that very score.

5. In order to substantiate its case, prosecution had examined altogether eight PWs, out of whom, PW-1 Isha Kumari, PW-2 Bharat Mahto, PW-3 Mahesh Mahto, PW-4 Harkhit Mahto, PW-5 Suresh Mahto, PW-6 Pramila Devi, PW-7 Rambali Mahto and PW-8 Dr. B. N. Thakur. Side by side, had also exhibited injury report as Exhibit-1.

6. It has been urged by the learned counsel for the appellant that the finding recorded by the learned lower Court happens to be non-sustainable in the eye of law, because of the fact that the initial prosecution version divulging alleged motive on account of digging of a drainage, both the parties being on strained relationship, has been completely given up and so, this case has been flashed without any motive. If really such thing survives, then in that event, the manner of occurrence, the genesis of occurrence is found completely demolished and that happens to be reason behind that none of the independent witnesses including Dewar of the informant, PW-2 also declined to come toe with the prosecution.



7. It has further been submitted that from the record, it is apparent that none other than the own family members have supported the case of the prosecution. As stated above, considering the conduct of the prosecution, evidence of PW-1, daughter, PW-6 mother and PW-7 son (victim) became unreliable and so, their evidences are fit to be rejected. Moreover, non-examination of the I.O. has also caused prejudice to the interest of the appellant in the background of the fact that had there been examination of the I.O., the concealment of prosecution version regarding digging of drainage adversely affecting upon the interest of the appellant, would have been exposed and in the aforesaid background, though there happens to be absence of counter version at the end of the appellant, the probability would have also been duly exposed to such extent of getting the appellant falsely implicated in this case taking a bonanza of an accident whereunder PW-7 had sustained injury.

8. Now, coming to the evidence of PW-8, doctor, it has been submitted that the nature of injury did not justify it to be caused by a Chhura and so, the cumulative effect as suggested by the learned counsel for the appellant, rules out truthfulness in the prosecution version whereupon the judgment impugned is fit to be set aside.

9. On the other hand, Learned Additional Public Prosecutor controverted the submission made on behalf of appellant



and submitted that the evidence of injured happens to be highly pedestal. This is a case wherein the appellant had made criminal trespass and then, inflicted Chhura blow over the injured, which is found corroborated by PW-1 as well as PW-6 duly substantiated by the injured, PW-7. The doctor, PW-8 had further strengthened the allegation. Consequent thereupon, the judgment impugned is fit to be confirmed.

10. Admittedly, at an initial stage, although during course of evidence, defence failed to take contradiction on that very score, but the fact remains that on account of digging of drainage by the prosecution party, both the parties were at loggerhead since four days and that event has been ascribed by the prosecution for commission of the occurrence. Motive is not sine qua non for commission for even offence that too, when is being substantiated by the eye witnesses, but once flashed, and subsequently, withheld will cast doubt over genuine conduct of the prosecution. Thus, veracity of the prosecution case is to be adjudged in the aforesaid background.

11. Learned counsel for the appellant is justified in arguing that save and except the family members, none have come forward to substantiate the case of the prosecution much less as an eye witness to occurrence. Before going to deal with the evidence of those witnesses that means to say, PW-1, PW-6 and PW-7, first of all,



evidence of doctor PW-8 is to be taken note of. The doctor had found one incised wound on chest wall interiorly near 3rd inter-coastal space on right side measuring 2" X 1 ½" X ½". The dimension of the injury itself indicates that it was not caused at the end of the assailant by means of forceful blow nor there happens to be allegation of repetition of blow.

12. In the aforesaid background, when the evidence of the witnesses have been gone through, it is apparent that Isha Kumari (PW-1), Pramila Devi (PW-6) as well as victim Rambali Mahto (PW-7) himself had simply asserted that appellant, who came with Chhura, made criminal trespass, inflicted blow and slipped. None of them had stated that they tried to apprehend the appellant nor they deposed on the score that there was any kind of intervening circumstance whereupon, the appellant was forced to leave the place, nay forbidden to repeat the blow.

13. In absence thereof, non-repetition of the blow and further, present nature of the injury is indicative of the fact that appellant at the alleged time of occurrence was not carrying an intention to commit murder and in likewise manner, was not at all carrying a knowledge that by such activity, he will endanger the life of the victim. At the present moment, again evidence of PW-8 is to be looked into, who had not stated that the injury whatever been over the



person of PW-7 was sufficient in ordinary course of nature to cause death or endangering the life of the victim. That being so, the conviction and sentence recorded by the learned lower Court against the appellant relating to Section 307 of the I.P.C. is not justifiable hence is set aside.

14. Now, coming to remaining part, it is evident from the record that prosecution had succeeded in substantiating the offences found by the learned lower Court to the extent of Sections 341, 324 and 448 of the I.P.C. and further, tracing out from the L.C. Record that appellant was apprehended, produced on 12.03.2009 and was bailed out on 10.12.2009, that means to say, his detention during course of trial was for nine months, really found sufficient to saturate the sentence as period already undergone instead of fine having inflicted by the learned lower Court relating to Section 341 of the I.P.C. as well as Section 448 of the I.P.C.

15. Accordingly, appeal is partly allowed. Appellant is on bail. Hence is directed to be discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

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