

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.78 of 2015**

Arising Out of PS.Case No. -145 Year- 1995 Thana -DAUDNAGAR District- AURANGABAD

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1. Nagendra Mahto son of Late Munarik Mahto resident of village- Makhara Tolla  
Ayodaya Bigha, P.S.- Daudnagar, District- Aurangabad

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Purushotam Sharma, Adv.  
Mr. Ravi Prakash, Adv.

For the State : Mrs. Abha Singh, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 04-09-2017**

1. Sole Appellant Nagendra Mahto has been found guilty for the offences punishable under Sections 324 IPC as well as 307 IPC and sentenced to undergo rigorous imprisonment for 10 years, to pay fine appertaining to Rs. 5,000/- and in default thereof, to undergo simple imprisonment for six months additionally, perhaps under Section 307 IPC, however, due to ambiguity prevailing thereupon, it is not cleared vide judgment of conviction dated 10.12.2014 and order of sentence dated 12.12.2014 passed by learned Additional Sessions Judge-III, Aurangabad in S.T. No. 230 of 1996 / 78 of 2014.

2. PW-7 Dudheshwar Mahto along with his wife being admitted at State Dispensary, Daudnagar recorded his fardbeyan on 03.09.1995 at about 4.20 pm, alleging inter-alia that on the same day



at about 2.00 pm., his wife has tied she-goat in a peg after affixing the same in front of her *Darwaja* which, his co-villager Munarik Mahto, uprooted. Then his wife again indulged herself in such activity, whereupon, Munarik Mahto ordered to assault. On this, his son Nagendra Mahto armed with *Garasa*, Pradeep Mahto armed with *khanti* and Ravindra Mahto armed with *Lathi* came and out of whom, Nagendra Mahto gave *Garasa* blow over the head of his wife causing injury thereupon. He rushed in rescue, whereupon, Munarik Mahto gave *khanti* blow over his head, as a result of which he also became injured. He raised alarm, over which his son as well as daughter-in-law rushed in rescue, they were also assaulted by them. On hearing hue and cry, his co-villagers Ram Nand Mahto, Jawahar Mahto along with others came there and on seeing them, the accused persons fled away.

3. On the basis of the aforesaid fardbeyan, Daudnagar P.S. Case No. 145 of 1995 was registered followed with an investigation and after concluding the same, charge-sheet was submitted paving the way for trial which ultimately concluded in a manner subject matter of the present appeal.

4. Defense case as is evident for mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has been specifically been pleaded that as the



she-goat of prosecution party was grazing the crop belonging to the appellant, whereupon, they protested and during the course thereof, they were brutally assaulted and for that, they have instituted a case. To substantiate the same, F.I.R. of the counter case has also been exhibited as Exhibit-‘A’.

5. In order to substantiate its case, prosecution had examined altogether 7 PWs out of whom, P.W. 1 Mahendra Tiwari, P.W. 2 Shakuntali Devi, P.W. 3 Shivnarain Mahto, P.W. 4. Tetari Devi, P.W. 5 Jawahar Mahto, P.W. 6 Ram Nand Mahto, P.W. 7 Dudheshwar Mahto. Formal F.I.R. is also exhibited as Exhibited-I. Now coming to status of the witnesses, P.W. 1 is formal in nature, P.W. 5 has been declared hostile while P.W.- 6 is hearsay. Remaining witnesses, namely, P.W. 2 Shatuntli Devi, P.W. 3 Shivnarain Mahto, P.W. 4 Tetari Devi are family members but injured. From the record, it is evident that neither doctor nor I.O. has been examined. From the judgment impugned, it is evident that learned lower court had dealt with elaborately the issue relating thereto.

6. It is needless to say that evidence of injured witness has got pivotal role status in criminal trial and the reason behind thereof, is that injuries sustained by them reflect their presence or probablizes their presence at the place of occurrence as well as during the course of occurrence. Therefore, being family members, would not discredit



the version of the injured witness.

7. Now coming to facts of the case, the learned lower court has rightly perceived that appellant Nagendra Mahto happens to be assailant of wife of informant, P.W. 7., and on that very score there happens to be inconsistent evidence. P.W. 2 had deposed that her mother-in-law Tetari Devi was assaulted by Nagendra Mahto with *Garasa* over her head while her father-in-law Dudheshwar Mahto was assaulted with *Khanti* by Munarik Mahto (since deceased) over his hand, knee and forehead. On his alarm, her husband came there who was also assaulted by Pradeep with *khanti* over his head while on back and shoulder by Ravindra Mahto with *Lathi*. She was assaulted by Pradeep with *Khanti* as well as Rabindra by *Lathi*. P.W. 3 had stated that Nagendra Mahto gave *Garasa* blow over his mother as well as father while Munarik Mahto also gave *Khanti* blow over both of them. He was assaulted by Pradeep Mahto as well as Ravindra Mahto by means of *Khanti* and *Lathi* respectively. His wife Shakuntli Devi was assaulted by Ravindra Mahto with *Khanti* over her head. P.W. 4 the wife of informant had deposed that Nagendra Mahto had given *Garasa* Blow over her head as a result of which, she sustained injury. Blood started oozing out, she cried of pain, whereupon, her husband, elder son Shivnarain Mahto and daughter-in-law shakuntali Devi came. Her husband was assaulted by Munarik



Mahto by *khanti* above right eyebrow, son was assaulted by Pradeep Mahto with *Khanti* over arm and daughter-in-law was also assaulted by Munarik Mahto. P.W. 7 informant had deposed that Nagendra Mahto gave one *Garasa* blow over the head of his wife as a result of which, she sustained injury. He again intended to inflict *Grasa* blow but seeing the blood, he left the scene. He was assaulted by Munarik Mahto with *Khanti* over his forehead as well as hand. His daughter-in-law Shakuntli Devi was assaulted with *Khanti* by Munarik Mahto while his son Shivnarayan Mahto was also assaulted by Munarik Mahto.

8. From the evidence, it is apparent that though there happens to be some sort of inconsistency relating to others but so far as, appellant Nagendra Mahto is concerned, he happens to be consistent with regard to assault over P.W. 4 Tetari Devi.

9. Now coming to other aspect, it is apparent that the materials coming out from cross-examination of respective PWs, have completely been ignored by the learned lower court. Apart from Exhibit-‘A’, the F.I.R. of counter case though not exhibited in accordance with the procedure prescribed under the Evidence Act, but the fact remains that all the injured witnesses have admitted its presence. P.W. 2 in para 11 had admitted that accused persons have also lodged a case with regard to Mar-pit over them relating to same



date and time. In likewise manner, P.W. 3 at para-9, P.W. 4 at para 23 and P.W. 7 at para 34 have admitted presence of counter case. Apart from this, P.W. 2, during course of cross-examination had admitted that wife of Munarik Mahto as well as Nagendra Mahto were admitted to hospital on the same date to which, P.W. 3 her husband had denied as is evident from his cross-examination para-8. P.W. 4, though initially, she declined but at para 23 admitted that Nagendra Mahto was also treated at the hospital for the injuries sustained by him. P.W. 7 had denied as is evident from para 31 of his cross-examination. In the aforesaid background, it is apparent, that in spite of admission at the end of some of the injured witnesses with regard to presence of injuries over person of wife of Munarik Mahto as well as Nagendra Mahto and for that, having admitted at the hospital, being declined by other two witnesses, though admitted presence of counter case on that very score is indicative of the fact that prosecution tried to suppress the real genesis as well as the manner of occurrence. Had there been fair conduct of the prosecution, then in that event, they though admitted presence of counter case as well as injuries, having sustained by the appellant / accused side and further, they would have, flashed a story of free fight stamping the appellant/accused to be aggressor and sustained injuries while defending. Moreover, on account of non-examination of I.O., the



appellants have been deprived off an opportunity to enlighten the issue at least with regard to actual place of occurrence as well as status of the party who either of two was the aggressor. Whenever, such kind of dubious activity of the prosecution happens to be that has been taken into consideration adverse to their interest. The Hon'ble Apex Court more recently in a case of **Bhagwan Sahai and another Vs. State of Rajasthan** reported in **2016 Criminal Law Journal, 3154** has held as under:-

Para-8. "The aforesaid view of the High Court is devoid of legal merits. Once the Court came to a finding that the prosecution has suppressed the genesis and origin of the occurrence and also failed to explain the injuries on the person of the accused including death of father of the appellants, the only possible and probable course left open was the grant benefit of doubt to the appellants. The appellants can legitimately claim right to use force once they saw their parents being assaulted and when actually it has been shown that due to such assault and injury their father subsequently died. In the given facts, adverse inference must be drawn against the prosecution for not offering any explanation much less a plausible one. Drawing of such adverse inference is given a go-by in the case of free fight mainly because the occurrence in that case may take place at different spots and in such a manner that a witness may not reasonably be expected to see and therefore explain the injuries sustained by the defence party. This is not the factual situation in the present case."



10. Giving close minute observation of the materials available on the record, it has been found that the prosecution has not come forward with a true version relating to manner as well as genesis of occurrence, whereupon, the finding recorded by the learned lower court is found un-sustainable.

11. Accordingly, the same is set aside. Appeal is allowed. Appellant is on bail, hence, he is discharged from the liability of bail bond.

**(Aditya Kumar Trivedi, J)**

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| CAV DATE          |            |
| Uploading Date    | 12.09.2017 |
| Transmission Date | 12.09.2017 |

