

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.75 of 2015

Arising Out of PS.Case No. -100 Year- 2008 Thana -DEO District- AURANGABAD

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1. Tunni Chaurasia S/o Jagarnath Chaurasia
2. Kunkun Chaurasia S/o Jagarnath Chaurasia
3. Munna Chaurasia S/o Jagarnath Chaurasia All are residents of Village - Deo Tola
Barari Bigha, P.S. - Deo, District - Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Advocate
Mrs. Meena Singh, Advocate
For the Respondent/s : Mr. Ashfaq Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 31-08-2017

1. Appellants Tunni Chaurasia, Kunkun Chaurasia and Munna Chaurasia have been found guilty for an offence under Section 307 of the Indian Penal Code and each one has been sentenced to undergo S.I. for five years as well as to pay fine appertaining to Rs. 4000/- in default thereof to undergo S.I. for two months, under Section 323 of the Indian Penal Code whereunder no separate sentence has been inflicted, vide judgment of conviction dated 27.01.2015 and order of sentence dated 28.01.2015 passed by Additional Sessions Judge IV, Aurangabad in Sessions Trial No. 107 of 2010/129 of 2013.

2. P.W. 5, Raju Kumar Singh gave his fardbeyan on



29.10.2008 at about 7.45 A.M. while he was admitted at P.H.C., Dev alleging inter alia that on the same day at about 1.00 A.M. while he, after performing Puja, was to close his hotel (Magadh Hotel) at that very moment Tunni Chaurasia armed with iron-rod, Munna Chaurasia armed with iron-rod and Kunkun Chaurasia armed with danda came and demanded a glass as well as Jug whereupon, he disclosed that as he has closed the shop so, it would not be made available. Over this, Kunkun Chaurasia forcibly entered inside the hotel took out Jug as well as glass and then began to pour wine in the glass whereupon, he protested as a result of which, all the three assaulted him. He became injured. It has also been alleged that Tunni Chaurasia removed Rs. 4500/-. When he fell down on the ground as well as raised alarm for his safety, Rupesh Pathak, P.W.4, Bhim Kumar (not examined), Sandip Kumar (not examined), Suresh Kumar, P.W.2 and others came who intervened and pacified the accused persons. Then thereafter, the witnesses lifted him to the hospital. The motive for occurrence has been shown on account of denial by him to provide glass and Jug for drinking of wine.

3. After registration of Dev P.S. Case No. 100 of 2008, investigation was proceeded with and after concluding the same, chargesheet was filed, facilitating the trial which ultimately concluded in a manner, subject matter of instant appeal.



4. The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Code of Criminal Procedure is that of complete denial. It has also been pleaded that on account of land dispute prevailing amongst both the parties as a result of which Title Suit No. 111 of 1988 happens to be, the prosecution party brutally assaulted whereupon Dev P.S. Case No. 101 of 2008 was registered and to save their skin, the informant had filed instant case as a counter blast. To substantiate such plea, the chargesheet as well as cognizance order relating to Dev P.S. Case No. 101 of 2008 have been filed on behalf of the defence and exhibited as Exhibit A and Exhibit B respectively.

5. The learned counsel for the appellants has submitted that unfortunately, on account of non-exhibit of plaint of Title Suit No. 111 of 1988 though attention of P.W.8 in para 22 has been drawn, the motive for false implication could not be brought up on record. But the fact remains that all the P.Ws. have been cross-examined on that very score, though denied at their end. Furthermore, it has also been submitted that there happens to be admission at the end of P.W.5, informant relating to counter case instituted at the end of the appellants relating to same date of occurrence. Therefore, there happens to be presence of version and counter version for an occurrence which, the Court should have seen in order to adjudge



which of two versions happens to be more probable. At the relevant juncture, it has also been submitted that due to negligence on the part of the conducting lawyer, the First Information Report relating to counter case bearing Dev P.S. Case No. 101 of 2008 could not be brought up on record as an exhibit. However, considering the admission at the end of the informant, the subsequent event be accordingly, visualized.

6. It has also been submitted that from the evidence available on the record, it is apparent that none of the prosecution witnesses could be stamped as an eye witness in the background of the fact that in the fardbeyan itself P.W.5 had stated that after commission of the occurrence, the witnesses arrived who lifted him to the hospital. Contrary to it, P.W.1, P.W.2, P.W.3, P.W.4 have claimed themselves to be an eye witness of an occurrence though during cross-examination their status as an eye witness is found completely detract. So far P.W.5 is concerned, he had stated that accused persons assaulted him on account of non providing of Jug and a glass. The aforesaid story is found unreliable in the background of the fact that he had not mentioned the fact that he had kept glass and Jug inside the hotel and then hotel was closed, and then, thereafter taken to hospital. None of the witnesses that means to say that P.W.1 to P.W.4 had stated like so. So, Jug and glass having wine would have been at the



place where it was kept, is not at all found substantiated.

7. P.W.8, the I.O. during course of inspection of the place of occurrence in his objective finding had not mentioned the fact whether the door of the hotel was closed, he entered inside the hotel, found glass, Jug containing wine as, there happens to be version of the informant that after taking out glass wine was poured in the glass. Furthermore, it has also been submitted that there happens to be disclosure at the end of the P.W.5, informant along with other witnesses that after sustaining injury, P.W.5 fallen on the ground, blood had oozing out from his injury, spread over floor but during course of inspection, P.W.8 had not found those things on the floor.

8. In the aforesaid background, it has been submitted on behalf of learned counsel for the appellants that it is an admitted fact that the day was of Deewali day both the parties might have engaged in gambling somewhere else have indulged into fracas on that score whereupon sustained injury at different place in different manner but, in the background of animosity prevailing since before, got this case filed with false and frivolous allegation.

9. It has also been submitted that learned lower court would not have considered those evidences which were not exhibit of the record to come to the conclusion that appellants are guilty for an offence punishable under Section 307 of the Indian Penal Code.



Furthermore , it has also been submitted that P.W.7, Doctor had not found any injury to be dangerous to life or grievous in nature or any way hazardous to the P.W.5, informant rather had found the injuries simple in nature though, five in number, which in the background of case and counter case should not be adversely taken into consideration against the appellants. That being so, it has also been submitted that the conviction and sentence recorded for an offence punishable under Section 307 of the Indian Penal Code, from the facts and circumstances of the case, is not at all justified. So, in worst case appellants be held guilty for an offence punishable under Section 323 of the Indian Penal Code whereupon, considering the time span from the date of occurrence till today approximately nine years and during midst thereof having faced rigour of trial, fear of sentence, the substantial sentence be modified into monetary one or be left out on admission.

10. The learned Additional P.P. oppose the submission and submitted that there happens to be consistent version of the P.Ws. against the appellants to have inflicted iron-rod blow as well as lathi blow over the informant, P.W.5. That being so, the conviction and sentence recorded by the learned lower court is fit to be confirmed.

11. P.W.7 Dr. Md. Samid had examined. P.W.5 on 29.10.2008 at about 3.15 A.M. and found the following injury:-



I. Lacerated wound 1.1/2" x 1/6 x 1/2" on the right side of forehead just above the eye brow.

II. Lacerated wound 1/2" x 1/6 X scalp deep on the right parietal bone of head.

III. Lacerated wound 1.1/2" x 1/6" X scalp deep on the right parietal bone of head.

IV. Bruise 4" x 1/6X in the right side back of the chest.

V. Swelling of left forearm.

12. At an initial stage while identifying injury No. 4 to be simple, the patient was referred to Sadar hospital, Aurangabad and after getting subsequent injury report therefrom, had opined all the remaining injuries to be simple in nature caused by hard and blunt substance. During course of cross-examination, it is evident that save and except challenging his finding over non mentioning of the colour of the injuries, his testimony has been found intact.

13. P.W.5 is the informant. He had stated that while he was sitting at his hotel after performing Puja and was to close the shop Kunkun Chaurasia came and asked for a glass in order to consume wine which he declined. He forcibly entered inside the hotel, took out glass and then began to pour wine whereupon he snatched away the glass over which both the parties indulged into an altercation. Kunkun Chaurasia left the scene after abusing him. Subsequently, he returned



back along with his two brothers having duly armed and then, first of all Tunni Chaurasia gave rod blow over his head causing injury. Then Munna Chaurasia gave another blow causing injury over right eye-brow. He has further stated that on account of aforesaid injury he lost vision. Kunkun Chaurasia gave danda blow over back of his head. He, after sustaining injuries fell down and began to shout whereupon, people assembled. During midst thereof, Tunni Chaurasia snatched away Rs. 4500/-. Witnesses tried to intervene whereupon, they were also threatened. After departure of accused persons, he was taken to hospital where he was treated. Police came and recorded his fardbeyan over which he put his signature (exhibited). Police also recorded his further statement. During cross-examination at para 7, he had given the boundary of the place of occurrence as north-Dev Kila, south-Durga Mandir, east-road leading to Jangi Mohalla and west-road leading to Surya Mandir. From para 10, it is evident that he was one of the witnesses in Surendra Prasad Chaurasia's murder case wherein he was declared hostile as a result of which the accused persons of that very murder trial were acquitted. In para 11 he had stated that he was assaulted indiscriminately by all the accused persons. In para 15, he had further stated that blood had spread over the place where he had fallen. Blood also fallen on him. Police had not seized his cloth as well as blood-stained earth. Police also not



seized the Jug, glass. In para 18, he had admitted that accused persons had also filed a case relating to an occurrence of marpit committed against himself. In para 19, there happens to be contradiction. In para 22, he had denied with regard to pendency of Title Suit No. 111 of 1988.

14. From his evidence, it is apparent that he had shifted from his initial version. As per fardbeyan, all the accused persons came, conjointly, asked for a glass for the purpose of drinking wine which was denied by him followed by an assault while during course of evidence he had stated that firstly Kunkun Chaurasia had come, he had demanded glass for drinking wine he gone inside the hotel even when denied, poured wine which was object to leading to an altercation, leaving from the place and then returning back with remaining accused along with rod and danda. Furthermore, as per initial version appearance of the witnesses happens to be after the occurrence while as per evidence, there happens to be appearance of the witnesses during course of the occurrence.

15. P.W.1 during his examination-in-chief had substantiated the prosecution version claiming to be an eye witness to occurrence by way of stating that he had seen all the accused along with informant by means of rod and danda. However, during cross-examination at para 4 he had shown the boundary of the place of



occurrence as north- house of Mathura Sah, south-road leading to market, east-Dev Kila and west-Dawakhana. In para 6, he had further stated that it was Andheriya night. He had seen both the accused who were armed with iron-rod, inflicting one rod each over the informant. In para 7, he had denied the suggestion that during his previous statement before the Police he had stated that there was an altercation amongst both the parties and then they indulged in scuffle wherein fists and slaps were used.

16. P.W.2 during his examination-in-chief had also deposed in similar manner. In para 4, he had given boundary of the place of occurrence as north-building of Mathura Babu, south-Surya Mandir, east-Raja Ka Kila and west –gate of Dawakhana. In para 6, he had stated that when he reached at the place of occurrence, mob was present since before. In para 7, he had stated that when he reached the place of occurrence he had found Raju in injured condition. Blood was oozing out from his injury. Furthermore, from para 14, 15, 16, 17 there happens to be contradiction.

17. P.W.3 in his examination-in-chief alone had shown to be hearsay witness and so, detailed discussion is forbidden.

18. P.W.4, during examination-in-chief had reiterated the prosecution version. During cross-examination at para 6, he had shown the place of occurrence as north-building of Mathura Babu,



south-road leading to market, east-Dev Kila, west-house of Ramdat Babu wherein medicine shop is situated. In para 8, he had stated that when he reached at the place of occurrence Raju was in pool of blood. He lifted Raju and took him to hospital. He had not shown his blood-stained cloth to the Police. He had not found Raju conscious. He had further stated in para 10 that Police come at hospital where his statement was also recorded. In para 12, he had shown ignorance with regard to counter case. In para 13, 14, 15 there happens to be contradiction.

19. P.W.8 is the I.O. Who had stated that he had gone to hospital, recorded fardbeyan of Raju, P.W.5 on the basis of which case was registered and then, investigation was entrusted to him. In para 3, he had shown the place of occurrence to be Magadh Hotel, running in a thatched house having western front. It has further been disclosed that on its verandah, the occurrence is said to have been committed. He had shown the boundary west-road and then Durga Mandap, east-Magadh Hotel, north and south-road. He took statement of other witnesses. He had arrested Kunkun Chaurasia. Obtained injury report of the informant and then, after concluding investigation submitted chargesheet. During cross-examination, he had shown the Station Diary Entry No. 474 dated 29.10.2008 which was registered on the basis of O.D. slip received from the hospital. In para 9, he had



stated that investigation was entrusted to him by the O.C. At para 11, there happens to be contradiction relating to witness Suresh Kumar, para 12 Bikki Kumar and para 13 Mukesh Pathak.

20. After scrutinizing the evidence adduced on behalf of prosecution, it is apparent that prosecution had succeeded in substantiating its case with regard to assault having over the person of informant, P.W.5. Furthermore, as per evidence of P.W.7, it is further evident that five injuries have been found over the person of the informant though simple in nature. The learned lower court, as is evident had gone over C.T. Scan report even admitting that it was not exhibit of the record and so, if the learned lower court was so eager would have exhibited the same invoking the power prescribed under Section 311 of the Code of Criminal Procedure but, without having so, the finding would not have based thereupon. Moreover, the inconsistency in the evidence of P.W.5, as indicated above in consonance with the fact that there happens to be an admission at the end of the P.W.5 with regard to presence of counter case though, for want of exhibit of F.I.R., the narration of the defence is not at all found perceptible. Regard being had to the facts and circumstances of the case, it looks prudent to infer and hold the appellants guilty for an offence punishable under Section 323 of the Indian Penal Code, on account thereof the finding recorded by the learned lower court



relating to Section 307 of the Indian Penal Code is being annuled. Now, coming to sentence, it is evident that learned lower court had not passed any form of sentence relating thereto. That being so, considering the nature of the allegation, presence of case and counter case, the duration having from the date of occurrence till today, each of the appellants, instead of directing to suffer substantial sentence, is directed to pay fine appertaining to Rs. 15,000/- in default thereof each will have to go S.I. for two months. In case, the fine amount is deposited by each of the appellants out of the same Rs. 30,000/- will be paid to the informant which the learned lower court will direct after noticing the P.W.5 as well as on proper identification.

21. This appeal is allowed in terms thereof. The appellants are on bail which they are directed to avail for six weeks only, furthermore during midst thereof, aforesaid exercise in terms of the punishment as inflicted hereinabove is to be performed.

(Aditya Kumar Trivedi, J)

Vats/-

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