

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.14 of 2015

Arising Out of P.S. Case No. -null Year- null Thana -null District- BANKA

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Bouki Mandal, Son of Late Ganesh Mandal, resident of Village- Alipur, Police Station- Rajoun, District- Banka.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Mukherjee-Advocate
Mr. Sunil Prasad-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 04-12-2017

Appellant, Bouki Mandal has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo R.I. for seven years as well as fined of Rs.10,000/- and in default thereof, to undergo R.I. for two months, additionally, under Section 323 of the I.P.C. and sentenced to undergo R.I. for six months, under Section 385 of the I.P.C. and sentenced to undergo R.I. for one year with a further direction to run the sentences concurrently with a further direction to set off the period having undergone during course of trial as per Section 428 of the Cr.P.C. vide judgment of conviction dated 17.11.2014 and order of sentence dated 20.11.2014 passed by the Additional Sessions Judge-3rd, Banka in Sessions Trial No.738 of 2013.



2. PW-5, Niraj Kumar filed written report on 08.12.2012 disclosing therein that on 07.12.2012 while he along with his father, mother, brother, Dharmendra Kumar was engaged in harvesting paddy crop, at about 3.00 p.m. Bouki Mandal, son of Late Ganesh Mandal came along with two other unknown persons armed with musket and directed him as well as his father to pay Rs.25,000/- as rangdari, whereupon they said that as they have got no money, therefore, they are not in a position to pay rangdari. Bouki Mandal abused and further threatened that without paying rangdari, he will not allow them to cut paddy crop. As they proceeded to cut paddy crop, on account thereof, Bouki Mandal gave stroke with the barrel of musket over his head as a result of which, he sustained injury. He again gave second blow over left eye as a result of which, he sustained hurt. He fell down, whereupon his mother, father and brother Dharmendra came in rescue, who were also assaulted by Bouki Mandal and his associates as a result of which, his mother has sustained injury over her head. His brother had sustained fracture of his hand. Bouki took out of Rs.5,00/- from his pocket and further, threatened that he will have to pay Rs.25,000/- as rangdari. On hue and cry, person in surrounding engaged in harvesting, ran whereupon they escaped there from.

3. After registration of P. S. Case No.165 of 2012,



investigation commenced and concluded by way of submission of chargesheet followed with trial, which ultimately concluded in a manner, 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 that of complete denial. It has also been pleaded that father of informant and appellant happen to be full brother. There happens to be land dispute against them. While informant was cutting branches of tree belonging to the appellant and fell down during course thereof, as a result of which, sustained injuries. The prosecution party getting the opportunity, got this case filed. 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 viz. PW-1 Bhagwat Singh, PW-2 Anandi Prasad Singh, PW-3 Jitendra Kumar, PW-4 Poonam Devi, PW-5 Neeraj Kumar, PW-6 Shiv Kumar Yadav and PW-7 Dr. Md. Shah Kalim Ahmad as well as had also exhibited the documents viz. Exhibit-1, written report, Exhibit-2 series, injury report/ supplementary injury report relating to informant Neeraj Kumar. As stated above, defence had not adduced any kind of oral as well as documentary evidence.

6. Learned counsel for the appellant while assailing the



finding has submitted that learned lower Court completely ignored the materials having on the record while drawing inference against the appellant and so, same is fit to be set aside. In order to substantiate such plea, it has been submitted that from the evidence of PW-2, Anandi Prasad Singh, father of informant, it is evident that appellant happens to be his full-brother. Furthermore, from the evidence of PW-5 under Para-12, it is crystal clear that the prosecution party were engaged in harvesting paddy crop from a land, which stood in name of their grandfather and that being so, appellant has got his interest in the ancestral property and only to digest the same, got this case filed. Furthermore, it has also been submitted that none of the independent witness has come forward to support the case of the prosecution. It has also been submitted that at an initial stage, there was disclosure that Poonam Devi, mother (PW-4) along with Dharmendra Kumar, another brother of the informant (not examined) were also assaulted by the appellant, but neither there happens to be any injury report relating to PW-4 nor Dharmendra Kumar. Furthermore, Dharmendra Kumar has not come forward to depose and instead thereof, Jitendra Kumar (PW-3) has been adduced, whose presence has not been shown right from initial stage. Furthermore, no explanation has been offered relating to non-examination of Dharmendra Kumar.

7. Furthermore, it has also been submitted that story of



demand of rangdari as well as having been armed with musket has purposely been introduced in order to give gravity over the allegation otherwise even if considering the prosecution version, it happens to be a simple case of assault that too, on account of encroachment of legal right of appellant by the prosecution party and that being so, appellant would not have been convicted and sentenced for, in a manner as held by the learned lower Court. It has also been submitted that on account of specific disclosure at the end of prosecution that Dharmendra sustained fracture on account of assault, his non-examination found adverse to the prosecution case, as his non-examination happens to be intentional as he might not concede to implicate his uncle falsely, his presence happens to nowhere. Furthermore, when the evidence of remaining witnesses PW-2, father, PW-4, the mother and PW-5, the informant is taken together, it is evident that they are inconsistent on each and every factual aspect and that being so, the judgment impugned is not at all found duly supported with the material available on the record.

8. Furthermore, it has also been submitted that even if considering that prosecution has succeeded in proving its case, even then, no case under Section 307 of the I.P.C., because of the fact that having musket in his hand, appellant had not used the same. Had there been an intention to commit murder, then in that circumstance, all the



prosecution members would have been a soft target. Furthermore, it has also been submitted that none of the injuries having over the person of PW-5, Neeraj Kumar found dangerous to life rather according to doctor, it happens to be grievous injury that too, caused by hard and blunt substance and so, in worst case, appellant would be held liable for an offence punishable under Section 325 of the I.P.C. It has also been submitted that no offence under Section 385 I.P.C. happens to be substantiated as being co-sharer, residing in the same house, then what was occasion for him to go to field and ask for rangdari, that too, possessed with musket and in the aforesaid background, as appellant was under custody from 03.05.2013 to 07.05.2015, approximately two years, the same be considered as a sufficient period of sentence.

9. On the other hand, learned Additional Public Prosecutor refuting the submission made on behalf of appellant has submitted that being uncle of informant (PW-5), appellant has got no legal right to come over the land, which gone out of his share during course of partition, with musket and the manner whereunder musket was used, is indicative of the fact that appellant was carrying knowledge that by such activity in case of failure at the end of the prosecution to get properly examined, would have lent to death of informant. That being so, the conviction and sentence recorded by the



learned lower Court is fit to be confirmed.

10. It has also been submitted that because of the fact that dispute happens to be amongst own family members, on account thereof, non-presence of outsider is not going to hamper the case of the prosecution. In any view of the matter, the judgment of conviction and sentence is fit to be confirmed.

11. PW-7, Dr. Md. Shah Kalim Ahmad, had examined the injured (PW-5), Neeraj Kumar on 08.12.2012 while he was posted as Medical Officer at P.H.C. Rajaun and found the following:-

I) Abrasion size 1" x ½" red in colour with diffused painful tender swelling on the left side of skull.

II) Abrasion size ½" x ½" red in colour with diffused painful tender swelling on the left side of face caused by hard and blunt substance. Age of injury within 24 hours. With regard to opinion, same has been kept reserved as the patient was referred to Jawahar Lal Nehru Medical College and Hospital, Bhagalpur for further treatment. After getting C.T. Scan report as well as other reports issued by the Dr. M. K. Chaudhary, large epidural bleeding seen in the left frontal side with fracture of left frontal parietal bone, whereupon both the injuries were shown to be grievous in nature.



From cross-examination of this PW, the most surprising feature is the suggestion having given by the appellant side is under Para-4 of the deposition as “It is not a fact that report of Dr. M. K. Chaudhary is with regard to only one injury.” That means to say, presence of single injury being grievous in nature is an admission at the end of the appellant. In the aforesaid background, now, the ocular evidence is to be seen.

12. PW-5 is the informant/ injured. He had deposed that on 07.12.2012 at about 3-4 p.m., he along with his father Anandi Prasad Singh (PW-2), Poonam Devi (PW-4), brother Dharmendra Kumar (not examined) were harvesting paddy crop. At that very time, Bouki Mandal came and ordered to stop harvesting unless Rs.25,000/- is paid to him in lieu of rangdari. Two more persons accompanied Bouki Mandal, who were armed with lathi and danda. They have not paid heed to him and continued with harvesting the paddy, whereupon Bouki Mandal gave blow of musket over his head as a result of which, he sustained injury and fell in the field. His brother Dharmendra Kumar came in rescue, who was also assaulted by Bouki Mandal with the musket causing fracture of his hand. His mother rushed, who was also assaulted over her head. Father was also assaulted. He had further stated that another blow was also given to him near left eye. Then thereafter, the remaining persons also assaulted with lathi and danda.



On hue and cry raised by him, the people of the surrounding rushed in rescue, whereupon accused persons fled away. During course thereof, Bouki Mandal also threatened that in case of non-payment of rangdari, they will be eliminated. Then thereafter, they rushed to police station, but those police officials had not entertained them as a result of which, they returned back. On the following day, they again gone to the police station and case was registered. He had filed written report. The aforesaid written report was scribed by his maternal uncle Bhagwan Singh on his dictation and after going through the same, he put his signature (exhibited). Police had made requisition and sent him to hospital where he was treated and then thereafter, he was referred to Bhagalpur Medical College. As he got himself not properly cured, on account thereof, had gone to Patna where he was treated at Government Hospital. He had further stated that Dharmendra Kumar and Poonam Devi were also examined. Dharmendra Kumar was also referred to Bhagalpur. Identified the accused.

13. During cross-examination at Para-9, he was questioned over non-recording of F.I.R. on 07.12.2012. In Para-10, he had further stated that on 07.12.2012, he along with his mother, maternal uncle, brother Dharmendra Kumar, father had gone to police station. Hospital lies near about police station. They have not gone to hospital rather they returned back to their houses. In Para-11, he had



further stated that on 08.12.2012, they have gone to police station and then, filed written report. In Para-12, he had stated that land over which harvesting was going on happens to be in name of his grandfather. Aforesaid land was purchased jointly. He had not seen document of partition amongst the family. Then had submitted that he is unable to disclose the survey plot number, but he can speak with regard to its boundary. He had further stated that Bouki Mandal is not claiming the land. Only on the date of occurrence, Bouki had come over the land. In Para-13, he had stated that his family members were harvesting paddy crops since before arrival over the plot. At Para-14, he was cross-examined relating to physical feature of the musket. Then had stated that one blow was given on head while another blow near left eye, after sustaining both the wound, he fell down. He was assaulted by the accused near his eye by the barrel of the musket. Other associate of the accused had also assaulted with lathi over his hand, leg as well as other part of body. They have also assaulted his father as well as mother, who came in rescue. He was suggested under Para-18, it is not a fact that this case has falsely been filed. It has further been denied by him that accused had not assaulted him. He had further denied the suggestion that he had not made further statement before the police.

14. PW-6 is the Investigating Officer, who had stated



that on 08.12.2012, he was posted at Rajoun P. S. He was entrusted with the investigation of the Rajoun P. S. Case No.165 of 2012 by the Officer-in-Charge. After being entrusted with the investigation, first of all, he issued injury report with regard to injured and sent him to hospital. Then had gone to place of occurrence, which happens to be the paddy field of informant lying at Fullfaria Badhar having boundary North-Bilas Prasad Singh, South-Mokil Yadav, East-Bilas Prasad Singh, West-Bilas Prasad Singh. He had recorded further statement of informant, statement of witnesses Poonam Devi, Dharmendra Kumar, Anandi Prasad Singh, Bhagwat Singh, Upendar Yadav, Ramesh Yadav. Arrested the accused, procure injury report. Received supervision note and then, submitted chargesheet. Then had exhibited the relevant documents. During cross-examination at Para-7, he had stated that there was only one injured Neeraj Kumar. His further statement was recorded on 08.12.2012. Then at Para-8, there happens to be contradiction relating to the evidence of witness Poonam Devi. In Para-9, he had stated that he had not found harvested paddy at the P.O. He had not found the paddy crop was trampled. He had not found blood stain. He had further stated that it was divulged to him that accused had planted Papaya, bringle plant over the ridge of the field. At Para-11, he had stated that he is unable to say the approximate length of barrel of the musket.



15. So far remaining witnesses are concerned, PW-1 is Bhagwat Singh of village-Khajoor Korma, who had stated that while he was in a way to his house from Nawada market, during midst thereof, he heard uproar, whereupon he had gone there and then, saw Bouki Mandal had given stroke over head of Neeraj Kumar with rod like substance as a result of which, there was injury over his head. Blood oozen out. Mother of Neeraj rushed in rescue, who was also assaulted in similar way by the rod over her head as a result of which, she also sustained injury. Then younger brother of Neeraj Kumar came in rescue, who was also assaulted with rod over his hand. Neeraj, his mother and his brother were harvesting paddy crop. On hue and cry, so many persons assembled, but he is unable to disclose their identity. Then had stated that he came to know that father of Neeraj had planted paddy crop. The name of father of Neeraj happens to be Anandi Prasad Singh and accused Bouki Mandal happens to be his full-brother. Father of Neeraj happens to be three brothers namely Anandi, Bouki and Bilas. He had further stated that at an earlier occasion also Bouki was an accused relating to rangdari. During cross-examination at Para-9, he had stated that he is not at all associated with Anandi nor he has got any connection with him. In Para-10, there happens to be contradiction, but that is irrelevant as PW-6 has not been confronted on that very score. At Para-12, it has



been suggested that Neeraj was cutting tree of Bouki and during course thereof, had fallen down, due to which, he had sustained injury.

16. PW-2 Anandi Prasad Singh, father of Neeraj Kumar. He had deposed that on the alleged date and time of occurrence, he along with his wife Poonam Devi, Neeraj Kumar, Dharmendra Kumar were harvesting paddy. Bouki along with unknown persons came from eastern side and demanded Rs.25,000/- as rangdari from him as well as Neeraj. At that very moment, Bouki Mandal was armed with musket while others were with pistol. They have disclosed that they are unable to pay rangdari. They began to harvest paddy crop, whereupon, Bouki Mandal assaulted Neeraj with barrel of musket as a result of which, he sustained injury over his head as well as near his eye. Bouki Mandal had also assaulted mother of Neeraj over her head as a result of which, she also sustained injury. Other co-accused also assaulted Dharmendra Kumar with the barrel of the pistol as a result of which, he sustained fracture. In Para-2, he had stated that the field belonged to him. He had grown the paddy. It has also been submitted that accused had assaulted Neeraj with an intention to kill. On hue and cry, the persons having in surrounding came in rescue seeing whom Bouki and his associate left the scene. Even at that very moment, Bouki had threatened that in case of non-



payment of rangdari, they will be eliminated. Then thereafter, they came to Rajoun P.S. wherefrom injured were sent to hospital. They had gone to P.S. in the night itself. Neeraj was referred to Mayaganj. In Para-5, he had also asserted that he was also assaulted by the accused persons. During cross-examination at Paras-6 and 7, there happens to be cross-examination relating to their family affair. In Para-8, he had stated that partition had taken place, all the brothers are independently enjoying without having grievances to each other. In Para-9, he had stated that it was a winter season, time was at about 3.00 p.m. In Para-13, he had stated that they have gone to bahiyar at about 11.00 a.m. for harvesting the paddy crop. Four persons have come to harvest, they all took sickle. They have taken only two sickle. He along with his wife were cutting paddy crop. They have cut away the paddy approximately of three kattha, remaining three kattha was to be cut. In Para-14, he had shown boundary of the P.O. land viz. North-Bilas Singh, South-field of a person of Goradih, East-field of person of Goradih, West-field of person of Goradih and Shakhara. It has further been disclosed that the land belonging to Bilas Singh lying at eastern side, West-Bilas Singh, South-Mokil Yadav. They have taken on batai some portion thereof, was cut away while some was remained to be cut. In Para-15, he had stated that total area of the land happens to be five kattha. In Para-16, he had further stated that they



are not on strained relationship since before. When Bouki came in the field, then thereafter, he had seen. His wife and son had not disclosed that Bouki was coming this side. In Para-17, he had stated that as Bouki was armed with a weapon, whereupon they became apprehensive. They have further stated that they have not think about confronting him. In Para-18, he had stated that Bouki had not fired. He had firstly assaulted Neeraj and he sustained injury while protecting Neeraj. His wife also sustained injury during course of protecting Neeraj. His son Dharmendra was not assaulted by Bouki rather he was assaulted by other co-accused. In Para-19, he had stated that he had sustained injury over left hand finger. Blood oozen out, it had fallen over the ground as well as over cloth. In Para-20, he had shown presence of injury over the person of Neeraj over his head as well as below left eye. Then at Para-21, he had detailed injury with regard to Neeraj. Then had disclosed that they have gone to the place of Bhagwat Singh, who happens to be his friend (PW-1). In Para-24, he had further stated that Bouki has also got land in aforesaid Bahiyar wherein paddy was grown. He had further stated that he had got some orchard. Then had denied the suggestion that it is wrong to say that while cutting branches of the orchard of Bouki by his son, he had fallen down and sustained the injury.

17. PW-3 Jitendra Kumar is the another brother of



informant. Although he had detailed the occurrence, but considering the fact that neither PW-5 nor PW-2 had shown presence of this PW. On account thereof, detailed discussion of this PW is forbidden.

18. PW-4 Poonam Devi, is the mother, who had deposed that on the alleged date and time of occurrence, she along with her husband Anandi Prasad Singh, Dharmendra Singh, Neeraj Singh, Jitendra Singh were harvesting paddy. At that very time, Bouki along with his two unknown associates armed with musket came and demanded Rs.25,000/- as rangdari and further, said that after payment of the same, they will be allowed to harvest the paddy crop over which, Neeraj had disclosed that where from they will pay the same over which, Bouki abused and then, gave barrel blow over his head as a result of which, he sustained injury. When she rushed in rescue, she was also assaulted by Bouki. Rest also assaulted. Then had said that there was fracture of left hand of Dharmendra. On hue and cry, persons being in surrounding, rushed in rescue, whereupon Bouki and his two associates fled away and during course thereof, Bouki took away Rs.5,00/- from the pocket of Neeraj. They have also threatened in event of launching of a case, they will be murdered. Then thereafter, they had gone Rajoun P.S. and from there to hospital. Neeraj and Dharmendra were referred to Mayaganj. Niraj was also referred to Patna from Mayaganj where his treatment continued. In



Para-4, there happens to be contradiction. As stated above, PW-6 under Para-8 substantiated the same. In Para-5, she had stated that they were not on strain relationship since before. In Para-6, she had stated that at that very time, harvesting of paddy was going on and so, people of Gauradih, Matraundha and Manjhipur were in the Bahiyar, but she is unable to say how many persons were there. In Para-7, she had stated that the total area of the plot happens to be 8-9 kattha, half of the paddy was already harvested. In Para-8, she had stated that the field of accused also lies near about. He is unable to say whether harvest was going on or not. She had further stated that in between her field as well as accused, field of another brother lies. In Para-9, she had disclosed that they were not aimed at. In Para-13, she had stated that she had also accompanied Neeraj to police station. In Para-14, she had stated that four persons were present at the field and all were armed with sickle for harvesting.

19. After having chronological and analytical scrutiny of the evidence on record, more particularly suggestion having given to the respective witnesses in consonance with the evidence of PW-7, doctor, it is evident that Neeraj had sustained injury, which has not been denied. That being so, injury over the person of PW-5 goes out of controversy. Now, coming to identify whether the appellant happens to be the author of the injury. It is



evident that PW-5, the injured has categorically stated and identified the appellant to be author of the crime. During cross-examination, appellant could not be able to save his testimony to that extent. The evidence probablises some sort of dispute over partition, but the reason best known to the appellant, no detail cross-examination was there, but even considering that the land happens to be joint and even considering after taking into account the evidence of PW-6, that no harvested paddy was found, presence of prosecution party is found substantiated on account of absence of any kind of suggestion to the effect that prosecution party illegally gone over the same nor cross-examination happen to be on that score, would not give any kind of privilege to the appellant to assault. Contrary to it, it has been suggested to the witnesses that while cutting branches of a tree belonging to appellant by Neeraj, he had fallen down. So, suggestion happens to be inconsistent with the present aspect which could have at least given some sort of relief. Be that as it may, from the evidence available on the record, it is apparent that musket happens to be a firearm and during course of the occurrence, it was never used. It was used as hard and blunt weapon whereunder PW-5 was assaulted by means of its barrel. Though both the injury have been found grievous, but not dangerous to life nay PW-7, the doctor had stated that the injuries were sufficient in ordinary course of nature to cause death, if



not proper medical facility would have been given. That being so, the conviction and sentence recorded against the appellant for an offence punishable under Section 307 of the I.P.C. is found not at all maintainable. In likewise manner, considering the nature of the evidence, conduct of the parties, Section 385 of the I.P.C. is also not attracted. So far Section 323 of the I.P.C. is concerned, because of the fact that the assault over the person of informant's mother, brother, father, had not been properly substantiated on account thereof, Section 323 of the I.P.C. relating to them is also at all not found duly substantiated. Whatever been gathered from the evidence on the record, appellant is found guilty for causing grievous injury by means hard and blunt substance over the person of PW-5, on account thereof, he is held accountable for an offence under Section 325 of the I.P.C.

20. Considering the status of the party in consonance with the fact that appellant remained under judicial custody for approximately two years from 03.05.2013 to 07.05.2015, on account thereof, instead of inflicting sentence furthermore, sentence is modified as a period already undergone with a fine appertaining to Rs.10,000/-, in default thereof, to undergo R.I. for six months. The amount should be deposited within fortnight, failing which the learned lower Court will be at liberty to proceed against the appellant in accordance with law. Appellant is on bail, which is extended only for



fortnight to enable him to deposit the fine amount. Since thereafter, the privilege will cease to survive in case of non-deposit of fine. With the aforesaid modification, instant appeal is partly allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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