

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.19 of 2015

Arising Out of PS.Case No. -46 Year- 2011 Thana -BODHGAYA District- GAYA

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1. Brij Kishore Singh Son of Yogendra Singh @Ghora Singh.
 2. Krishna Singh Son of Yogendra Singh @ Ghora Singh.
 3. Yogendra Singh @ Ghora Singh Son of Late Govind Singh.
- All R/o Vill.- Kurmawa, P.S-Cherki, District-Gaya,(Bihar)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhishek, Adv.
Mr. Arvind Kr. Pandey, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the appellants as well as learned Additional Public Prosecutor.

2. Gone through the report submitted by the Senior Superintendent of Police, Gaya communicated vide letter no.1197/Legal Cell dated 08.09.2017 confirming the death of appellants (1) Krishna Singh son of Yogendra Singh @ Ghora Singh, (2) Yogendra Singh @ Ghora son of late Govind Singh. Furthermore, from the judgment impugned, it is evident that those persons were convicted and sentenced of imprisonment only. No fine has been inflicted. That being so, instant appeal abates relating to appellant no.2 Krishna Singh son of Yogendra Singh @ Ghora Singh as well as appellant no.3, Yogendra Singh @ Ghora son of late Govind Singh. That being so, this appeal would now survive only against remaining appellant, namely, Brij Kishore Singh.

3. Appellant, Brij Kishore Singh has been found guilty



for an offence punishable under Section 324 of the IPC and sentenced to undergo R.I. for two years vide judgment of conviction and sentence dated 11.12.2014 passed by Additional District & Sessions Judge, VIth, Gaya in Sessions Trial No.99 of 2014/394 of 2011 while the other convicts (since deceased) were found guilty for an offence punishable under Section 323 of the IPC and each was sentenced to undergo R.I. for six months.

4. PW.5, Birendra Singh filed written report on 24.02.2011 alleging inter alia that his Bataidar Buniyadi Choudhary while was engaged in irrigating his field wherein wheat crop was standing through the electric pump of Sudarshan Prasad, Brij Kishore Singh, Krishna Singh and Ghora Singh came and diverted the flow. His Bataidar Buniyadi Choudhary informed him whereupon he rushed to the spot and inquired from them when his field was being irrigated since before then, the flow, would not have been diverted whereupon, on an order of Yogendra Singh @ Ghora Singh, his son Brij Kishore Singh gave Khanti blow over his head causing injury. Thereafter, Krishna Singh gave lathi blow over his right thigh as a result of which, he fell down. Then, thereafter, Krishna Singh snatched away golden chain while Brij Kishore Singh took away rupees eleven hundred.

5. As is evident after registration of the case investigation was taken up and after concluding the same, charge sheet was submitted whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

6. 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. Furthermore, it has also been submitted that no such type of occurrence had ever taken place but, on account of land dispute prevailing amongst the parties who are family members and for that civil suit was pending since before, this case intentionally been filed.

7. In order to substantiate its case, prosecution had examined altogether seven PWs. PW.1 Sudarshan Prasad, PW.2 Vijay Singh, PW.3 Jitendra Singh, PW.4 Ram Lakhan Singh, PW.5 Birendra Singh, PW.6 Dr. S.Z. Ahsan and PW.7 Ratan Lal Thakur. Side by side also exhibited Ext.1- Written report, Ext.2-Injury Report, Ext.3-Endorsement over written report and Ext.4-Injury report issued by the Investigating Officer, PW.7.

8. From the deposition of the respective witnesses, it is apparent that father of PW.2, namely, Late Balo Singh, father of informant Birendra Singh, namely, Late Jatan Singh and appellant/accused Yogendra Singh @ Ghora Singh (since deceased) were full brothers. It is also evident from the deposition that though they have separated for convenience sake whereunder they got certain land partitioned but, partition could not taken place by meets and bound whereupon, partition suit has been launched by the prosecution party. From the deposition of the respective witnesses, it is evident that PW.2, Vijay Singh happens to be hostile to the accused persons while PW.3 Jitendra Singh is the cousin (Mausera) brother of informant Birendra Singh and PW.4 Ram Lakhan Singh happens to be inimical on account of litigation going on in between. PW.1, Sudarshan Prasad is the



owner of the boring pump and his status is to be adjudged subsequently. During examination-in-chief, PW.2 had detailed the occurrence as an eyewitness claiming himself to be present at his field which was to be irrigated after the field of informant. But the Investigating Officer PW.7 had not found field of PW.2 in the boundary of the alleged P.O. From para-9 of his cross-examination, it is evident that he (PW.2) had materially developed his evidence from his initial version on the score of eyewitness and the same has been substantiated by the Investigating Officer PW.7, para-11.

9. Now coming to evidence of PW.3, though he also had narrated the prosecution case but in examination-in-chief alone he had disclosed that he was at his house. As, he had not claimed to have accompanied the informant to his field or had followed the informant subsequently, to the P.O. his evidence on that very score loses its sanctity. PW.4 during course of his examination-in-chief had stated that hearing uproar, he had gone to the house of Birendra Singh and then accompanied Buniyadi and Birendra to his field whereupon, claimed to have seen the occurrence. From para-10 of his cross-examination, it is evident that he was not at all an eyewitness to occurrence as is evident from deposition of PW.7, Para-13.

10. Now, coming to the evidence of PW.1, it is evident that he had shown himself to be present at his boring by which the land of informant taken on Batai by Buniyadi Choudhary was being irrigated and on account thereof, claimed himself to be an eye witness to occurrence. When the evidence of PW.7,



Investigating Officer has been gone through, it is evident that he had not found boring of PW.1 in the vicinity of the alleged P.O. nor he had found channel, portion of land the P.O. having irrigated which as per evidence of PW.5 para-11 that about 1.5 kattha of land was already watered. Apart from this, the PW.7, Investigating Officer in para-9 of his cross-examination had admitted that he had not mentioned in the case diary whether land was irrigated or not. He had not mention in the case diary that wheat crop was tram-plated or not. From the evidence of PW.7 para-2, it is evident that field of appellant in the boundary of alleged P.O. has been identified but there happens to be no disclosure with regard to any portion of his land having irrigated.

11. So far evidence of injured is concerned, it happens to be settled principle of law that in ordinary course of nature it has to be accepted in the background of primacy having attached therewith coupled with, an inference with regard to presence of injured at the place of occurrence and further, sustaining of the injury in terms of an narration having given by the injured with regard to occurrence unless and until the same happens to be influenced with malafide, ulterior motive as well as false implication.

12. PW.6, doctor had found following injury over the person of PW.5, informant:

- i. Incised wound right side parietal region of scalp 3"x ½"x bone deep profused bleeding. Margin of wound sharp and ever few bunches of cut hair found in base of wound, caused by



sharp edged weapon.

ii. Bruise right thigh 4"x2" caused by hard blunt substance.

iii. Bruise over nose 1"x ½" caused by hard blunt substance.

13. True it is PW.6, doctor had found injury over the person of PW.5, informant out of whom injury no.1 has been found to be grievous in nature caused by sharp cutting weapon while rest injury has been caused by hard and blunt substance, simple in nature, and for that, PW.5, the informant had narrated an incidence having been committed at the end of the appellant including other co-convict (since deceased) while informant had inquired over their illegal activity. When the evidence in its totality has been gone through in consonance with the evidence of PW.7, Investigating Officer, it looks difficult to accept the narration, version having at the end of the prosecution with regard to mode of assault and on account thereof, irrespective of injury having been found by the PW.6, doctor the finding recorded by the learned lower court did not justify its prevalence. Consequent thereupon, same is set aside. Appeal is allowed. Appellant is on bail. He is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	15.09.2017
Transmission Date	15.09.2017

