

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.17 of 2015

Arising Out of PS. Case No. -160 Year- 2002 Thana -TEKARI District- GAYA

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1. Akhilesh Kumar

2. Navlesh Kumar

3. Pawan Kumar

All Sons of Late Ram Naresh Singh Resident of Village-Ark Dhibariya,P.S-
Tekari,Distt.-Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Dinu Kumar, Adv.
Mr. Arvind Kumar Sharma, Adv.
Mrs. Neeha Kumari, Adv.

For the State : Mrs. Abha Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 23-08-2017

Appellants, Akhilesh Kumar, Navlesh Kumar and Pawan
Kumar have been found guilty for an offence punishable under Section 353
of the IPC and each one has been sentenced to undergo R.I. for two years
vide judgment of conviction and sentence dated 17.12.2014 passed by
Additional Sessions Judge, VIth, Gaya in Sessions Trial No.78 of 2014 /
495 of 2004.

2. PW.5, Anand Mohan Srivastava, an Amin, filed written
report on 18.09.2002 at 06:00 PM alleging inter alia that he happens to be
posted as Anchal Amin at Anchal Office, Tekari. Today i.e. 18.09.2002 he
accompanied the C.O., Nagendra Prasad Sinha (PW.3) armed police
personnel, police official of Tekari P.S. to remove encroachment in
pursuance of order having been passed by the SDM, Tekari in
Encroachment Case No.7/99-2000. They reached at the place of
occurrence at 03:00 PM. C.O. had directed Akhilesh Kumar, Navlesh



Kumar and Pawan Kumar to remove encroachment as he was directed by the SDM to remove the encroachment but, none of the encroachers were ready to pay heed, on the other hand they began to abuse as well as threatened of dire consequence. During midst thereof, C.O. had directed him to measure the land in order to ascertain actual area of encroachment whereupon, the encroachers have said that in case of any activity at his end will cost his life. They have also threatened that C.O. as well as police personnel will also be murdered. Anyhow, he proceeded in terms of order given by the C.O. whereupon, Navlesh Kumar and Pawan Kumar snatched away chain from his hand and threw it. They caught hold him, threw on the ground and began to throttle. Akhilesh Kumar pelted stone on others. Anyhow, he was rescued by the police personnel otherwise he might have been murdered. Then, thereafter on an order of C.O. Akhilesh Kumar, Navlesh Kumar and Pawan Kumar were apprehended.

3. On the basis of the aforesaid written report, Tekari P.S. Case No.160/2002 was registered followed with an investigation which ultimately concluded by way of filing of charge sheet against all the accused under Section 323,341,337, 307, 353, 504, 34 of the IPC and being the offences exclusively triable by the court of Session, paved way for trial before the court of Sessions on commitment which ultimately concluded having verdict of guilt as well as sentence, 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 there was



no order of SDM, in its operation as, the same was under challenge under Encroachment Appeal No.80/2002 and to substantiate the same relevant order sheets have been exhibited as Ext.A, A/1, A/2. However, no DW has been adduced.

5. In order to substantiate its case, prosecution had examined altogether five PWs namely PW.1 Ram Udai Sharma, PW.2 Rajesh Kumar, PW.3 Nagendra Kumar Sinha, PW.4 Ranjan Prasad and PW.5 Anand Mohan Srivastava, informant as well as had also exhibited written report, as Ext.1.

6. Because of the fact that conviction has been recorded with regard to offence punishable under Section 353 of the IPC on account thereof, there should be a glimpse over Section 353 of the IPC which reads follows:

“353. Assault or criminal force to deter public servant from discharge of his duty.-Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

From plain reading of the section, the following ingredients are found necessary to constitute the offence.

(a) There should be assault or use of criminal force.

(b) Such force could have been applied on public



servant.

(c) The aforesaid exercise must be while the public servant was acting in execution of his duty or with intent to prevent or deter him from discharging his duty.

(d) In consequence of anything done or attempted to be done by the public servant in due discharge of the duty.

7. Now the evidence on record has to be seen whether the ingredients of the Section as classified herein above is found properly substantiated.

8. None of the police officials including the I.O. has been examined and that being so, the P.O. is not at all properly substantiated in the background of ambiguous nature of evidence having at the end of the C.O. PW.3 as well as the informant PW.5. None of them have disclosed that with regard to which land more particularly specifying by Khata number, Khesra number, boundary, they were directed by the SDM, Tekari to measure, to ascertain the extent of encroachment and to remove the encroachment. Was it a quasi judicial order or an administrative order? The aforesaid eventuality is found deficient one at the end of the prosecution in the background of the fact that no copy of the order has been made an Ext. which could have exposed that there was an order directing the C.O. to get the encroachment properly identified as well as to remove the same therefrom. That means to say in spite of having identification of PW.3 as well as PW.5 to be public servant in terms of Section 21 of the Indian Penal Code, whether on the alleged date and time



of occurrence they were discharging their duty at the place of occurrence in pursuance of an order having been passed by the SDM, Tekari which could have only by way of having the aforesaid order an Ext. of the record. That means to say, mere presence of PW.3 as well as PW.5 at the place of occurrence which too is found uncertain, it would not be presumed that their presence happens to be in due discharge of public duty. So far remaining witnesses are concerned that means to say PW.1 Ram Udai Sharma, PW.2 Rajesh Kumar, it is evident from their evidence that they are on inimical term being on loggers head since before with the father of appellants, namely, Ram Naresh. So far status of PW.4 is concerned, he halfheartedly supported the case of the prosecution as a result of which, was declared, hostile.

9. After giving anxious consideration over the evidence available on the record, it is found that the prosecution happens to be porous one whereupon, the finding recorded by the learned lower court did not survive. Accordingly, same is set aside. Appeal is allowed. Appellants are on bail hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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