

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.122 of 2015

Arising Out of PS.Case No. -234 Year- 2010 Thana -LAXMIPUR District- JAMUI

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1. Lakhan Paswan
 2. Baijnath Paswan
 3. Billo Paswan
 4. Subelal Paswan, all sons of Punit Paswan, all resident of Village Nayagawn,
 Police Station Gidhaur (Laxamipur), District Jamui.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pankaj Kumar Sinha-Advocate

For the Respondent/s : Mr. Z. Hoda-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 21-09-2017

Appellants, Lakhan Paswan, Baijnath Paswan, Billo Paswan and Subelal Paswan have been found guilty for an offence punishable under Section 323 of the I.P.C. and each one has been sentenced to undergo S.I. for three months, under Section 504 of I.P.C. and each one has been sentenced to undergo S.I. for six months, no separate sentence has been inflicted with regard to Section 341 of the I.P.C. vide judgment of conviction and sentence dated 22.12.2014 passed by the 4th Additional Sessions Judge, Jamui in Sessions Trial No.372 of 2011/ 221 of 2014.

2. PW-5, Faguni Devi filed written report on 06.12.2010, disclosing therein that on account of allocation of Indira



Aawas Yojna, she was carrying construction on her field. On 05.12.2010 at about 5.00 p.m., accused Lakhan Paswan, Baijnath Paswan, Billo Paswan and Subelal Paswan came and claimed the land. They also began to abuse. On protest, Subelal Paswan inflicted lathi blow over her head which she prevented and on account thereof, she sustained injury over her left hand as a result of which, sustained hurt. Blood oozed out. Then thereafter, he began to throttle as a result of which, she became unconscious. Her daughter-in-law lifted her and on her effort, she regained sense. During midst thereof, her daughter-in-law was assaulted by Billo Paswan over her back and then, entered into grapple. Her younger daughter Pramila came in rescue, who was also assaulted by Baijnath Paswan over her waist as a result of which, she also became unconscious. Her another daughter Saraswati was assaulted by Lakhan Paswan. Billo Paswan snatched away chain from her daughter-in-law. Subelal Paswan snatched away ear-ring as well as nose-pin. Then thereafter, all of them, made house trespass and took away Rs.20,000/- after breaking open the lock of a box, which she had kept for construction. They have also threatened that their son-in-law happens to be notorious dacoit and at his instance, they will eliminate her whole family.

3. After registration of the case being Laxmipur (Gidhaur) P. S. Case No.294 of 2010, investigation commenced and



concluded by way of submission of chargesheet facilitating the trial ultimately ended in recording conviction and sentence in a manner as indicated above.

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 they have been falsely implicated on account of land dispute.

5. From the record, it is evident that I.O. has not been examined and on account thereof, could not be traced out, whether it happens to be at the house of informant or at the location of the P.O., the place where Indira Aawas was being constructed. Furthermore, the witnesses also failed to identify divulge really construction work was going on and if so, whereas none of the witnesses have disclosed Khata Number, Khesra Number with boundary. It is further evident from the record that all the material witnesses namely PW-1 Ranjeet Paswan, PW-2 Pramila Kumari, PW-4 Babita Devi and PW-5 Faguni Devi are own family members. That means to say, not even a single independent witness has been examined. PW-3 is the doctor. It is also evident that one of the injured Saraswati has not been examined and for that, there happens to be no explanation.

6. Furthermore, as per initial version, PW-2, PW-4 and PW-5 are the injured. That being so, first of all, ocular witness is to be



seen. PW-5, informant had deposed that while wall was being erected, all the accused persons namely Lakhan Paswan, Baijnath Paswan, Billo Paswan and Subelal Paswan came and began to dismantle the same. On protest, they abused. Subelal Paswan gave one lathi blow, which she prevented through her right hand as a result of which, she sustained fracture of her hand. Billo Paswan pressed her neck. Babita Devi, her daughter-in-law came out from her house and began to cry. She indulged herself in protecting her, whereupon Billo Paswan began to assault. He also pulled her cloth. Billo Paswan also snatched away chain. Billo Paswan also snatched away ear-ring, none-pin. Billo Paswan had directed to remain stand up silently otherwise she will be brutally assaulted. Her daughter Pramila Devi came in rescue, she was also assaulted by Baijnath as a result of which, she became unconscious. Then thereafter, the accused persons gone inside her house and took away Rs.20,000/-. She had gone to the Police Station and instituted the case. During cross-examination at Para-2, she had stated that her husband happens to be a Government Servant. Indira Awas Yojna was taken in name of husband's brother namely Ram Briksh Paswan, who happens to be joint. Then, she had stated that about 15-20 days ago, Rs.15,000/- as first instalment was received by him. Construction was being made since last 15 days and during midst thereof, there was no obstruction. Then had stated that dispute arose



amongst them as both the parties were claiming the land. She had further stated that after coming to know about the occurrence, her son Ranjeet Paswan (PW-1) came at Hospital after 10-15 minutes. None other came at the hospital.

7. PW-4 is Babita Devi, daughter-in-law of PW-5. She had stated that on the alleged date and time of occurrence, she was at her house, her mother-in-law Pramila Devi and Saraswati Devi were at the site where construction work was going on. She came to know that Billo, Subelal, Baijnath were assaulting her mother-in-law. She had gone there whereupon, saw lathi blow was being hurled. Accused persons were assaulting her mother-in-law. Subelal was giving lathi blow. Her mother prevented with her hand. When she intervened, she was assaulted by Billo over waist. Then, he entered into the house. Her ornaments were also snatched away. When sister-in-law came in rescue, they were also assaulted by the accused persons. Then thereafter, all the accused gone inside her house and took away Rs.20,000/- after breaking open lock of the box. During cross-examination at Para-2, she had admitted that accused persons are her Gotia. Dispute is going on amongst them. She had further stated that she is unaware about Khata number, Khesra number of the P.O. land. She is unaware with regard to grant of Indira Awas. In Para-3, she had stated that blood oozen out from her injury, back, head, neck, hand.



Cloth were also blood stained. None of the independent person came at the spot. Then had said that land of accused persons also lies adjacent to her land and for that, there was dispute.

8. PW-2 is Pramila Kumari, who had deposed that on the alleged date and time of occurrence, she was at her house. Subelal Paswan, Lakhan Paswan, Baijnath Paswan and Billo Paswan came at her house and then, began to abuse her mother. As her mother protested, Subelal gave lathi blow over her head which she prevented by her left hand as a result of which, she sustained injury. Her Bhabhi Babita also came. At that very time, accused persons were indulged in throttling her mother. She intervened whereupon Billo Paswan assaulted her with lathi. Billo had pulled away Sari of her bhabhi as a result of which, she became naked. Then thereafter, Billa snatched away ornaments from her bhabhi. All the accused gone inside her house and took away Rs.20,000/-. During cross-examination, she had stated that she is not knowing whether occurrence took place in the background of India Awas Yojna, which she had further stated that she is unaware of the fact that India Awas Yojna was allotted to her mother or not. She had further stated that no occurrence took place with regard to Indira Awas Yojna. In Para-3, she had stated that there was injury on account of assault from which blood had oozen out. Her cloth became soaked with blood. She had further stated that none of



the persons of her locality had come at the P.O.

9. PW-1 Ranjeet Paswan, son of informant had deposed that on the alleged date and time of occurrence, he was at the grocery shop. His mother Faguni Devi, sister Pramila, Saraswati and wife Babita Devi were present at her house. After hearing uproar, he rushed to his house and saw Subelal, Baijnath, Lakhan and Billo engaged in assaulting his mother, sister and wife. All were armed with lathi. He had gone to his mother. His mother had said that these accused persons have assaulted. Then had said that his mother was assaulted by Subelal Paswan with lathi, when Pramila came in her rescue, she was assaulted by Baijnath as a result of which, she became unconscious. Then Saraswati, Babita came, who were also assaulted, Billo pulled Sari of his wife. He also snatched away ornaments. Then all the accused persons gone inside his house and took away Rs.20,000/-. In Para-2, he had admitted that accused persons are his Gotia and land dispute is coming since long. Both the parties are claiming the land. Then had said that Indira Awas was allotted to his uncle Ram Brikch Paswan. Further said that he is not remembering the khata number, khesra number relating to the land for which Indira Awas Yojna was granted. Further said that he will produce the document. In Para-3, he had further stated that when he reached at the P.O., all the accused persons have already left the place after



assaulting his family members.

10. PW-3 is the doctor, who had found following injury over the person of respective injured:-

Pramila Devi

1) Pain in right side of waist. No external injury present.

Age of injury within six hours.

Nature- Simple in nature caused by hard and blunt substance.

Babita Devi

1) Abrasion on left side of chest near waist, 1" diameter.

2) Complaint of pain in left leg. No external injury.

Age of injury within six hours. All injuries are simple in nature caused by hard and blunt substance.

Faguni Devi

1) Tender, swelling with abrasion on the left forearm 1" x ½".

2) Complain of back pain. No external injury.

Age of injury within six hours.

Nature – All injuries are simple in nature caused by hard and blunt substance.

11. From the evidence available on the record, it is



evident that PW-3 had not found bleeding injury nor blood clots were found over the injury. That being so, the assertion of the prosecution witnesses that on account of assault, they have sustained bleeding injury, is found completely falsified. Moreover, the nature of the injury having been found over the person of respective injured could be caused by friendly hand is another circumstance to be taken into consideration. It is also apparent that from the evidences of the witnesses that they have admitted land dispute. In the aforesaid background, it was incumbent upon the prosecution to have properly affixed the place of occurrence in the background of the fact that as per evidence of PW-5, the place of occurrence happens to be the field where construction work was going on while as per evidence of PW-2, it happens to be their house. Furthermore, there also happens to be inconsistency with regard to assailant. Apart from this, no document has been filed to substantiate that Indira Awas Yojna was granted that too, relating to a particular land which does not belong to the accused persons. Had there been aforesaid document, then in that circumstance, prosecution would have been able to substantiate the motive. Non-examination of the I.O., happens to be another circumstance which, in the facts and circumstances of the case, happens to be prejudicial to the interest of the appellants, save and except PW-5, none had disclosed that construction work was going



on. Apart from this, PW-3 had not named Lakhan Paswan, while Saraswati, another injured, as claimed by the prosecution, has not been examined. The cumulative effect did not justify the finding recorded by the learned lower Court.

12. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

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