

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.238 of 2015**

Arising Out of PS.Case No. -105 Year- 2008 Thana -SINGHIYA District- SAMASTIPUR

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1. Siya Ram Singh**2. Sushil Singh**, both sons of Late Shaligram Singh, resident of village-Singhia, P.S. Singhia, District - Samastipur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh-Advocate

For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 22-02-2018**

Appellants Siya Ram Singh and Sushil Singh have been found guilty for an offence punishable under Section 307 of the I.P.C. and each one has been sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo R.I. for one year. Sushil Singh, under Section 323 of the I.P.C. and sentenced to undergo S.I. for six months as well as to pay fine appertaining to Rs.500/- and default thereof, to undergo S.I. for one month, additionally. Siya Ram Singh, under Section 324 of the I.P.C. and sentenced to undergo R.I. for two years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, to undergo S.I. for three months vide judgment of conviction dated 16.04.2015 and order of sentence dated 20.04.2015 passed by the Additional Sessions



Judge, Rosera, Samastipur in Sessions Trial No.145 of 2010.

2. PW-5 Dipu Kumar Singh while he along with his brother was admitted at P.H.C. Singhia gave his fard-bayan on 26.10.2008 at about 11.00 a.m. disclosing therein that on the same day at about 8.30 a.m. his brother Lalan Kumar Singh after giving tuition, gone to backward of his house where Siya Ram Singh, Sushil Singh/ these appellants had kept cut caster plant and requested them to remove the same as a result of which, it has been alleged that appellant Sushil Singh took out pistol and gave a butt blow over Lalan Kumar Singh causing injury thereupon. When he (informant) rushed in rescue, Siya Ram Singh gave farsa blow over his head causing injury thereupon. Then thereafter, Siya Ram Singh snatched away golden chain of Rs.10,000/- as well as also took away Rs.11,00/- . Then thereafter, both the brothers left the scene abusing whole family members.

3. After registration of Singhia P.S. Case No.105 of 2008, investigation was taken up and after completing the same, chargesheet was submitted, which happens to be the basis for trial meeting with ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that prosecution party



illegally advanced their claim over the land under dispute which has already been purchased possessed by them and only to coerce them to give up their possession, instant case has been registered with false allegation in consonance with those persons, who happen to be inimical to them. Furthermore, oral as well as documentary evidence have been adduced on behalf of appellants in support thereof.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, who are PW-1, Vijay Prasad Singh, PW-2, Babloo Singh, PW-3, Lalan Kumar Singh, PW-4, Bimla Devi, PW-5, Dipu Kumar Singh, PW-6 Jaikant Mahto, PW-7, Dr. Ram Singh, PW-8, Priyanka Devi and PW-9, Naresh Yadav. Side by side, had also exhibited as Exhibit-1, signature of PW-3 over fard-bayan, Exhibit-1/1, signature of informant (PW-5) over fard-bayan, Exhibit-2, formal F.I.R., Exhibit-3 series, injury reports relating to injured Dipu Kumar Singh and Lalan Kumar Singh, respectively.

6. As stated above, three DWs have also been examined namely Vishwanath Prasad Karn (DW-1), Tarakant Singh (DW-2) and Raj Kumar Singh (DW-3) as well as had also exhibited as Exhibit-A series, sale deed dated 22.02.1996/ 21.05.2001, respectively, Exhibit-B, C.S. Khatiyani, Exhibit-C, signature of Tarakant Singh (DW-2) over Partition Deed No.1604 dt. 26.09.2013, Exhibit-D, Map, Exhibit-E and F, notices issued by the Gram



Kutcheri as well as order dated 06.12.2009 passed by the Gram Katcheri.

7. It has been submitted on behalf of learned counsel for the appellants that from the evidence of the witnesses, it is apparent that PW-1 happens to be hostile since before as case and counter-case was being fought with the appellant. In likewise manner, it has been submitted that PW-2, Babloo singh and PW-4, Bimla Devi are son and mother. They are on litigating term with Jiwas Sharma, who is contesting on the basis of a sale deed, whereupon appellant Sushil Singh is the witness. Now, evidence remains of allegedly both the injured Lalan Kumar Singh and Dipu Kumar Singh along with evidence of Doctor (PW-7). With regard to other witnesses, it has been stated that they happens to be formal in nature. I.O. has not been examined and in the aforesaid background, before dealing with evidence of PW-3 and PW-5, when the evidence of PW-1 is gone through, it is apparent that he had admitted that accused persons had purchased this land. So far PW-3 and PW-5 are concerned, they have disclosed that both the parties are on strained relationship relating to aforesaid land, which is being claimed and counter-claimed by both the parties. In the aforesaid background, it has also been submitted that nature of the injury inspires that the same happens to be self-inflicted and in the aforesaid background, got this case filed. It has



also been submitted that even considering the evidence of the injured in consonance with the medical evidence, it is apparent that there was single blow and further, from the evidence of the doctor, the nature of the injuries suggest that neither the same was inflicted with an intention or knowledge to commit murder and that being so, no offence under Section 307 of the I.P.C. is made out. Even if considering the appellants are liable to be convicted punishable under Section 323 and 324 of the I.P.C., considering the nature of the evidence, claim and counter-claim relating to the P.O. land over which, admittedly, staking of cut Castrol plant by the appellants inspires confidence with regard to possession of the appellants and further, appellants have got no criminal antecedent and that being so, a lenient view be taken at least giving benefit under the Probation of Offenders Act.

8. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that admittedly, there happens to be land dispute amongst the parties as is found duly exposed by the witnesses, but manner whereunder appellants have acted speak otherwise and that being so, the learned lower Court had rightly convicted and sentenced the appellants.

9. Investigating Officer has not been examined and that



being so, first of all, it has to be seen whether any prejudice has been caused to the appellants or not. After going through the evidence available on the record, it is evident that there happens to be no exaggeration, contradiction in the evidence of the witnesses. Side by side, they happen to be consistent with regard to manner of assault as well as place of occurrence. That being so, non-examination of the I.O. could not be found prejudicial to the interest of the appellants.

10. All the witnesses have categorically stated identifying both the appellants namely Sushil Singh to have given butt blow over the head of Lalan Kumar Singh while Siya Ram Singh had given farsa blow over head of informant (PW-5) Dipu Kumar Singh. It is needless to say that one set of witnesses, who happen to be the hostile to the appellants, have come forward to depose against the appellants and the same is evident from PW-1 under Para-4 whereunder he had admitted that his brother as well as appellants have filed case and counter-case at an earlier occasion. Though his brother Manoj Singh has not come forward to depose. In Para-5, he had admitted that his brother Manoj Singh happens to be witness of this case. In likewise manner, PW-2 under Paras-3 and 4, his mother at Para-3 had admitted pendency of Title Suit against Jiwas Sharma. Jiwas Sharma claims the land on the basis of a sale deed, whereupon appellant Sushil Singh happens to be attesting witness. In Para-5, she had also admitted that



Ramakant Singh, father of PW-3 as well as PW-5 had deposed in that Title Suit, in her favour. Rest witnesses that means to PW-6, PW-8 and PW-9 happen to be formal and so, now, evidence remains of PW-3 and PW-5, both allegedly injured along with evidence of PW-7, doctor.

11. PW-3, during his examination, had deposed that on the alleged date and time of occurrence, he after giving tuition, requested Siya Ram Singh and Sushil Singh to remove the staked castrol plant over which Sushil Singh assaulted him with butt of pistol over his head as a result of which, he fell down, his brother Dipu Kumar Singh rushed in rescue, who was also assaulted with farsa on his head as result of which, he sustained injury, blood oozen out. Then thereafter, Siya Ram Singh snatched away golden chain from Dipu Singh as well as also snatched away Rs.11,00/-. Both were taken to Singhia Hospital where police came and recorded fard-bayan over which, he also put his signature (Exhibited), identified the accused.

During cross-examination at Para-4, he had identified the boundary of the P.O. as North-South-Land of Siya Ram Singh, East-Bhuskar of Radhakant, West-hut of Tarakant Singh. In Para-5, he had stated that he is unable to say Khata number and Khesra number of the P.O. land. Accused persons are claiming the aforesaid land. Then



had shown ignorance from whom, accused persons had purchased the land. In Para-6, he had stated that his house and not of accused stood over the P.O. land. He had further denied under Para-7 that there was Panchayati for the aforesaid land. He had also disclosed the distance of his house as well as house of accused persons having at a distance of 20 legs-30 legs respectively from P.O. land at Para-8. In Para-9, he had stated that as soon as he directed to remove firewood, accused began to assault. In Paras-13 and 14, there happens to be cross-examination with regard to nature of the injuries as well as mode of assault. He had also asserted that he was not assaulted by the farsa. Then had denied the suggestion that on account of land dispute, they have falsely implicated the accused persons.

12. PW-5 is the informant. During examination-in-chief, he had reiterated the initial version properly identifying the appellants to be author of injuries. During cross-examination at Para-5, he had shown place of occurrence as North-South-land of Siya Ram Singh, East-Bhuskar of Radhakant, West-land of Tarakant Singh. In Para-6, he had disclosed that he is not remembering khata number and khesra number of the P.O. land. He had further stated that accused persons are not claiming the aforesaid land. He had further disclosed that no Panchayati was convened relating to the aforesaid land. In Para-7, he had stated that both the parties are Pattidar. Accused persons have got



no share in the aforesaid land. Then had admitted at Para-8 that accused persons had purchased the land from Southern side from Chandrashekhar Singh. He had further admitted that up-till-now, the land has not been measured. In Para-9, again he had admitted that with regard to P.O. land, both the parties are quarrelling. He had denied the story that his father had given an undertaking that up-till 2009, he will relinquish the land. In Para-10, he had stated that his house as well as house of accused persons lie at a distance of five laggi from the P.O. land. In Para-11, he had stated that when his brother had gone to say to remove the firewood, accused persons were there. He had further stated that he had witnessed the occurrence from 10-15 legs away. In Para-13, he had stated that only one blow was given over his brother as well as upon he himself. Then had denied the suggestion that on account of land dispute, this false case has been lodged.

13. PW-7 is the doctor, who had examined **Dipu Kumar Singh** on 26.10.2008 at about 9.05 a.m. and found the following injuries:-

“1) Incised wound 2” ¼” x bone deep size on hop of scalp placed anterposteriorly and slightly obliquely in centre. The margin and surface were bleeding.



2) One swelling on wound bridge of $\frac{1}{2}$ " x $\frac{1}{2}$ ".

3) Both injuries are simple in nature. Injury no.1 caused by heavy sharp cut weapon and injury no.2 by hard blunt substance. Age of injury within few hours.

Lalan Kumar Singh

On the same day and time, he had examined Lalan Kumar Singh and had found the following injuries:-

1) One lacerated wound on right scalp in the region of parietal area placed obliquely 2" x $\frac{1}{4}$ " x bone deep. Bleeding from margin of under Neath surface.

2) Abrasion of 6" length and $\frac{1}{4}$ " within on right back of chest and abdomen placed obliquely with red surface".

All injuries simple in nature caused by hard blunt substance. Age of injury within few hours. During cross-examination, it is apparent that nothing substantial has been explicit from his mouth.

14. After anxious consideration of the evidence available on the record, it is evident that mode of action having alleged against the appellants, certainly would not attract applicability of Section 307 of the I.P.C., because of the fact that apart from action whatever been



alleged, the nature of injuries as referred hereinabove, did not divulge the ingredients that means to say, the intention or knowledge having at the end of the appellants to commit murder of the respective injured, true it is, that so far applicability of Section 307 of the I.P.C. is concerned, the only requirement happens to be causing of hurt and same has been defined under **Section 319 of the I.P.C.**, which reads as follows:-

“319. Hurt.—Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.”

15. But during consideration of aforesaid eventuality, the activity having been so alleged against the appellants is also to be seen, more particularly in the background of the fact that even if there was no intervening circumstance, nothing more was at their end. So far the present controversy is concerned, admittedly, same happens to be under the garb of land dispute. Furthermore, there happens to be no evidence on the record in order to suggest the conduct of the appellants contrary to whatever been pleaded. In the aforesaid facts and circumstances of the case, the finding having been recorded by the learned lower Court relating to Section 307 of the I.P.C. would not survive and that being so, the finding inconsonance with the sentence having inflicted there for, is set aside. Now, coming to rest of the Sections that means to say, Sections 323, 324 of the I.P.C. that in the



facts and circumstances of the case as indicated hereinabove, is found duly substantiated, but did not justify the substantial sentence as inflicted by the learned lower Court as the action was in spur of moment that too, when was referred at the end of prosecution party and on account thereof, same is altered directing the appellants to be present before the learned lower Court for getting themselves duly admonished as provided under Section 3 of the Probation of Offenders Act and for that, both the appellants are directed to be present before the learned lower Court within three weeks from the date of receipt of judgment by the lower Court, till then, the liberty of bail being granted by this Court will continue. In case, there happens to be failure on the part of the appellants, then in that circumstance, the liberty will cease to survive and in the aforesaid background, the learned lower Court will be at liberty to proceed against the appellants in accordance with law. In terms thereof, the appeal is partly allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

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