

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.403 of 2015

Arising Out of PS.Case No. -124 Year- 1995 Thana -KUTUMBA District- AURANGABAD

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1. Nagendra Prasad Sinha S/o Late Tripurari Lal resident of Village- Manora, P.S.- Obra, District- Aurangabad.
 2. Ranvijay Lal @ Bhagal Lal S/o Late Ramlagan Lal
 3. Gopal Lal S/o Late Ramlagan Lal
 4. Gani Lal S/o Late Ramlagan Lal 2 to 4 resident of Village- Simari Kala, P.S.- Kutumba, District- Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Adv
Mrs. Meena Singh, Adv.
Mr. J. Upadhyay, Adv.
Mr. Bhaskar Shankar, Adv.
Mr. Mithilesh Kr. Singh, Adv.
For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 26-03-2018

Appellants, Nagendra Prasad Sinha, Ranvijay Lal @

Bhagal Lal, Gopal Lal and Gani Lal have been found guilty for an offence punishable under Section 307/149 IPC, 27 of the Arms Act and have been sentenced to undergo RI for 10 years vide judgment of conviction dated 19.06.2015 and order of sentence dated 23.06.2015 passed by the Additional Sessions Judge-3rd, Aurangabad in Sessions Trial No. 148/1996/19/14.

2. PW-5, Nathuni Singh gave his Fard-e-beyan on 12.12.95 at about 7.00 PM disclosing therein that in the same day at about 4.30 PM that while along with his full brother, Bhagwati Singh



(PW 1) were present at their Khalihan lying west to his Village, Ramlagan Lal, Nagendra Prasad Sinha, Ranvijay Lal @ Bhagal Lal, Gopal Lal, Kashi Singh and Gani Lal came and abused them. Nagendra Prasad Sinha, Kashi Singh, Ranvijay Lal and Gani Lal were armed with pistol. They after saying that as they have illegally possessed their land and further, is not paying Rs, 20,000/- they began to fire indiscriminately. Then thereafter, they caught hold of him as well as his brother and assaulted with fists and slaps as a result of which he sustained injury over cheek, right side back, while his brother had sustained injury over his left leg, buttock. Anyhow, they got released from their claws and escaped towards his house during course of which, they chased and during course thereof, his brother was assaulted with Lathi. On hue and cry, his co-villagers, Baijnath Barhi, Munarik Paswan, Ramji Singh, Mathura Singh, Sukhnandan Singh, Shyamdeo Singh, Om Prakash Singh and other came, intervened. The motive for occurrence has been shown as the accused persons were not inclined to allow them to construct a furnace for crushing of his sugarcane over the land. They had also dismantled the furnace as well as unsuccessfully tried to damage the *Karaha* (pan of big size).

3. After Registration of Kutumba PS Case No. 124/1995, investigation commenced and after concluding the same,



charge-sheet was submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been suggested that prosecution party illegally advanced their claim over plot no. 164, area-11 decimal belonging to them and for that, this case has falsely been instituted. Also adduced ocular as well as documentary evidence in defence.

5. In order to prove its case, prosecution had examined altogether 7 PWs who are PW-1, Bhagwati Singh, PW-2, Shyamdeo Singh, PW-3, Baijnath Barhi, PW-4, Sukhnandan Singh, PW-5, Nathuni Singh, PW-6, Dr. Suresh Pd. Singh, and PW-7, Bijay Kumar Sinha. Side by side had also exhibited Ext-1, signature of informant over Fard-e-beyan, Ext-1/1, Signature of witness, Ext-2 Series, injury report, Ext-3, Formal FIR. Defence had also examined one DW, Surendra Rai as well as had exhibited two rent receipts under Ext-A series.

6. While assailing judgment of conviction and sentence, it has been submitted by the learned counsel for the appellants that on account of non examination of the Investigating Officer, they have suffered a lot as, apart from the inconsistency



amongst the evidence of the PWs, material development visualizing therefrom, place of occurrence is also found inconsistent coupled with the fact that defence version with regard to illegal claim having advanced at the end of the prosecution party remained unexplained whereupon, the judgment of conviction and sentence would not survive. It has also been argued that all the independent witnesses PWs-2, 3 and 4 have not supported the case of the prosecution whereupon they all were declared hostile. The prosecution case rests upon the shoulder of PW-1, brother of the informant and PW-5, the informant himself. When their testimonies are gone through, it is apparent that they had not gone to hospital and that being so, presence of PW-6, Doctor speaks otherwise than whatever been asserted at the end of the prosecution. Now coming to the applicability of the offence whereunder appellants have been convicted and sentenced for, it has been submitted that from the judgment impugned, it is evident that while same is not at all found duly substantiated apart from the fact that inflicting sentence the learned lower court was completely confused and that happens to be reason behind that though appellants have been found guilty for an offence punishable under Section 307/149 IPC as well as 27 of the Arms Act, no independent sentence has been inflicted under the aforesaid two Sections.

7. Furthermore, it has also been submitted that there



happens to be specific disclosure at the end of the PW-1 as well as PW-5 that they made indiscriminate firing though in the evidence of PW-1, there was development which, on account of non examination of the Investigating Officer could not legally be brought up on record, some had fired in the air, some upon them but all those things found to be falsified when they both admitted that even after their apprehension by the accused persons, they were not shot at, at that very time, even while they were being chased, they sustained only Lathi blow which is indicative of the fact that none of the appellants was armed with dangerous weapon nor there was firing and so, even if considering the evidence of PWs-1 and 5 though did not inspire confidence but in worst case, it happens to be under Section 323/149 of the IPC and for that, the period already undergone will be sufficient punishment.

8. On the other hand, learned APP while supporting the finding having been recorded by the learned lower court, has submitted that manner whereunder appellants came at Khalihan of the prosecution party, brandished their weapon, aimed at the prosecution party having miraculous escape, justify the conviction and sentence whereupon the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

9. It is needless to say that PWs, 2, 3 and 4 have not



supported the case of the prosecution whereupon, they all were declared hostile. The only evidence which could be subject to consideration, scrutiny happens to be relating to PW-1, brother and PW-5, informant.

10. PW-1, during course of his examination-in-chief had stated that on the alleged date and time of occurrence he along with his brother were at Khalihan. At that very time, accused persons (so named) came, abused and then began to fire. Out of them, Gani Lal aimed at Nathuni but the aim missed. Then thereafter, all the accused persons caught hold of him as well as his brother and began to assault them with fists and slaps, legs, shoes and during course thereof, on their alarm, so many villagers arrived who intervened and during course thereof, they escaped therefrom towards their house. As soon as he reached at his Darwaza, Gopal gave Lathi blow over his buttock. He was examined at Kutumba Govt. Hospital. Identified the accused. During course of cross-examination at para-6, there happens to be contradiction with regard to firing. At para-9, he had admitted that accused persons are claiming over a land having been recorded in the name of his grand-father under Khata No. 32, Khesra No. 164, Area-11 Decimal. Then there happens to be cross-examination on that very score. At para-10, he had stated that Ranvijay, Gani and Nagendra were armed with pistol while rests were armed with Lathi



and Danda. He had further stated that after their apprehension, they were not shot at by the accused persons. He had further stated that some of the accused persons have fired in the air while some upon them. In para-11, he had stated that at least 200 people have arrived during course of occurrence at Khalihan. In para-13, he had stated that the disputed land at the present moment, happens to be in his possession. He had also stated that Sasural of brother of Nagendra lies in his village.

11. PW-5 is the informant who had stated that on the alleged date and time of occurrence, he along with his brother was present in the Khalihan and was engaged in crushing. At that very time, accused persons (so named) came out of whom, Ranvijay, Gani and Nagendra were armed with pistol while rests were armed with Lathi and Danda. Gani was demanding Rs. 20,000/- They fired but cartridge did not hit them. Then, thereafter, all the accused persons caught hold both of them and began to assault with leg, fists, Lathi, butt of pistol. On hue and cry, villagers came to intervene and saved them. Then they had dismantled the furnace. Then had stated that he had made Fard-e-beyan before the police (exhibited). Police also recorded his further statement. Claimed identification of the accused.

12. During cross-examination at para-11, had stated that so many cases were being fought amongst the parties. Then had



stated at para-14 that Maar-peet took place over plot no. 159, his Khalihan. He had further disclosed at para-18 that the firing was aimed at him but it did not strike him. In para-19, he had stated that at the time of firing Bhagal, Madan and others had caught hold of him. They have caught hold from front side as well as back side. They had assaulted with Lathi, butt of pistol. In para-20, he had stated that even they were caught hold by accused persons, they were not murdered. Again on that very score, he was tested under para-27. At para-29, he had stated that he along with his brother sustained injury over back, cheek. Then had denied the suggestion that there was 144 CrPC proceeding amongst them. Then had denied the suggestion that they have not sustained any kind of injuries. Then had stated at para-38 that first of all the accused persons assaulted him, then dismantled the furnace. He was not able to forbid them as accused persons were apprehending him. He was apprehended by Bhagal and Gani who had also caught hold of his brother. Then at para-39, he had stated that after dismantling the furnace, accused persons gone away.

13. PW-6, the doctor who had claimed to have examined both the injured on 21.12.1995 and found the following:-

Nathuni Singh:-

Injury No.1. A scratch red in colour 1" x 1/4" on right side of back below scapula region. Only complaint of pain. No evidence of injury.

Injury No.2. Swelling and redness on right auxiliary region 3/4" in diameter. Wound severe mark 3"x 1" on



right muscular region. Nature of Injury-Simple caused by hard and blunt substance.

Bhagwati Singh:-

Injury No.1, A lacerated wound $\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{4}$ " below right patella red in colour transverse.

Injury No.2. Only complaint of pain. No evidence of injury. Nature of Injury-Simple caused by hard and blunt substance.

14. From the evidence available on the record, it is apparent that PW-5 had not spoken a single word that he along with his brother had gone to hospital for their treatment. From the evidences of the witnesses, it is apparent that in spite of presence of all the accused having weapon in their hands, even thereafter, PWs-1 and 5 were not at all shot at rather the story goes as per PW-1, he was assaulted with fists, slaps, legs, shoes and Danda, when got released at the intervention of villagers and rushed therefrom towards their houses and when reached at his Darwaza was given a Lathi blow over his buttock by accused, Gopal Lal which is found ruled out by the informant whereunder he had stated that after dismantling furnace, the accused persons released them and gone away. If this inconsistency is further scrutinized, then in that event, it is apparent that PW-1 had admitted that accused persons were claiming over plot no. 164, on the other hand, in spite of admission at the end of PW-5 under para-11 that so many litigations are pending amongst the parties on account of land dispute, had again unsuccessfully tried to correct the same under



para-23 and further there happens to be some sort of activity at their end as is evident from para-26 whereunder he had stated that accused persons are not claiming plot no. 159 over which his Khalian lies.

15. Considering the nature of the evidence inconsonance with the motive so alleged, it does not look wise to concur with the finding having been recorded by the learned lower court and that being so, the judgment of conviction and sentence recorded by learned lower court is hereby, set aside. Appeal is allowed.

16. Since appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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