

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.277 of 1995

Arising Out of PS.Case No. -44 Year- 1987 Thana –Kusheshwar Asthan District- Darbhanga

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1. Mahendra Yadav son of Mishri Yadav.
2. Rajpati Yadav son of Mahendra Yadav.
3. Satto Yadav son of Mahendra Yadav.
All Resident of Village Usri, P.S.Kusheshwar Asthan, District-Darbhangha.
..... Appellant/s

Versus

State of Bihar (through Chinta Devi)

..... Respondent/s

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Appearance :

For the Appellant/s : Ms. Anukriti Jaipuriyar (A.C)
For the Respondent/s : Ms. S.B Verma, A.P.P

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-06-2018

This Criminal Appeal has been preferred by the three appellants for setting-aside the judgment dated 8th Day of August, 1995, passed by the learned Assistant Sessions Judge, Benipur, District-Darbhangha, (hereinafter referred to as the learned “Trial Court”) in Sessions Trial No.113/89/SJ No.12/94 arising out of Kusheshwar Asthan P.S.Case No.44 of 1984. By the impugned judgment the learned Trial Court has been pleased to hold all these appellants guilty of committing offence under Sections 316 and 323 of the Indian Penal Code, they have been convicted and sentenced to undergo rigorous imprisonment for ten years each under Section 316 of the Indian Penal Code. They have been further sentenced to undergo rigorous imprisonment for one year each under Section 323 of the Indian Penal Code. Both the sentences have been ordered to run separately.

2. The prosecution case is based on the Fardbeyan of one Masomat Chinti Devi (P.W.3). P.W.3 along with her injured daughter-in-law Dhanwa Devi (P.W.4) went to the police station on 17.05.1987, at about 7 P.M and alleged that



on the same day at about 2 P.M the accused Rajpati Yadav and his brother Satto Yadav (Appellant Nos.2 and 3) were taking their bullock cart through the land belonging to the informant situated in the backyard of the house of the informant wherein sweet potatoes were being grown. The informant alleged that as she objected to the accused (Appellant Nos.2 and 3) taking their bullock cart through her land causing damage to the sweet potatoes, appellant no.2 called Mahendra Yadav (appellant no.1) and ordered him to kill Masomat Chinti Devi. The informant alleged that Mahendra Yadav started assaulting her by lathi, seeing this her daughter-in-law, Dhanwa Devi, who was a pregnant women, came to rescue her. Allegedly Rajpati Yadav (Appellant No.2) assaulted Dhanwa Devi by lathi on her back, waist and thigh and on her head. It is alleged that when both of them started crying due to the injury and pain, the appellant nos.1 and 2 gave them slap and fists blow. They claimed that on their crying, Bechan Sada (not examined), Makhu Rai (P.W.1) and Ramadhar Safi (P.W.2) and other persons reached there and saved them from further assault. On the basis of the Fardbeyan (Ext.3) of the informant, firstly a station diary entry was only made on 17.05.1987 and the formal F.I.R., giving rise to Kusheshwar Asthan P.S. Case No.44 of 1987 registered under Sections 316 and 323 of the Indian Penal Code has been registered only on 20.05.1987 after the Officer-in-Charge of the police station received the injury report dated 20.05.1987 (Ext.2) of Dhanwa Devi from Government Hospital, Kusheshwar Asthan and found that the injury report of Dhanwa Devi shows injury no.5 to be grievous in nature, therefore, the case was registered and investigation was taken.

3. After investigation, police submitted the charge-sheet, cognizance was taken and the records were committed to the Court of Sessions for trial of the offences under Section 316 of the Indian Penal Code. Charges were framed



against the accused persons under Sections 316 and 323 of the Indian Penal Code. The accused persons pleaded not guilty and they claimed to be tried.

4. The case of the defence was that the informant, Chinti Devi (PW-3), had encroached upon the public land which she was utilizing for cultivation causing obstruction to the passage of accused persons in particular and the public in general which was objected by the accused persons and due to this reason they were falsely implicated in the case. The defence also pleaded that the abortion of Dhanwa Devi was not caused by the alleged assault, but in fact, Bhikari Yadav, husband of Dhanwa Devi and his mother Champa Devi had poisoned Dhanwa Devi for causing abortion and, thereafter, the informant and Bhikari Yadav and Dhanwa Devi have collusively implicated the accused persons.

5. It appears that in course of trial prosecution examined as many as six witnesses, whereas, defence examined altogether seven witnesses. Manhu Rai (P.W.1), informant Chinti Devi (P.W.3), Dhanwa Devi (P.W.4) are said to be the eye witnesses. They supported the case of the prosecution and repeated the allegations in course of their deposition. Dhanwa Devi deposed that when she came to save her mother-in-law, the accused Rajpati Yadav inflicted blow with 'hoor' of lathi in her abdomen and accused Satto Yadav (Appellant No.3) and Mahendra Yadav (Appellant No.1) also assaulted her with hoor of lathi, gave fist blow and kicked her. She fell down and because of such assault she was in great abdomen pain because she was pregnant and ultimately abortion was caused to her. Manhu Rai (P.W.1) deposed that he heard hulla from his darwaza and saw that Chinti Devi was stopping the bullock cart of the accused persons from grazing sweet potato plant and thereupon the accused Rajpati Yadav called the remaining accused persons, assaulted the informant.

6. The defence pointed out the vital contradiction in the evidence of



the prosecution witnesses on the manner of assault. It was pointed out that the F.I.R disclosed that Mahendra Yadav assaulted Chinti Devi with lathi and Dhanwa Devi was assaulted by Rajpati Yadav and after the assault they started crying and accused Rajpati Yadav (Appellant No.2) and Satto Yadav (Appellant No.3) fisted and slapped her. In her deposition Chinti Devi (P.W.3) made statement that all the three accused persons gave blows of lathi (hoor) in the abdomen of Dhanwa Devi and they further kicked her and fisted her. It was also pointed out that there were vital contradictions in the deposition of Dhanwa Devi also inasmuch as, she has contradicted the F.I.R by stating that Chinti Devi objected and accused Rajpati Yadav and Satto Yadav assaulted her with lathi which is not the case in the F.I.R.

7. The learned Trial Court, however, rejected the plea of the defence saying that the contradictions pointed out appear to be very natural contradictions. The Trial Court was of the view because all the prosecution witnesses were being examined after few years of the occurrence, after such lapse of time it is not expected from a person to present verbatim story of F.I.R and, therefore, it cannot be said to be unnatural. The Trial Court held that the witnesses have unanimously stated about active participation of assault upon the informant, Chinti Devi and Dhanwa Devi.

8. As regards the evidence of the Doctor, P.W.5 who has examined the informant, Dhanwa Devi, on 17.05.1987 at about 07.45 P.M, the learned Trial Court has found that according to the Doctor (P.W.5), there were small swelling on the right side of scalp, bruises on left ulna, multiple bruise in different direction on left gluteal region with swelling and tenderness on supra pubic region. The Doctor has proved injury certificate of Dhanwa Devi which is (Ext.2). The Doctor had deposed that Dhanwa Devi had aborted on



18.05.1987 at 07.30 P.M and the abortion was caused due to assault. The injury report of Chinti Devi was marked as Ext.2/A. The Trial Court held that there is nothing to disbelieve the evidence of P.W.5.

9. P.W.6 was the then Officer-in-Charge of Kusheswar Asthan Police Station who also supported the case of the prosecution. He had recorded the statement of the informant in the station diary and sent the informant Dhanwa Devi for treatment. According to him, on 20.05.1987 he received the injury report and on perusal of the injury report also on the basis of contents of Station Diary No.400 dated 17.05.1987 he drew formal F.I.R and took up the investigation. He had proved the copy of Station Diary which is Ext.3 and the formal F.I.R which is Ext.4. He had visited the place of occurrence on 21.05.1987 and had found a piece of land containing sweet potato behind the house of the informant and adjacent to the house of the accused Mahendra Yadav. According to the Investigating Officer, Mahendra Yadav had objected the informant from growing the sweet potato on that piece of land claiming that it is public road. P.W.6 further deposed that witness Arjun Yadav (D.W.1) and Jagdish Yadav (D.W.3) had stated before him that the informant had poisoned Dhanwa Devi for causing abortion and due to which abortion was caused to her. It was pointed out that in Paragraph No.9 the Investigating Officer has stated that witness Tara Kant Sah (not examined) had stated before him about the old land dispute between the parties. The Investigating Officer denied that the statements made by witnesses Dhanwa Devi and Malhu Rai in course of their deposition were made to him in course of investigation. Thus, what was deposed by Dhanwa Devi in course of trial were not stated before the Investigating Officer.

10. The defence witnesses deposed in favour of the accused persons, however, in ultimate analysis the trial Court convicted all the appellants and



sentenced them as stated hereinabove.

11. While assailing the impugned judgment, learned counsel representing the appellants has submitted that the appellants have been convicted in the present case under Section 316 of the Indian Penal Code without there being any iota of evidence to prove that Dhanwa Devi (P.W.4) was pregnant and that she had aborted due to assault. Learned counsel also submits that even the allegation of causing hurt punishable under Section 323 of the Indian Penal Code has not been proved by bringing any independent witnesses. Learned counsel submits that the conduct of the Investigating Officer in recording the Station Diary entry and not the First Information Report when the informant is said to have gone to the police station along with her daughter-in-law and son that too with so many injuries on their body is highly suspicious. Referring to the injury report of the victim Dhanwa Devi, learned counsel submits that the said injury report has been prepared initially on 17.05.1987, there is a overwriting in the date at the bottom of the report and 20.05.1987 has been overwritten and it is a mere certificate kind of things not an evidence in support of the fact that Dhanwa Devi was pregnant and had aborted. It is not known that where did she abort and who was the Doctor present at that time. No medical prescription showing the medicines prescribed to her has been brought on record. There is no scientific test of the foetus and in fact police has not prepared any inquest report of the same, in these circumstances learned counsel submits that the allegation that Dhanwa Devi being a pregnant lady got aborted due to assault received from the appellant nos.1 and 2 are not a fact 'proved' beyond all reasonable doubt.

12. On the other hand, learned A.P.P representing the State submits that the statement of the informant and victim Dhanwa Devi get support from the evidence of Dr. Hira Lal Prasad (P.W.5) who has proved the injury report of



Dhanwa Devi as well as that of the informant. It is submitted that even though the injury report of Dhanwa Devi in the bottom bears a date of 20.05.1987 by overwriting but that alone cannot be a ground to doubt the veracity of the injury reports.

13. Having heard learned counsel (*amicus curiae*) for the appellants and learned A.P.P for the State as also on perusal of the trial Court records, we find that save and except the oral statement of the informant and her daughter-in-law that victim Dhanwa Devi was pregnant, there is no independent material in support of the fact that Dhanwa Devi was a pregnant women who aborted due to the assault.

14. Dr. Hira Lal Prasad (P.W.5) has prepared the injury report on 20.05.1987 even though the Officer-in-Charge of Kusheshwar Asthan Police Station claims to have sent the victim to the Doctor in Government hospital on 17.05.1987 without lodging the F.I.R. It is highly suspicious that on the one hand the injury report of Chinti Devi (informant) was prepared by the same P.W.5 on 17.05.1987 but the injury report of Dhanwa Devi (Ext.2) was prepared on 20.05.1987 and only thereafter on the basis of the said injury report the F.I.R was lodged by the Officer-in-Charge after three days from the date of the occurrence which was received and seen in the Court of C.J.M only on 23.05.1987 (Ext.4). The injury report (Ext.2) apart from taking note of the injuries noticed by P.W.5 notes down in Paragraph-5 that there was abortion on 18.05.1987 at 07.30 P.M and this abortion was completely due to assault. This has been taken as an injury of grievous nature. The prosecution has not proved any document showing admission of Dhanwa Devi in the Government hospital, no bed head ticket or admission register has been brought in evidence. No X-Ray report or Ultra Sonography report has been brought in evidence to prove the fact that Dhanwa



Devi was pregnant when she was referred to the Government hospital on 17.05.1987. The medicines prescribed to the victim lady in the Government hospital applied for the treatment and other particulars noted down by a Doctor in course of treatment of a patient particularly an indoor patient or nothing of that sort has been proved in course of trial. The fact that the Officer-in-Charge of Kusheshwar Asthan Police Station did not lodge the F.I.R on 17.05.1987 even though the informant and her daughter-in-law had gone to the police station as claimed by them and then after three days an injury report (Ext.2) was issued by P.W.2 and on the basis of which F.I.R was lodged gives rise to suspicion in the mind of the Court about the whole manner of occurrence.

15. The further fact that there is no scientific evidence or documentary evidence to prove that Dhanwa Devi was a pregnant lady and had aborted on 18.05.1987, this Court is unable to accept the case of the prosecution about the pregnancy of Dhanwa Devi and her abortion on 18.05.1987 due to assault. The learned trial Court seems to have been carried away by the allegations made by the informant and then simply in view of the injury report (Ext.2), we are unable to accept the finding of the learned trial Court on the point of the charge under Section 316 of the Indian Penal Code.

16. As regards the allegation of causing hurt punishable under Section 323 of the Indian Penal Code, we find that even the defence has admitted to the extent that due to the planting of sweet potatoes by the informant on the disputed piece of land, accused Mahendra Yadav was facing obstacle in his free movement to his house which led to an altercation between the parties. The oral evidence of the prosecution witnesses support the factum of the fight which took place between the parties and in the said fight the accused appellants had given the lathi blow to the informant. Injury report of the informant has been proved as Ext.2/A



showing one injury of tenderness on left glatal region with three bruises each 3’’X4’’X3/4’’ in size. This injury has been opined as simple in nature and caused by hard blunt substance. Similarly all the injury nos.1 to 4 on the body of Dhanwa Devi have been found to be simple. We have disbelieved the injury no.5 on her body i.e., of the abortion, therefore, we upheld the conviction of the appellants under Section 323 of the Indian Penal Code.

17. The learned trial Court has awarded sentence of one year each under Section 323 of the Indian Penal Code which is the maximum prescribed sentence under the said provision, we however take a view that considering the facts and circumstances whereunder in course of a land dispute the parties are said to have indulged in fight and it was in the spur of the moment, the sentence of all the appellants are reduced to the extent of the period undergone.

18. This appeal is, therefore, partly allowed by setting aside the conviction of sentence of the appellants for the charge under Section 316 of the Indian Penal Code and by reducing the sentences of all the three appellants for the offence under Section 323 of the Indian Penal Code from a period of one year to the extent of the period they have already suffered in jail in connection with this case.

19. The impugned judgment is, accordingly, is set aside to the extent indicated hereinabove. The appellants are on bail, hence they are discharged from the liability of their bail bonds.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

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