

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.453 of 2003**

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

- =====
1. Jagdish Singh, son of Late Ramdeo Singh
  2. Sipahi Singh, son of Late Ramdeo Singh
  3. Ram Kripal Singh, son of Late Ramdeo Singh
  4. Ram Yas Singh, son of Late Hikayat Singh
  5. Sudarshan Singh, son of Sri Ram Yas Singh, all residents of village Chakhan,  
P.S. Isuapur Taraiya, District Saran

.... .... Appellants

Versus

The State of Bihar

.... .... Respondent

=====

**Appearance :**

For the Appellant/s : Mr. Harsh Singh with Mr. Ravi Shankar  
Chaudhary, Advocates

For the Respondent/s : Mr. Binod Bihari Singh, APP

=====

**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**ORAL JUDGMENT**

**Date: 29-03-2018**

All the appellants have been convicted under Sections 324/34 of the Indian Penal Code and further appellants Nos. 1 and 2, namely, Jagdish Singh and Sipahi Singh, have been convicted under Section 323 IPC. Further appellants Jagdish Singh, Sipahi Singh, Ram Yas Singh and Sudarshan Singh have been released on executing bond of Rs.2000/- each for the offences under Sections 324/34 and 323 IPC for a period of one year. However, appellant Ram Kripal Singh has been sentenced to undergo rigorous imprisonment for six months under Sections 324/34 IPC and



he has granted provisional bail by learned trial court for a month to enable him to move this Court vide judgment and order dated 23.8.2003 passed by Sri Shashi Bhushan Shukla, the then Additional District and Sessions Judge, Fast Track Court No.III, Saran at Chapra in Sessions Trial No. 79 of 1986. It appears that the aforesaid bond has not been stayed by this Court at the time of admission of this appeal.

2. Prosecution case as appears from the fardbeyan of one Ramanand Singh (since died), in short, is that on 13.11.1983 at about 3 P.M. when grandson of informant, namely, Babu Lal Singh (PW 6) was filling soil at his Nad, accused persons, namely, Jagdish Singh, Sipahi Singh and Urmila Devi came there and got the cattle of the informant freed and pulled down his hut and on protest of PW 6 Babu Lal to the same, the accused persons assaulted him with slaps and when informant came there to rescue his grandson Babu Lal Singh, the accused persons, namely, Ramdeo Singh, Jagdish Singh, Sipahi Singh, Sudarshan Singh, Kripal Singh and Ram Yas Singh, armed with Bhala, Sword came there, and accused Kripal Singh assaulted the informant with Farsa



on his head and accused Ram Yas Singh assaulted him on his hand. Further prosecution case is that the witnesses and large number of village people came there and saved the informant and accused persons fled away and thereafter the informant was taken to Isuapur Dispensary for his treatment.

3. On the basis of aforesaid fardbeyan, Tariya P.S.Case No. 137 of 1983 was registered. On completion of investigation charge sheet has been submitted and cognizance was taken and after commitment the case traveled to the file of the learned Trial Judge for trial and disposal.

4. During trial learned trial court has examined altogether nine witnesses on behalf of prosecution, they are PW 1 Sant Lal Singh, PW 2 Jhulan Mishra, PW 3 Subh Narain Mishra, PW 4 Sawalia Mishra, PW 5 Bishwanath Singh, PW 6 Babu Lal Singh, who is son of the informant, PW 7 Shanker Sah, who is a formal witness, PW 8 Girish Deo Mishra and PW 9 Bindhyachal Singh, who is I.O. of this case. It appears that neither Doctor nor informant has been examined in this case as it has been reported that both have died during pendency of the trial.



5. Apart from that, the prosecution has brought on record the following documents which have been admitted into evidence, they are Ext.1- injury report of Ramanand Singh, the informant, Ext.2- formal FIR, Ext.3- fardbeyan, Ext.4- requisition of police for injury report of Ramanand Singh in writing of Sri Bindhyachal Singh (I.O) and Ext.5- the entire case diary.

6. On behalf of defence no ocular evidence has been adduced but large number of documents have been brought on record, they are Ext.A- certified copy of FIR of Isuapur P.S.Case No. 4/93, Ext.B- certified copy of judgment of Sessions Trial No. 610/93, Ext.B/1- certified copy of judgment of Title Appeal No. 110/83, Ext.B/2- certified copy of judgment of Sri Laxman Ram, Judicial Magistrate, 2<sup>nd</sup> Class, Chapra dated 28.3.1985, Ext.B/3- certified copy judgment of Munsif\_IV, Chapra passed in Title Suit No. 39/80, Ext.C- charge sheet of Isuapur P.S.Case No. 4/93 and Ext.D- certified copy of plaint of Title Suit No. 39 of 1980.

7. On perusal of the record it appears that no specific defence has been taken by the appellants but from the



documents produced by them it appears that their defence is the land (place of occurrence) belongs to them as the title suit was decided in their favour and prosecution party is the aggressor and against them the defence side also lodged a case.

8. From perusal of the documents filed on behalf of defence it appears that a title suit was filed with respect to the land bearing Khesra No. 422 by the informant and others and the same was decided in favour of appellants, against which prosecution party has preferred an appeal, which was also dismissed. It further appears that the defence has filed counter case being Isuapur P.S.Case No. 4/93 against the informant and others with respect to occurrence of 13.11.1983, at 3 P.M. and place of occurrence is also land pertaining to Khesra No. 422 as in the present case.

9. Contention of learned counsel for the appellants is that learned trial court has failed to consider that the land (place of occurrence) belongs to the appellants and the same has been decided in their favour by the judgment passed by learned Munsif and the same has been affirmed in appeal and



learned trial court has also failed to consider that the counter case is also with respect to the same place of occurrence, time of occurrence and date of occurrence lodged by the defence. No doubt, the counter case led to acquittal of the prosecution party but there was a case instituted against them and the evidence further shows that there was some dispute with respect to filling of Nad by Babu Lal Singh (PW 6) and that shows prosecution party is aggressor and in such a situation, false implication of the appellants cannot be ruled out.

10. On the other hand, learned counsel for the State has defended the judgment on the ground that there are consistent evidence on record so far assault made by appellants Ram Kripal Singh and Ram Yas Singh by sword and farsa are concerned and PW 6 had been slapped. No doubt, witnesses appear to be related witness except PWs 2, 3 and 4, who appear to be chance witnesses but there is nothing in their evidence to doubt their testimony which remains unrebutted, as such, conviction of the appellants under Sections 324 and 324 IPC is just and proper and does not



require any interference by this Court.

11. In the background of rival submission of both sides, on examination of the record it appears that in this case informant has not been examined as it has come in the evidence that he died during pendency of trial and son of the informant Babu Lal Singh (PW 6) has supported the prosecution case stating that while he was filling “Nad” accused persons came and freed the cattle and damaged the “Nad” and hut and on protest, he was assaulted by the accused persons with fists and slaps and when his father came he was assaulted by farsa and sword by the appellants and specifically he was assaulted by accused Ram Kripal Singh by means of Farsa on his head, causing injury to him and thereafter appellant Ram Yas Singh assaulted him, causing injury to his hand, as such, even though the informant Ramanand Singh has not been examined in this case the case has been supported by PW 6 Babu Lal Singh, son of the informant and in the FIR his name has been mentioned and he also received injuries by fists and slaps. It appears that with respect to the land (place of occurrence)



having Khesra No. 422 a title suit was filed by informant Ramanand Singh which was decided against him (Ext.B/3) and in appeal also the same has been affirmed (Ext.B/1), as such plea of learned counsel for the defence is that they were in possession of the land. However, learned trial court has disbelieved the same stating, for the place of occurrence an appeal was pending which was in continuation of the suit and, as such, it cannot be said that appellants were in possession of the land on the day of occurrence and prosecution party are the aggressors in this case. Finding of learned trial court is that there is nothing on record and no evidence has been brought on record by the defence that the land in dispute was in their possession.

12. Further it appears that the counter case was also filed by the defence side with respect to the same place and time occurrence but learned trial court has disbelieved the same on the ground that appellants were strong and they have caused more injuries to the informant, whereas the alleged injury caused by prosecution party is simple and apart from the finding of learned trial court it appears that the aforesaid



counter case filed by the appellants resulted into acquittal of prosecution party, whereas there are consistent evidence available on record to show that appellants Ram Kripal Singh and Ram Yas Singh assaulted the informant Ramanand Singh by farsa and sword and others assaulted Babu Lal Singh, son of the informant by fists and slaps but Doctor has not been examined in this case and injury report has been brought on record by a formal witness, who is a health worker and the Doctor has died but in absence of examination of any other Doctor to prove the same and the same being proved by a witness who is not competent to depose about nature of injury, injury report (Ext.1) does not appear to be admissible in the eye of law. It is well settled that even in absence of medical evidence, conviction can be based under Sections 324 and 323 IPC on the basis of consistent evidence available on record, showing that the injured was assaulted by farsa.

13. However, it appears from perusal of the record that except appellant No.3 Ram Kripal Singh all the appellants have been released on execution of bonds of Rs.2000/- each for a period of one year and that has not been



stayed by this Court, as such, there is no need of passing any order on the point of sentence for those appellants. So far appellant No.3 is concerned, he has been sentenced to undergo R.I. for six months.

14. Submission of learned counsel for the appellants is that appellant No.3 Ram Kripal Singh is also entitled to be released on probation under Section 360 Cr.P.C. as benefit of the same has been given to other appellants and even no reason has been assigned by learned trial court for not giving such benefit to him which caused miscarriage of justice. Furthermore the case is of the year 1983 and 35 years have passed, as such appellant No.3 Ram Kripal Singh may also be released on executing bond as has been given to the other appellants by learned trial court.

15. Considering the submission of learned counsel for the appellants and also considering the fact that occurrence is 35 years old and appellant No.3 Ram Kripal Singh was at the age of 50 years in the year 2003 when he was convicted and by now he must be at the age of 65 years of age, as such, instead of confirming the order of sentence,



appellant No.3 is directed to be released on executing bond of Rs.2000/- for keeping peace and good behaviour for a period of six months.

16. With the aforesaid modification in the sentence, this appeal is dismissed.

**(Vinod Kumar Sinha, J)**

spa/-

|                   |          |
|-------------------|----------|
| AFR/NAFR          |          |
| CAV DATE          |          |
| Uploading Date    | 5.4.2018 |
| Transmission Date | 5.4.2018 |

