

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.356 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

- =====
1. Lallan Singh son of Jamuna Singh
 2. Rishimuni Singh son of Ram Khelawan Singh
 3. Ram Pravesh Singh son of Rajgrihi Singh
 4. Barister Singh son of Ramdhari Singh
 5. Udai Pratap Singh son of Ram Raj Singh
 6. Basisth Sigh son of Late Ram Khelawan Singh

.... Appellants

Versus

State of Bihar

.... Respondent

=====

Appearance :

For the Appellants : Mr. Arun Kumar Tripathi, Amicuc Curiae

For the Respondent : Mr. Bipin Kumar, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 28-03-2018

1. All the appellants have been convicted under Section 307/149 of the Indian Penal Code and sentenced to undergo R.I. for ten years and the appellant no.1 has further been convicted under Section 148 of the IPC and sentenced to undergo R.I. for one year and rest of the appellants have also been convicted under Section 147 of the IPC and sentenced to undergo R.I. for six years.

2. The prosecution case as stands on the basis of FIR lodged by P.W.5 Triveni Singh on the same day of occurrence on 18.10.1990 in short is that he was sitting at the Darwaza of injured Sudersan Singh along with him, all the accused persons variously



armed arrived there and threatened the informant that on the last occasion, he was saved but today he will not be spared. It appears that accused Lalan Singh with an intention to cause the death of Sudersan Singh gave one *garasa* blow on his head and Sudersan Singh fell down on the ground and became unconscious and blood started oozing from the head, thereafter, the other accused persons also assaulted him by *lathi*. It is also the case that Hriday Narain Singh and Nandlal Singh and also the father of the injured arrived at the place of occurrence and the injured was shifted to the hospital. It is also stated that Sudarshan Singh was unconscious as such FIR has been lodged by Triveni Singh in the Police Station which led to registration of Ramgarh P.S.Case No.94/90 dated 18.10.1990.

3. During trial seven witnesses have been examined and they are : P.W.1 Ramakant Tiwary (formal witness who has proved Ext.1 P.W.2 Chhabinath Singh, P.W.3 Nandlal Sigh, P.w.4 Hridya Narain Singh, P.W.5 Triveni Singh (informant), P.W.6 Sudersan Singh (injured), P.W.7 Dr. Dau Prasad Singh . The I.O. has been examined as court witness no.1.

4. Apart from the above, following documents have been brought on record on behalf of the prosecution, they are Ext.1 FIR, Ext.1/1 Forwarding of the FIR, Ext.2 injury report of Sudersan Singh.

5. Injury report of the defence side has been brought as



Ext. A to A/2 and the F.I.R. of S.Tr. No.54 of 1991/157 of 2002 has been marked as Ext.B and certified copy of the protest petition has been marked as Ext C, inquest report of Daroga Singh has been marked as Ext. D, certified copy of the postmortem report has been marked as Ext.E, certified copy of the charge-sheet of Ramgarh P.S.Case No.93 of 1990 has been marked as Ext. F.

6. On perusal of the evidence of the prosecution, it appears that there is case and counter case and one person i.e. Daroga Singh, who was initially accused in this case, has died due to injury caused in the occurrence and for which S.Tr. No.54 of 1991/157 of 2002 has been instituted, in which the injured Sudersan Singh, Ramesh Singh, Sudama Singh and Jagram Singh were also accused.

7. The defence case is also that on 18.10.1990 at 01:00 P.M. the FIR had been lodged stating that at about 10:00 A.M., brother of the informant in that case (P.W.1 in the case) had gone to his field situated near *Khalihan* of Jagram Singh, Sudersan Singh, Sudama Singh, Ramesh Singh, all sons of Jagram Singh surrounded and assaulted him by *lathi*, due to which he became unconscious, as such evidence shows that there is case and counter case with respect to the same occurrence.

8. The learned trial court on conclusion of the trial has convicted all the appellants under various Sections of the IPC as



stated above.

9. It appears that the learned trial court has found injury on the person of P.W.6 serious in nature, which can not be manufactured and also found that the accused persons made unlawful assembly at the *Baithka* of the informant and gave *garasa* blow on the head of Sudersan Singh and others also assaulted by *lathi*, due to which he became unconscious and Dargoa Singh has also received injury of *lathi* on scalp and he was referred to the Hospital, where he succumbed to the injuries and on the basis of the same, the learned trial court has found a case of free fight between the parties. The learned trial court has also come to a finding that there is possibility that P.W.6 of this case was assaulted by accused persons and in such a situation, in the occurrence Daroga Singh has also received injury on his head.

10. Learned Amicus Curiae has submitted that the learned trial court has found that there was case and counter case and Daroga Singh has also received injuries but he failed to appreciate this fact that the injury caused to Daroga Singh has not been explained by the prosecution and apart from that he also failed to consider that three persons have also received injuries in that occurrence and they are appellant no.1 and appellant no.6 has also received injuries in that occurrence and their injuries have also been brought on record as Ext



A/2 and A/3 and injury on their persons has also not been explained and as such defence is entitled for the benefit of non-explanation of the injury on the person of the appellants' side, in which one person also died.

11. Further submission of the learned counsel for the appellant is that in this case one of the injuries on the person of P.W.6 Sudersan Singh i.e. injury no.1 has been found grievous in nature but the Doctor has not arrived to the conclusion that the injury is grievous in nature. It has also been submitted that there is allegation against Lalan Singh even in the initial prosecution case that he assaulted Sudersan Singh (P.W.6) but there is no allegation that he repeatedly assaulted, in spite of that two incised injuries were found on the person of P.W.6 and no specific allegation has been attributed to any other appellants and general allegation of assault by Lalan Singh has been mentioned in the FIR and if the aforesaid discrepancies is considered in the light of a case and counter case, conviction of the appellants under Section 307 is not sustainable in the eye of law and the learned trial court has failed to consider that the appellants have been assaulted by the informant and further submission is that even genesis of the occurrence has not been proved in this case.

12. On the basis of the above submission, the learned Amicus curiae has submitted that the impugned order suffers form



infirmities and it is not sustainable in the eye of law.

13. Learned counsel for the State has drawn my attention towards the evidence of P.W.7 and has submitted that the Doctor (P.W.7) has found incised injury on the right side of head and the blood was oozing out profusely and he was brought in the hospital in coma and he has found the injuries grievous in nature and apart from that there was several other injuries also including one incised injury and as such attention can be drawn that the appellants have found doing unlawful assembly and assaulted P.W.6 with an intention that had he been died in the occurrence, the appellants were convicted for murder as such conviction under Section 307/149 of the IPC is sustainable in the eye of law and it does not require any interference by this Court. It has also been submitted that though there is case and counter case but the place of occurrence is near *Darwaza* of the informant and P.W.6 has received injury, in such a situation the accused persons are aggressor and there is injury, as such conviction of the appellants is just and proper and it does not require any interference by this Court.

14. Having heard both sides and on perusal of the evidence it appears that P.W.6 is the injured in this case and he has stated that while he was sitting at the *Darwaza* of the informant accused persons came and Lalan Singh assaulted by *farsa* on his head due to which he



fell down and became unconscious, thereafter, the other accused persons assaulted. No doubt his cross examination shows that for the occurrence of the same day, he has admitted that a counter case has also been instituted by accused Lalan Singh. P.W.5 is the informant in this case and he has supported the manner of assault to Sudersan Singh (P.W.6) and stated that Lalan Singh assaulted by *Farsa* and after receiving injury, he fell down and the other accused persons assaulted by *lathi*. He has proved his signature on the FIR and further stated that Sudersan Singh was unconscious, so far FIR has been lodged by him. His evidence further shows that cases are going on. Evidence of P.W.2 to 4 also supports the prosecution case so far manner of occurrence is concerned and further shows that there is enmity between the parties.

15. P.W.4 has also admitted in para 3 that one Title Suit is pending between him and Lalan Singh and he has also stated that Triveni Singh has deposed in favour of him under Section 145 of the Cr.P.C., however, P.W.2 to 4 have supported the prosecution case so far manner of occurrence is concerned.

16. P.W.7 is the Doctor and he has found following injuries :-

I. Incised wound 2 2/1" X 1/4" X 1/4" on the right side of head. The wound was bleeding profusely due to damage of temporal artery. Artery ligated surgical in interference of wound stitched and bandaged. The patient was brought to



the hospital in comma.

II. Incised wound ½" X 1/8" X 1/8" just one inch away from injury no.I

III. Swelling 3" X 2" on the right fore arms

IV. Swelling 2" X 1" on the left fore arm

V. Bruise 2" X ½" on the back

VI. Swelling 3" X 2" on the right shoulder M/I. A mole on the right shoulder.

And his evidence further shows that injury no.1 was grievous. Further this witness has also stated in his cross examination that on the same day, he has examined Daroga singh (deceased) and found following injuries :-

i. Lacerated wound 2 1/2 : X ¼" X ¼" on the centre of head and further stated that he was referred to hospital.

This witness has further stated that he examined Lalan Singh and Sudersan Singh and also found following injuries on Lalan Singh :

Bruise 3 X 2" on the left clavicular area.

Bruise ½" X ¼" on the thumb of right hand.

He has further stated that he found following injuries on the person of Basisht Singh :

Lacerated 1/4" X 1/8" X 1/8" on the left side of hand.

Bruise 5" X 1" on the back and further stated that injuries were simple in nature.

He has proved the injury report as Ext. A to A/2. The I.O. has not been examined by the prosecution and his evidence shows that he inspected the P.O. land situated at the village.



17. Considering the prosecution evidence, as discussed above, it appears that the prosecution evidence are consistent on the point of assault by the appellant Lalan Singh by *farsa* on head but evidence does not show that there is repeated blow but the doctor has found two injuries on the head of the person of P.W.6 Sudersan Singh. It further appears that though all the witnesses have stated about the assault by the accused persons by *lathi* also to P.W.6 but none of them have named any appellants specifically as to about assault on the part of the body but further appears from perusal of the record that the Doctor has found injury no.1 grievous in nature but there is no x-ray report available on the record to show that there was any fracture or to show that the injury was dangerous to the life. No doubt finding has been given that he was in coma but in absence of the x-ray report it is very difficult to come to a finding that the injury was either grievous or danger to the life. Further it appears from perusal of the record and the learned trial court has also found that there is case and counter case as such there was free fight between the parties. It further appears that so far genesis of the occurrence is concerned, the prosecution has not been able to establish the genesis of the occurrence in this case rather it appears that there was enmity between the parties and as such free fight took place and it is not alleged that the appellant no.1 has assaulted repeatedly him rather



there is allegation that only one blow was given by appellant no.1, in such a situation it appears that the prosecution has not been able to establish this case under Section 307/149 of the IPC against the appellants beyond all shade of reasonable doubts. At best on the basis of the discussions made above, the appellants may be found responsible for offence under Section 324/149 of the IPC under Section 148/147 of the IPC as from the evidence, it can not be gathered that P.W.6 was assaulted with intention to kill him rather it appears that there is free fight, in which both the parties have assaulted each other and there is no repetition of blow in which P.W.6 has received injuries and evidence of the prosecution is that there is no repetition of blow though the Doctor has found two incised injuries, hence, conviction of the appellants is modified to the conviction under Section 324/149 of the IPC, however, conviction of the appellant no.1 (Lalan Singh) under Section 148 of the IPC and conviction of the rest of the appellants (Rishimuni Singh, Ram Pravesh Singh, Barister Singh, Udai Pratap Singh and Basisth Singh) under Section 147 of the IPC is affirmed.

18. Submission of the learned counsel for the appellants is that occurrence is of the year, 1990 and 27 years have passed and further one person has also died in defence side also and further submission is that appellant no.1 has remained in custody for three



months, after conviction and other appellants have remained in custody for more than one month, after conviction, as such lenient view may betaken and sentences against them be reduced to the period already undergone by them.

19. Considering submissions and also case is of 27 yeas old and appellant no.1 has remained in custody for three months and other appellants have remained in custody for more than one month, as such their sentence under Section 324/149 of the IPC and sentence of appellant no1. (Lalan Singh) under Section 148 of the IPC and sentence of the other appellants (Rishimuni Singh, Ram Pravesh Singh, Barister Singh, Udai Pratap Singh and Basisth Singh) and under Section 147 of the IPC is reduced to the period already undergone by them in custody.

20. With the above modification in conviction and sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

chn/-

AFR/NAFR	CAV
CAV DATE	N/A
Uploading Date	05.04.2018
Transmission Date	05.04.2018

