

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.341 of 2003

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

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1. Ram Darshan Bhagat, son of Baban Bhagat
2. Shyam Babu Bhagat, son of Motichand Bhagat
3. Araj Nath Bhagat, son of Sudarshan Bhagat
4. Babanjee Bhagat, son of Suryapal Bhagat, all are residents of village Karmasi,
P.S. M.H. Nagar, District Siwan

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ramadhar Shekhar with Mr. Irshad
Ahamad Khan, Advocates
For the Respondent/s: Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-03-2018

All the appellants stand convicted under Sections 147 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three months on each count vide judgment and order dated 11.6.2003 passed by Sri Anant Prasad Shrivastava, the then Ad hoc District and Sessions Judge, Presiding Officer, 1st Additional Fast Track Court, Siwan in Sessions Trial No. 19/97/19 of 2003.

2. Prosecution case, as per fardbeyan of informant Motilal Bhagat (PW 4), in short, is that on 3.2.1996 at about 6 P.M. while he was sitting by the side of wood fire at his door, in the meantime the accused persons, six in numbers, including the appellants armed with



lathi and deadly weapons like farsa, came there and started throwing “Chauki” and “Khat” from the verandah of the informant and when daughter-in-law of the informant, namely, Kalauti, as also by the informant protested to the same, they assaulted the informant as well as his daughter-in-law with their respective weapons and it is said that appellant Baban Bhagat assaulted the informant with Farsa on his head and other accused persons by lathi, causing injuries to him and Kalauti Devi was assaulted by them by lathi. Further prosecution case is that appellant Shyambabu Bhagat snatched gold “Karnful” from the ears of Kalauti Devi and appellant Motichand had taken Rs.1104/- from the pocket of the informant.

3. The aforesaid fardbeyan led to the registration of Husainganj M.H.Nagar P.S.Case No. 27 of 1996. Post investigation charge sheet has been submitted, cognizance of the offence has been taken and as Section 307 IPC was also involved the case has been committed to the court of sessions, which ultimately came to the file of the learned Trial Judge for trial and disposal.

4. Charges were framed against the accused persons and prosecution in order to substantiate its case has examined altogether seven witnesses, they are PW 1 Gautam Bhagat, who claims to be an eye-witness to the occurrence, PW 2 Ram Bahadur Manjhi, who also claims to be an eye-witness to the occurrence, PW 3 Dr. Md. Lokman



Ali, who has examined the injured informant, PW 4 Motilal Bhagat, who is informant and injured, PW 5 Kalauti Devi, who claims to be an eye-witness and injured, PW 6 Bishundeo, who has turned hostile and PW 7 Amar Manjhi, who has also turned hostile. I.O. has not been examined in this case.

5. Defence of the appellants as per the trend of cross examination and statement under Section 313 Cr.P.C. is of false implication and of innocence. Apart from that, defence has also filed certified copy of the plaint of Title Partition Suit No. 21 of 1995 (Sudarsan Bhagat and ors. Vs. Motilal Bhagat and ors.) as Ext.A, petition of probate case No. 3 of 1987 filed by Motilal Bhagat with record to the estate of Jhalar Bhagat as Ext.A/1, certified copy of order dated 7.7.1996 passed by the Executive Magistrate, Siwan in a proceeding No. 37 of 1996 in a proceeding under Section 145 Cr.P.C. as Ext.B and the certified copy of order dated 11.5.1996 passed in a proceeding under Section 144 Cr.P.C. (Motilal Bhagat vs. Panchanand Bhagat) as Ext.B/1.

6. Learned trial court on the basis of aforesaid evidence has not found the accused persons, including the appellants guilty under Section 307 IPC and also under Section 379 IPC but convicted the appellants under Sections 147 and 323 IPC and sentenced the appellants to undergo R.I. for three months, whereas he has released



other accused persons on due admonition under Section 360 Cr.P.C.

7. Contention of learned counsel for the appellants is that enmity between the parties appears from a large number of documents filed by the defence and further there are contradictions in the evidence and injuries are superficial in nature and no injury was caused by Farsa though it is alleged that informant Motilal Bhagat was assaulted by Farsa, as such possibility of false implication of the appellants cannot be ruled out but in spite of that the appellants were convicted under Sections 147 and 323 IPC and sentenced them to undergo R.I. for three months, which does not appear to be sustainable in the eye of law.

8. On the other hand, learned counsel for the State has defended the impugned judgment on the ground that there is no infirmity in the same and all the witnesses have supported the time of occurrence, place of occurrence and manner of occurrence and Doctor has found the injuries over the person of informant injured though injuries were lacerated and swelling. Further submission of learned counsel for the State is that the learned trial court has taken lenient view and convicted the appellants under Section 147 and 323 and not under Sections 307 and 379 IPC, as such the conviction of the appellants is just and proper and does not require any interference by this Court.



9. On perusal of the evidence of witnesses available on record it appears that the informant (PW 4) has supported the prosecution case and he has stated in his evidence that all the accused persons have assaulted him by lathi and Baban Bhagat assaulted him by Farsa on his head and his daughter-in-law Kalauti Devi (PW 5) was also assaulted by them by lathi and his evidence found corroboration from the evidence of other witnesses, i.e., PWs 1 and 2 also. No doubt, PW 2 has not stated about the snatching of gold “Karnful” from Kalauti Devi and cash from the informant (PW 4). Learned trial court has not found the case true under Section 379 IPC but so far allegation of assault is concerned, the evidence is consistent on the point of assault and evidence of Doctor shows that he has found injuries on the person of informant Motilal Bhagat, which are as follows :-

(i) Lacerated wound 3”x 1” x ¼” over mid inter partial region, (ii) Swelling 3” x 1” over back, (iii) Swelling 2” x 1” over low back, (iv) Swelling 2” x 1” over left glutial region, (v) Swelling 2-1/2” x 1” over left detroid region and (vi) Swelling 1” x ½” over left wrist.

Opinion of Doctor is that all the injuries were caused by hard and blunt substance. Opinion of nature of injury No.(i) kept reserved till X-ray examination report was received. Rests are simple in nature.



Age of injuries is within six hours.

10. Learned trial court has also considered the aspect of the matter that there is allegation against Baban Bhagat of assault by Farsa but no Farsa injury was found and all the injuries were caused by lathi but in spite of that he has convicted the appellant Baban Bhagat under Section 323 IPC though there is no allegation of assault against him caused by hard and blunt substance.

11. Considering the entire discussions made above, so far conviction of appellants Nos. 1 to 3 under Sections 147 and 323 IPC is concerned, there is no infirmity in that. However, so far conviction of appellant No.4 Babanjee Bhagat is concerned, the allegation of assault by Farsa is not supported by medical evidence, as such he is entitled to the benefit of doubt. As such, the conviction and sentence of appellant Babanjee Bhagat under Sections 147 and 323 IPC are set aside. However, conviction of appellants Nos. 1 to 3 under Sections 147 and 323 IPC is affirmed.

12. Submission of learned counsel for the appellants is that on the same material learned trial court has released the other accused persons on due admonition under Section 360 Cr.P.C. but the same benefit has not been given to the appellants and no reason has been assigned for not granting the same benefit to the appellants as provided under Section 361 Cr.P.C. Hence, miscarriage of justice is



caused to the appellants.

13. Considering the fact it appears that submission of learned counsel for the appellants has force in the background of the case for not granting the benefit under Section 360 Cr.P.C. and not assigning reason for that as provided under Section 361 Cr.P.C.

14. As such, instead of confirming the sentence against appellants Nos. 1 to 3 they are directed to be released on executing bond of Rs.1000/- each for a period of six months for keeping peace and good behaviour.

15. Accordingly, appeal of appellant Babanjee Bhagat is allowed, conviction and sentence passed against him are set aside. So far appeal of other appellants is concerned, same is dismissed with aforesaid modification in sentence.

16. This appeal is disposed of with the above findings.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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