

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.206 of 2003

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

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1. Arun Singh
 2. Ranjeet Singh @ Ranjit Kr. Singh
 3. Ashok Singh
 4. Upendra Singh
All are sons of Sri Sukhdeo Singh
 5. Deo Nandan Singh
 6. Raghu Nandan Singh
Both are sons of Late Jagdeo Singh
All are resident of village Kala Dhanaw Police Station Nabinagar district
Aurangabad

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Bindhyachal Singh, Adv.
Mr. Vipin Kumar Singh, Adv.
Mr. Smriti Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 10-04-2018

Heard the parties.

2. All the appellants stand convicted under Sections 147, 323 & 504 of the Indian Penal Code and also under Section 3 (1)(X) of the S.C. & S.T. Prevention of Atrocities Act and they have been sentenced to undergo R.I. for six months under Section 3 (1)(X) of the S.C. & S.T. Prevention of Atrocities Act and further a fine of Rs.500/- with default clause and they have also been sentenced to undergo R.I. for six months for the offences under Section 323 of the



IPC and further six months R.I. for offences under Section 147 of the IPC. No separate sentence has been passed for the offences under Section 504 of the IPC.

3. The prosecution case in short, which appears from the Fardbeyan of Ramsundar Ram (P.W.2), is that he was at his *Darwaza* when appellants Arun Singh, Ranjeet Singh, Upendra Singh and Ashok Singh came after forming an unlawful assembly with *Lathi* and *Danda* and asked him as to why he has got his land settled in his favour, on which he replied that the government has settled the land and thereafter Arun Singh assaulted by *Garasa* causing injury on his forehead and as a result started bleeding. It is also stated that Deonandan Singh and Raghunandan Singh were instigating.

4. The aforesaid fardbeyan led to registration of Nabinagar P.S.Case No.101 of 1996 under Section 147, 323 and 504 of the IPC and later on, police submitted charge-sheet under Sections 147, 323 and 504 of the IPC and also under Section 3 (1)(X) of the S.C. & S.T. Prevention of Atrocities Act and as Section 3 (1)(X) of the S.C. & S.T. Prevention of Atrocities Act is involved, it was tried by the learned Special Judge.

5. During the trial, altogether six witnesses have been examined and they are P.W.1 Ram Pravesh Ram, P.W.2 Ramsundar Ram (informant and the injured) P.W.3 Moti Ram (cousin), P.W.4



Devanti Devi, wife of the informant, P.W.5 Dr. Dadan Pd. Singh who has treated injured and P.W.6 Kailash Prasad, formal witness.

6. On behalf of the defence, two witnesses have been examined, they are Nand Kishore Thakur (D.W.1) and Bhagwat Pd. (D.W.2). The evidence of D.W.1 is on the point that no “*Mar-pit*” took place with the informant and evidence of D.W.2 is on the point of age of Radhunandan Singh and Deonandan Singh and D.W.2 has proved Ext. A, which is *Parcha*. D.W.1 has also proved Exts. B and B/1, which are *Zamindari* receipts.

7. Defence of the accused persons is of innocence and no such occurrence took place and also of false implication.

8. The learned trial court on conclusion of the trial has convicted the appellants under Sections 147, 323 and 504 of the IPC and also convicted under Section 3 (1)(X) of the S.C. & S.T. Prevention of Atrocities Act and sentenced as stated above.

9. Learned counsel for the appellants have assailed the judgment on the ground that there is inordinate delay in lodging the FIR of more than 24 hours without any plausible reason. Further submission is that objective finding of the I.O. does not corroborate the prosecution story with respect to the place of occurrence.

10. Further submission is that all the witnesses except the Doctor and the formal witness are related witnesses and the land



dispute is admitted between the parties and the Parcha has been issued with respect to the land which was claimed by Arun Singh and it has come in the evidence of Moti Ram (P.W.3) that the land is in possession of the appellants and in such a situation, conviction of the appellants only on the basis of related and inimical witnesses does not inspire confidence.

11. Further submission is that there are several inconsistencies in the prosecution evidence and that is why manner of occurrence has not been corroborated by the FIR as well as by the medical evidence of the Doctor and injury report, and the allegation is of assault by *Garasa* but no such injury was found on the person of the informant and also there is no injury on the person of wife of the informant but in spite of the above inconsistencies and infirmities, the learned trial court has convicted the appellants, which does not appear to be just and proper.

12. On the other hand the learned counsel for the State has supported the findings of guilt by the learned trial court and stated that evidences are consistent on the point of assault and the same has been corroborated by the medical evidence and the Doctor has found injuries on the person of the wife of the informant.

13. In the above background of the case, it appears that P.W.2 is the informant in this case and his evidence discloses that the



accused persons came and enquired about settlement of their land in his favour and on his reply the accused persons entered into his house and assaulted by *Garasa* and he has further stated that Deonandan Singha and Raghunandan Singh also assaulted by *garasa* and the accused persons have also assaulted his wife but in the earliest version of the prosecution, no such story has been mentioned about the assault by *Garasa* by appellant Deonandan Singh and as per his evidence, the place of occurrence is inside the house.

14. P.Ws. 1, 2, 3 and 4 have also stated about the assault by the appellant Arun Singh and other appellants have also assaulted to the informant and his wife.

15. Further it appears from the evidence of P.W.1 in para 7 of the cross examination that he came after ten minutes and he saw the accused persons fleeing, as such he can not be the eye witness of the occurrence. It further appears from the evidence of P.W.3 at para 1 that it was dark night and it was not visible and his evidence further discloses that land in dispute was in possession of the appellant Arun Singh. Further evidence of P.W.2 informant discloses that he has blurred vision and considering the above facts and blurred vision, as it was dark night it is not possible to identify all the accused persons that they are six in numbers.

16. Apart from the above, evidence, prosecution witnesses



claim that the informant was assaulted by Arun Singh by *Garasa* and his wife also claims to have received injuries, however, the evidence of the Doctor (P.W.5) discloses that he has treated the injured on 21.10.1996 at 9.40 P.M. and he found one abrasion on the forehead and one scratch near eye brow and complain of pain to the informant and so far wife of the informant is concern, she has found no external injury rather complain about pain, as such there is no injury on the person of the wife of the informant and so far informant is concerned, there is no *garasa* injury on his person. No doubt when there is contradiction between the ocular and the medical evidence, it is well settled that the ocular evidence has to be relied upon if it is free from inconsistencies and infirmity. However, in the present case, medical evidence creates serious doubt about the manner of occurrence.

17. Apart from the above, as discussed above, prosecution evidence suffers from inconsistencies as there is contradiction between evidence of the prosecution witnesses. Moreover, the witnesses are related and inimical witnesses. In such a situation, non-examination of the independent witnesses has also caused serious doubt about the prosecution case. Further it appears that the I.O. has not been examined in this case and there is delay of more than 24 hours in lodging the FIR and hence possibility of manipulation and



false implication can not be ruled out.

18. The learned trial court has not considered the aforesaid inconsistencies and infirmities in the prosecution case and has convicted the appellants under various Sections of the Indian Penal Code and the Section S.C. & S.T. Prevention of Atrocities Act, which does not appear to be sustainable in the eye of law.

19. In the result, this appeal is allowed and the impugned judgment and order are set aside as the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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