

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.158 of 2003

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

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1. Sitaram Ishwar son of Late Kamli Ishwar
2. Ramanuj Ishwar
3. Sanjoy Ishwar
Nos. 2 and 3 son of Sitaram Ishwar
All residents of village Siwri, Manjhaul, P.S.Cheriapiariapur, District Begusarai
.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. K.K. Mishra, Adv
Mr. K.N. Jha, Adv.
For the Respondent : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 24-01-2018

All the appellants stands convicted under Section 325, 341 and 504 of the IPC and they have been sentenced to undergo RI for four years under Section 325 of the IPC and no separate sentence has been passed with regard to offence under Section 341 and 501 of the IPC.

2. The prosecution case as per narration given by P.W.6 Murlidhari Ishwar is that at about 2.30 P.M. his cousin brothers were cutting branch of the mango tree and when he protested Sita Ram Ishwar assaulted him by *lathi* on the head and Ramanuj Ishwar and Sanjoy Ishwar also assaulted by lathi on the knee and the scalp. Further all the accused persons have also assaulted Chandramauli



Ishwar who was also standing there.

3. The FIR bearing Cheriabariarpur P.S.Case No.45 of 1993 was registered on the basis of the aforesaid fardbeyan, post trial the charge sheet has been submitted and the cognizance has been taken. It further appears that the case was committed to the court of sessions and ultimately it came to the file of Sri J.P.Sinha, Addl. District and Sessions Judge, FTC II, Begusarai for trial and disposal. Post trial 11 witnesses have been examined they are : P.W.1 Bholu Ishwar declared hostile, P.W. Pashupati Ishwar declared hostile, P.W.3 Sita Ram Ishwar declared hostile, P.W.4 Chandmauli Ishwar claimed injured, P.W.5 Rajniti Ishwar declared hostile, P.W.6 Murlidhari Ishwar informant and injured, P.W.7 Ram Krishna Ishwar claimed to be eye witness of the occurrence, P.W.8 Anup Lal Choudhary who has conducted the x-ray of the injured, P.W.9 Dr. Raghvendra Prasad Singh, P.w.10 Dilip Jha formal witness who has proved the Fardbeyan and P.W.11 Ratan Singh who has proved the case diary.

4. Following documents have been admitted in the defence, they are : Ext. 1 Identification of signature on Fardbeyan, Ext. 1/1 Identification of signature on Fardbeyan, Ext.2 to 2/3 X-ray Film, Ext.3 X-ray report, Ext.4 to 4/1 Injury report, Ext.5 Letters, Ext.6 writing and signature on the Fardbeyan and Ext.7 writing and



signature on the case diary.

5. On behalf of the defence no ocular or documentary evidence has been produced rather the defence of the appellants is that they have been falsely implicated in this case and the case is of innocence and false implication due to land dispute. Further defence is that the land belongs to the appellant Sita Ram Ishwar and they were constructing house over the same and as such it is the informant's side who had assaulted them and no such occurrence as alleged has taken place.

6. The learned trial court on conclusion of the trial relying on the evidence of the P.Ws. 4, 6 and 7, consistent so far manner of assault is concerned and also corroborated by the evidence of P.W.9 (Doctor) who has issued injury report and also on the basis of X-ray report, convicted the appellants under Sections 325, 341 and 501 of the IPC and sentenced them as stated above.

7. The contention of the learned counsel for the appellants is that the learned trial court has failed to consider that P.Ws. 4 and 6 are cousin brothers and apart from that P.W.7 has been examined but he is a chance witness and his presence itself is doubtful on the place of occurrence. Furthermore, from the cross examination, it will appear that the land in question has been purchased by the appellant Sitaram Ishwar, in such a situation, the learned trial court, ought not to have



relied upon the evidence of P.W. 4 and 6 who are related and inimical witness. It has also been submitted that non-examination of the I.O. also cause for serious prejudice in the present case as had he been examined in this case, he would have thrown light on the place of occurrence and at the place of occurrence the I.O. has found cattle and '*naad*' of the appellants .

8. It has further been submitted that though it is alleged that the injury on the head of the informant was found hair line fracture and the X-ray report has also been brought on the record to prove the X-ray plate which has not been mentioned by the Doctor (P.W.9) and furthermore the evidence of P.W.6 also does not show that he had gone for X-ray as he had stated that after treatment he returned his house and that also creates a doubt about the genuineness of the X-ray plate.

9. In view of the aforesaid submissions of the appellants that the learned trial court has not considered the aforesaid discrepancies and inconsistencies in the evidence of the prosecution witness and convicted the appellants under Section 325 and other Sections of the IPC.

10. Learned counsel for the State has supported the judgment stating that the evidence of P.Ws. 4, 6 and 7 are consistent on the point of assault to the informant and also to P.W.4 and their



manner of occurrence has also found support from the evidence of Doctor P.W.9 who has treated the injured at the hospital, hence, there is no infirmities in the impugned order and it does not suffers from any infirmities.

11. In the background of the aforesaid submission while examining the evidence available on the record it appears that P.Ws. 1, 3, and 5 have been declared hostile by the prosecution and there is nothing in their evidence to support the prosecution case. It further appears that P.W.6 is the informant in this case and in his evidence he has stated that the accused persons were constructing house on their land and when he went along with his brother he saw the accused persons variously armed and when he protested about the construction, Sita Ram Ishwar assaulted him on *Dhauna* and knee and when his brother came to save him, he was also assaulted by Sita Ram Ishwar, Ramanuj Ishwar and Sanjoy Ishwar. This witness has been cross examined at length and he has admitted in the cross examination that the accused persons are also *gotia* and a suggestion has also been given that the same land had been sold to the appellants which he was interested in purchasing and for that he has falsely implicated the appellants, though this witness has denied the same.

12. P.W.4 is the another injured and he has also stated that Sita Ram Ishwar has assaulted thrice by *lathi* on head of the informant



and the another accused Ramanuj Ishwar assaulted by *lathi* and thereafter when he intervened he was also assaulted by Sita Ram Ishwar, Ramanunj Ishwar and Sanjoy Ishwar. This witness has also been cross examined and in his cross examination in para 7 he has stated that they are in possession over that land, however, on further cross examination he has admitted that besides '*gaachhi*' or orchard the other lands are in two parts and for that Partition Suit No.24 of 1991 has been filed by them against Sita Ram Ishwar. This witness has denied the suggestion that this land in dispute was not in the plaint and he has further denied a suggestion that the same was decided in favour of the appellants however on further cross examination this witness has stated in his cross examination in para 11 that 10 dhur land was in question.

13. P.W.7 also claims to be eye witness of the occurrence but from his evidence it appears that he is a chance witness as he has stated in his evidence that he was on his house and there was altercation going between the parties, he went there and saw the occurrence. He has also admitted in para 6 of his cross examination that he is '*gotia*' of the informant and further stated that the land is '*mousiri* land. He has further admitted that there was altercation between the parties and his cross examination in para 10 also shows that '*Darogaji*' has not found any hut over the land. But later on he



has admitted that the hut was constructed prior to the occurrence. His evidence of cross examination further discloses that there was dispute between the parties with respect to the land of place of occurrence.

14. P.W.9 is the doctor who has examined the injured and he has found following injuries :

- 1. A lacerated wound with bleeding on right side upper lip directed oblique with swelling size 0.5 X 0.2X 0.3 centimeter about*
 - 2. Bruise with tenderness on interior part of right shoulder directed oblique size 2 centimeter X 1 centimeter about.*
 - 3. Bruise with tenderness on austral lateral of right arm part above elbow size 3.5 X 1 centimeter about.*
 - 4. An abrasion (scratch) with tenderness over base of right thumb directed dorsally size of abrasion with .5 cm. in diameter within of oozing.*
 - 5. Bruise swelling and with tenderness in austral lateral of right fore am in about middle size 2.5 centimeter. X 1 centimeter about directed oblique.*
- Nature of injury- All are simple and were produced by hard and blunt substance probably. This injury report is in my pen and bears my signature marked Ext.4.*

On the same date 3.20 P.M. I examined Murlidhar Ishwar Hindu Male 60 years S/O Late Jaldhar Ishwar of village Siwri, P.S. Cheriapariarpur, District Begusarai and found the following injuries on this person :

- 1. Lacerated wound in parieto occipital region of scalp in wrist in horizontal direction with blood oozing, swelling margin zig zag size 3c.m. X 0.2 c.m. X .2 c.m. about.*
- 2. A lacerated would with bleeding profusely in right taporalprital region of scalp with several hairs in mingled in wound directed oblique on screening making zigzag size 5 c.m. X ¼ c.m. x ½ C.M. below bone depth below skin surrounding would abrasion*



and swelling.

3. A lacerated wound with abrasion surrounding swelling about two cent. meter posterior to wound no.2 directed oblique size 3 c.m. x 0.4 cm. x 0.3 cm. about.

4.A bruise with swelling in mid of back left side to spinal region directed oblique size 4 cm. X 1.5 cm. about.

5. An abrasion (scratch) with swelling tenderness, with contaminated with dust in outer upper part of right knee size of abrasion 0.5 cm. in diameter about. Nature of injuries : Individually injuries are simple in collective may be dangerous and need x-ray skull for injury 1 to 3 and produced by hard and blunt substance probably. Age of injury within one day about.

This injury report is in my pen and bears my signature marked Ext. 4/1.

Later on got X-ray plate report of Murlidhar Ishwar and in his X-ray report there is a skull lined crack fracture in upper right pivotal bony region near capital. According to his report the nature of injury is grievous.”

15. However, his cross examination in para 6 shows that Ext.5 was sent by a private clinic, which is called as Doctor Raghvendra Hospital and the injured was treated in that hospital.

16. P.W.8 (Anup Lal Choudhary) has taken X-ray of the injury no.1 of the informant and he has found following injuries : -

1. X-ray for scalp and lateral view was given.

On X-ray I found in right lateral view film small linear crack fracture in upper portion of right parietal bony region. There are the film of x-ray Ext.2 to 2/3. This x-ray report is in my pen and bearing my signature marked Ext.3.



17. However I find from the evidence of P.W.6 who is the informant that he has not stated so, that he was taken to the clinic of Doctor Raghvendra Clinic but he has not stated that he was taken for X-ray examination and further P.W.9 has not mentioned about the number of x-ray plate of the P.W.6 and P.W.4 and in such view of the matter X-ray is claimed to be of P.W.6, does not inspire confidence.

18. Considering the entire evidence as discussed above, it appears that there was dispute between the parties with respect to construction of wall and the room but the I.O. has not been examined in this case and the evidence of P.W.7 shows that the I.O. has found 'naad' and cattle at the place of occurrence and in such a situation non-examination of the I.O. has become certainly caused prejudice, as had he been examined in this case he would have thrown light on that and apart from that the evidence of the X-ray also does not inspire confidence, as number of X-ray plats are not mentioned and X-ray report has been proved by P.W.8 (Anup Lal Choudhary) and he does not appear to be an expert and also not mentioned time of X-ray and he has only taken X-ray of Murlidhar Ishwar.

19. It appears from the evidence of P.W.9 that all the injuries were found to be simple in nature on the person of Chandramauli Ishwar caused by hard and blunt substance and so far injuries on Murlidhar Ishwar is concerned, injuries are simple and in



collective may be dangerous and need X-ray of scalp for injury nos. 1, 2 and 3 produced by hard and blunt substance probably. On the basis of X-ray report, he has found a fracture on the upper right parietal bony region of Murlidhar Ishwar and also found injuries grievous in nature but P.W.8 has not mentioned number of X-ray plate and he has also not mentioned time of X-ray, that creates doubt about the opinion given by the Doctor. The learned trial court has not considered this aspect of the matter while convicting the appellants under Section 325 of the IPC.

20. In view of the discussions made above, conviction under Section 325 of the appellants are modified to the conviction under Section 323 of the IPC and so far conviction under Section 341 and 504 of the IPC is concerned, they are affirmed.

21. The appellants were sentenced to undergo RI for four years under Section 325 of the IPC and no separate sentence has been passed with regard to conviction under Section 341 and 504 of the IPC, however, in view of the fact that conviction under Section 325 of the IPC is modified to 323 of the IPC and in view of the submission of the learned counsel for the appellants that the case is of the year, 1993 and 24 long years have passed, the appellants have suffered mental agony also and during the trial they have remained in custody for one month, in such view of the matter, their sentence is modified to the



extent for the period undergone by them during the trial.

With the aforesaid modification this appeal is disposed.

(Vinod Kumar Sinha, J)

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