

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.587 of 2002

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

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Mithilesh Yadav & Anr

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Babban Ray, Amicus Curiae

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 08-01-2018

By way of present appeal, appellants seek to challenge the Judgment of conviction and order of sentence dated 20.08.2002, passed by Shri Suresh Chandra Panday, Additional Sessions Judge – VII, Munger, in Sessions Case No. 466/96, by which the appellant Mithilesh Yadav was held guilty under Section 324 of the IPC and appellant Afsar Yadav was held guilty under Section 323 of the IPC and instead of sentence, trial court directed the appellants to execute a bond of Rs. 2,000/- with two sureties of like amount each to maintain peace for two years, failing which, they would be called upon to serve sentence.

2. Prosecution case in short as per the fardbeyan of Uma Shankar Rai, recorded by the Sangrampur Police, in State dispensary on 06.09.1995 is that a land dispute was going on between him and his



uncle Raj Yadav for last three years. Both the parties were restrained by the *Panches* from going over the said land. However, on 04.09.1995 at 8. A.M. appellants along with other accused persons went to plough the said land, informant along with Sanjay Yadav and Bhikhari Yadav went there and objected the said act of the accused, on which accused Raja Yadav ordered to kill the informant and his brothers. Girish Yadav took *bhala* in his hand. Meanwhile, accused Raja Yadav gave *farsa* blow on the head of the informant. Appellant – Mithilesh Yadav also assaulted the informant by means of *farsa*, thereafter, the informant fell down and accused – Girish Yadav assaulted him by *bhala* on his legs and all the accused persons also assaulted Sanjay Yadav and Bhikhari Yadav by their respective arms, however, Bhikhari Yadav managed to escape from the place of occurrence. Thereafter, mother, wife and other came there and accused persons fled away. On the basis of the above *fardbeyan* of informant, Sangrampur P.S. Case No. 85/95 was registered against the appellants and other accused persons.

3. Police after investigation submitted charge-sheet against the appellants and other accused persons, cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Suresh Chandra Panday, Additional Sessions Judge – VII, Munger, for trial and disposal.



4. To prove its case, prosecution has examined altogether seven witnesses. They are; P.W. 1- Shiv Nandan Yadav, who was declared hostile by the prosecution, P.W. 2 – Sanjay Yadav (injured), P.W. 3- Bhikhari Yadav, P.W. 4- Asha Devi (wife of informant), P.W. 5- Kesho Yadav, who was declared hostile by the prosecution, P.W. 6 – Tara Devi (mother of informant) and P.W. 7- Uma Shankar Yadav (informant/ injured), P.W. 8- Dhaneshwar Mandal and P.W. 9- Dinesh Jha. In this case, I.O. and Doctor has not been examined.

5. Apart from that following documents have been brought on record and marked as Ext. 1 – Signature of Uma Shankar Yadav, Ext. 2 – Fardbeyan, Ext. 3- X –ray report of Sanjay Yadav, Ext. 4 – injury report of Sanjay Yadav, Ext. 5 – injury report of Bhikhari Yadav and Ext. 6 – X-ray report of Uma Shankar Yadav.

6. On behalf of the defence neither oral nor any documentary evidence has been brought on record.

7. Post trial, the learned trial court convicted the appellant Mithilesh Yadav under Section 324 of the IPC and appellant Afsar Yadav under Section 323 of the IPC and sentenced them in the manner stated above.

8. Contention of learned *Amicus Curiaae* is that they have falsely been implicated in this case and admittedly there was a land dispute between the parties and as a matter of fact, the prosecution side



assaulted the appellants and other accused persons for which a case was lodged by informant and others only to save their skin from that case, the case was filed against the appellants and others. It has also been submitted that in this Doctor has been examined, which has caused serious prejudice to the defence and the Trial Court has relied upon the injury report, which are proved by formal witnesses, who are not the medical expert and the said injury has been brought illegally on record. Further I.O. has also not been examined in this case, which has also caused serious prejudice to the defence as had he been examined, he would have thrown light on the place of occurrence as well as the manner of occurrence. It has further been submitted that in this case, no independent witness has been examined and all the witnesses are related and interested witnesses and the Trial Court without considering all these facts has convicted the appellants in this case, which is out and out perverse and is not sustainable in the eye of law.

9. On the other hand, learned counsel for the respondent – State supported the finding of guilt recorded by learned Trial Court and submitted that there are consistent evidence of witnesses that appellants on the alleged date armed with various weapons assaulted the informant and his brothers causing injuries to them and no doubt, Doctor has not been examined but that does not make the conviction



bad as for conviction under Section 324 and 323 of the IPC, examination of Doctor is not essential. It has further been argued that it is a well settled principle of law that evidence of witnesses cannot be brushed aside only because, they are related witnesses rather their evidence requires to be closely scrutinized and from the close scrutiny of evidence of witnesses, it appears that they are consistent on the point of assault by the appellants and other accused persons. Furthermore, the Trial Court, itself, has taken a lenient view and has released the appellants on probation for a period of two years and, therefore, there is no illegality in the impugned Judgment of Trial Court and the same does not require any interference.

10. In the background of above submissions, this Court is going to examine the evidence of witnesses.

11. P.W. 7 is the informant and injured in this case and his evidence clearly discloses that appellants along with other accused persons on the alleged date of occurrence, had gone to plough the land in dispute, which was objected by him and his brother, namely Sanjay Yadav, (P.W. 2) and Bhikhari Yadav (P.W. 3), upon which accused Raja Yadav gave *farsa* blow on the head of the informant. Appellant – Mithilesh Yadav also assaulted the informant by means of *farsa*, thereafter, the informant fell down and accused – Girish Yadav assaulted him by *bhala* on his legs. His evidence further disclosed



that appellants and other accused persons also assaulted Sanjay Yadav (P.W. 2) and Bhikhari Yadav (P.W. 3). This witness was cross-examined at length; however, there is nothing in his cross-examination to doubt the credibility of the evidence of this witness. A suggestion was also given to this witness that the land in question was in possession of the appellants-accused and out of annoyance, he went to assault the appellants and other accused persons and when chased upon by the accused – persons, he received injuries, which was denied by him.

12. P.W. 2 – Sanjay Yadav is another injured of this case. He has supported the prosecution case in his evidence and also stated about the assault to him and the informant (P.W. 7) by the accused persons. He has also stated in his evidence that on *hulla* her mother (P.W. 6) and wife of the informant (P.W. 4) came there and appellants and accused persons fled away. He has also been cross-examined at length and there is nothing in his cross-examination to doubt his evidence.

13. P.W. 3 – Bhikhari Yadav is also an F.I.R named witness and he has also supported the case of prosecution with regard to assault by appellants and other accused persons on informant (P.W. 7) and Sanjay Yadav (P.W. 2). His evidence also disclosed that he was also assaulted, however, he managed to escape from the place of occurrence.



14. P.W. 4 and P.W. 6, who are wife and mother of the informant respectively, though might not be the eye-witness of the occurrence as they reached on the place of occurrence on *hulla* but evidence of these witnesses show that they found the informant (P.W. 7) and Sanjay Yadav (P.W. 2) in injured condition.

15. Considering the entire discussions made above, it appears that in this case doctor has not been examined and injury report was proved by P.W. 8 and P.W. 9, who were not the expert of medical terminology and further I.O. has also not been examined in this case,, the trial court considering this aspect has rightly not convicted the appellants under Section 307 of the IPC. So far assault on the informant and others are concerned, there are consistent evidence of witnesses that on the alleged date of occurrence, accused –appellant in spite of direction of the *panches* to not go over the disputed land, were seen ploughing the said land, which was objected by the informant (P.W. 7) and his two brothers, namely, Sanjay Yadav (P.W. 2) and Bhikhari Yadav (P.W. 3), on which appellants, who were armed with various weapons assaulted them and further in spite of rigorous cross-examination of witnesses, there is nothing to doubt their testimony.

16. Further, it appears that trial court itself had taken a lenient view and in stead of sentence, appellants were directed to execute a bond of Rs. 2,000/- and were released on probation for a period of two years.



17. Accordingly, I do not find any reason to interfere with the Judgment of conviction and order of sentence dated 20.08.2002, passed by Shri Suresh Chandra Panday, Additional Sessions Judge – VII, Munger, in Sessions Case No. 466/96, same is accordingly, upheld.
18. This appeal is dismissed.
19. Trial court is directed to see if the bond has not been executed, he will notice to appellants to execute a bond within a period of two months.

(Vinod Kumar Sinha, J)

sunil/-

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