

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.73 of 2003

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

- =====
1. Chandrika Singh, son of Late Raja Ram Singh
 2. Shiv Nandan Singh, son of Late Gurucharan Singh, both residents of village Nadauwa, P.S. Baniyapur, District Saran at Chapra

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, amicus curiae

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-08-2018

Since nobody appears on behalf of the appellants on repeated calls to argue this appeal, Mr. Arun Kumar Tripathi, Advocate has been appointed as amicus curiae to assist this Court.

2. Both the appellants have been convicted under Sections 325/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years by judgment and order dated 28.1.2003 passed by Sri Uma Kant Srivastava, the then 7th Additional Sessions Judge, Saran, Chapra in Sessions Trial No. 302 of 1996. It further appears that one of the co-accused Shyama Devi has been acquitted from the charge leveled against her.

3. Prosecution case as per the fardbeyan of Lalti Devi (PW 5) in short, is that on 16.1.1995 at about 12 hours in the noon she-goat of appellant Chandrika Singh was grazing the plant in her field and she tried to disperse the she-goat and in the meantime appellant Chandrika Singh came there armed with lathi and started assaulting her on her



legs, back, breasts, etc. and wife of Chandrika Singh hurled bricks on her and on alarm being raised by her, her father-in-law Shiv Prasad Singh arrived there to rescue her and then the appellants Chandrika Singh, Shiv Nandan Singh and wife of Chandrika Singh, Shyama Devi, assaulted him also. Further prosecution case is that witnesses Narendra Pandey, Inarmal Singh, Jai Prakash Pandey, Raghu Nath Singh, etc. arrived there and informant was taken to hospital along with her father-in-law, where they were treated and her statement was recorded.

4. On the basis of aforesaid fardbeyan, Baniapur P.S. Case No. 10 of 1995 was registered. Post investigation charge sheet has been submitted, cognizance of the offence has been taken and after commitment the case ultimately traveled to the file of Sri Uma Kant Srivastava, the then 7th Additional Sessions Judge, Saran at Chapra for trial and disposal.

5. In this case charge under Sections 307/34 IPC was framed against the appellants as well as one Shyama Devi.

6. To substantiate its case, the prosecution has examined altogether seven witnesses, they are PW 1 Lalji Singh, PW 2 Inarmal Singh, PW 3 Shiv Prasad Singh, PW 4 Jai Prakash Pandey, PW 5 Lalti Devi, informant, PW 6 Prabhu Nath Prasad and PW 7 Dr. Devendra Kumar, out of whom PWs 1, 2 and 6 have been declared hostile and there is nothing in their evidence which is relevant for just decision of the case. I.O. has not been examined.



7. Apart from the above ocular evidence, the prosecution has brought on record certain documents, they are Ext.1/1- signature of Lalti Devi on the fardbeyan, Ext.2- injury report of Shiv Prasad Singh, Ext.2/1- supplementary injury report of Shiv Prasad Singh and Ext.3- injury report of Lalti Devi.

8. On behalf of defence neither any witness has been examined nor any document has been brought on record and the plea of defence is of false implication as no such occurrence has taken place, rather from the appellant's side one case has been lodged against the informant and others, which has been disposed of on the basis of compromise arrived at between the parties, as such allegation as per prosecution case is false and concocted.

9. Learned trial court on conclusion of trial has not found the case true under Section 307/34 IPC against the appellants. However, he has convicted the appellants under Sections 325/34 IPC and also acquitted one accused person from the charge leveled against her.

10. Contention of learned amicus curiae is that the learned trial court has failed to consider that in this case PWs. 1, 2 and 6 have been declared hostile by the prosecution and so far PW 3 is concerned, he has not appeared for cross examination and PW 4 is not an eye-witness to the occurrence and as such remaining evidence is only of informant Lalti Devi and in such a situation the conviction only on the basis of evidence of informant Lalti Devi is not sustainable in the eye of law as the evidence of Lalti Devi is also



contradictory so far manner of occurrence as per FIR is concerned. Further submission of learned amicus curiae is that evidence of Doctor though shows that injuries were found to be grievous in nature on the persons of Lalti Devi and Shiv Prasad Singh but no X-ray plate was brought on record nor any Radiologist has been examined and as such the conviction under Sections 325/34 IPC does not appear to be just and proper and is not sustainable in the eye of law.

11. On the other hand, learned counsel for the State has supported the judgment of guilt and submitted that evidence of Lalti Devi clearly supports the prosecution case which has been further corroborated by evidence of Doctor, who has found injuries on Lalti Devi and Shiv Prasad Singh (PW 3), who has also supported the prosecution case and he has not appeared for cross examination because of his death as it appears from the impugned judgment and one of the injuries on both the persons was found to be grievous in nature and as such the conviction of the appellants under Section 325/34 IPC is just and proper and does not require any interference by this Court.

12. In the background of rival contentions of both the parties, on examination of the evidence it appears that the case is based on the evidence of PW 5 Lalti Devi as well as on the evidence of PW 4 Jai Prakash Pandey and PW 3 Shiv Prasad Singh. However, it appears that Shiv Prasad Singh has supported the prosecution case in his chief and he has not appeared for cross examination and the impugned



judgment shows that he died and due to that he could not appear for cross examination. However, it appears that the manner of occurrence as alleged in the evidence of PW 3 is contrary to the manner of occurrence as alleged in the FIR, which shows that Lalti Devi was first assaulted by appellant Chandrika Singh and when PW 3 Shiv Prasad Singh, father-in-law of Lalti Devi, came to rescue her, he was also assaulted. But from the evidence of PW 3 it appears that when he tried to disperse the she-goat from the field the accused persons came with lathi and started assaulting him and when Lalti Devi came to rescue him (PW 3) she was also assaulted by the accused persons. Since his cross examination has not been done, his attention cannot be drawn towards the earlier statement made in the fardbeyan.

13. PW 4 is another witness, who does not appear to be an eye-witness. He has stated that he saw Lalti Devi was fallen near the Dalan of Khekhar Prasad in unconscious condition and her leg was fractured and he was informed by Mukhiya Ram Ballabh Prasad and Janardan Prasad that Lalti Devi was assaulted by Chandrika Singh and Shiv Nandan Singh but Janardan Prasad has not been examined and aforesaid evidence of PW 4 appears to be a hearsay evidence which does not appear to be admissible in the eye of law.

14. PW 5 Lalti Devi has also supported the prosecution case in her chief and has stated that when she tried to disperse the she-goat from the field and when her father-in-law (PW 3) came to rescue her, he was also assaulted by Chandrika Singh and Shiv Nandan Singh,



due to which he fell down in ditch and when she came to save him, she was also assaulted by Chandrika Singh by lathi, causing fracture injury. On comparison of evidence of Lalti Devi, informant, from the fardbeyan it appears that manner of occurrence is contradictory in nature as FIR shows that Lalti Devi was first assaulted and then when PW 3 came to rescue her, he was also assaulted but in her evidence in court she has stated that her father-in-law (PW 3) was assaulted first and when she came to rescue him, she was also assaulted. Her evidence further shows that a counter case has been lodged by appellants' side to save their skin.

15. It appears that evidences in court of PWs. 3 and 5 are contradictory to the earliest version so far manner of occurrence is concerned, but as they are deposing long time after the occurrence, such type of contradiction is natural and on that ground whole prosecution case cannot be brushed aside.

16. PW 7 is Dr. Devendra Kumar, who has examined both the injured and found the following injuries on the person of Shiv Prasad Singh (PW 3) :

“I. Swelling on the right side of shoulder 2” x 1” x ¼”- opinion reserved for X-ray,

II. Swelling with abrasion on right side of chest front 1” x ¼” x ¼” with abrasion ¼” x ¼”- opinion reserved for X-ray,

III. Abrasion 2” x ¼” x ¼” on the left side of chest.

After X-ray report the doctor found injury Nos. I and II grievous due to fracture of clavicle and rib. According to him injury No.III was simple and all three injuries were caused by hard blunt substance within 48 hours.”

On the person of Lalti Devi he has found the following



injuries :

“I. Lacerated wound $\frac{1}{2}$ ” x $\frac{1}{4}$ ” x $\frac{1}{4}$ ” on the middle of right leg. He had found fracture on the middle of right leg, so, this injury was grievous,
II. Swelling about 2” x 1” on the right side of back and this injury was simple in nature.”

The Doctor has opined that both the injuries were caused by hard blunt substance and within 48 hours. He has proved the injury reports as Exts. 2, 2/1 and 3. During cross examination he has stated that he did not remember whether at the time of examination the X-ray plates were before him. He has further stated that swelling is possible by fall and abrasion may be concocted and lacerated injury is possible by fall. He has denied that the injury reports were not correct. However, X-ray plates had not been brought on record nor Radiologist has been examined and in absence of that, finding of PW 7 Doctor that some injuries are grievous does not inspire confidence.

16. In such a situation, to my opinion, the conviction of the appellants under Sections 325/34 IPC is not sustainable in the eye of law, rather appellants can be convicted under Section 323/34 IPC as ocular evidence has been corroborated from the medical evidence. Hence, conviction of the appellants under Sections 325/34 IPC is modified to a conviction under Section 323 IPC.

17. Submission of learned amicus curiae is that the occurrence is of 23 years old and the judgment clearly shows that there was case and counter case and counter case was compromised as informant has admitted that compromise petition has been filed in this



case also but it appears that compromise petition has not been pressed and in such a situation the appellants may be given the privilege under Section 360 Cr.P.C. and may be released on due admonition.

18. However, it appears that there is allegation of assault on a lady and learned trial court has considered to grant the benefit to the accused persons under Section 4 of Probation of Offenders Act but declined to grant the said benefit. However, considering the fact that appellants have suffered mental agony for 23 long years, as such, their sentence is modified to a fine of Rs.1000/- each and in default they have to suffer simple imprisonment for one month.

19. With the aforesaid modification in conviction and sentence, this appeal is dismissed.

20. Before parting with the judgment, I must thank learned amicus curiae for assistance and he shall be entitled for fees as per entitlement from Patna High Court Legal Services Committee.

(Vinod Kumar Sinha, J)

spa/-

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