

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.229 of 2003

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

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1. Ramashish Choudhary son of Late Janki Choudhary
2. Champa Devi wife of Ramashish Choudhary
3. Lakshman Choudhary son of Ramashish Choudhary
4. Bharat Choudhary son of Ramashish Choudhary
All residents of village Baligarh, P.S. Runi Saidpur, District Sitamarhi

.... Appellants

Versus

State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 300 of 2003

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

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Ram Nath Choudhary son of Ramashish Choudhary,
Resident of village Baligarh, P.S. Runi Saidpur, District Sitamarhi

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Prason Sinha, Adv.
For the Respondents : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 10-05-2018

At the very outset, learned counsel for the appellants has filed I.A. No.1485 of 2018 stating that appellant nos. 1 and 4 of Cr. Appeal No.229 of 2003 have died and in support of his contention, he has filed death certification.

2. In such view of the matter, this application against appellant no.1 (Ramashish Choudhary) and appellant no.4 (Bharat



Choudhary) of Cr. Appeal No. 229 of 2003 stands abated.

3. Appellant of Cr. Appeal No.300 of 2003, Ram Nath Choudhary stands convicted under Section 307 as well as under Sections 148 and 326 of the Indian Penal Code and sentenced to undergo R.I. for three years under Section 148 of the IPC and sentenced to undergo R.I. for ten years under Section 307/326 of the IPC and appellant Ram Nath Choudhary and others of Cr. Appeal No.229 of 2003 has been convicted under Section 147, 341 and 307/149 of the IPC and sentenced to undergo R.I. for three years under Section 147, 341 and 307/149 of the IPC, vide judgment dated 9.4.2003 and order dated 10.4.2003 passed by Md. Akram Rizwi, Addl. Sessions Judge (FTC) No.3, Sitamarhi in Sessions Trial No.169 of 1994/114 of 2002.

4. It further appears that altogether ten accused persons have been put on trial and except the appellants, all the other accused persons have been acquitted from the charges levelled against them.

5. Both the appeals arises from the same judgment and order as such they are taken together for disposal for the sake of convenience.

6. The prosecution case as per the fardbeyan of P.W.5 Deep Narain Das is that there was dispute with respect to construction of boundary wall with Basdeo Das, Suraj Das, Shibu



Das, Gauri Das and Ram Sagar Das as they were trying to make boundary in his land. Further case of the prosecution is that on 12.5.1994, while his father going to Runi Saidpur on rickshaw along with Teju Mandal (P.W.1) in village Baligarh near the house of Ram Nath Choudhary, appellants and other accused persons surrounded him and Ram Nath Choudhary assaulted him by *Hasuli* and Lakshman Choudhary, Bharat Choudhary, Ramashish Choudhary, Kamla Devi and Champa Devi caught hold him and when Teju Mandal came to rescue, he was also assaulted by Ram Nath Choudhary causing injury to him also. The aforesaid fardbeyan led to registration of Runi Saidpur P.S.Case No.81 of 1994.

7. Post investigation charge-sheet has been submitted against the appellants and all the other accused persons, cognizance of the offence has been taken and the case has been committed to the court of sessions, which ultimately came to the file of Md. Akram Rizwi, Addl. Sessions Judge (FTC) No.3, Sitamarhi for trial and disposal.

8. During trial, it appears that charges were framed under Section 148, 326 and 307 of the IPC against accused Ram Nath Choudhary and under Sections 147, 341 and 307/149 against other nine accused persons including the other appellants.

9. During trial altogether seven witnesses have been



examined, they are – PW 1 Tej Narain Mahto (claim to be eye witness of the occurrence), P.W.2 Ram Prit Sahni (who is said to be rickshaw puller and has been declared hostile by the prosecution), P.W.3 Upendra Kumar Sahni (tendered for cross examination), P.W.4 Pappu Das (informant of the case and son of the injured) P.W.5 Deep Narain Das (injured in the case), P.W.6 Pramod Kumar, who proved signature on the FIR and P.W.7 Dr. Ram Lal Gami.

10. On behalf of the defence, no ocular evidence has been adduced but some documents have been filed to show that the informant and his father (injured) have criminal antecedent and defence of the accused persons as per cross examination and statement under Section 313 of the Cr.P.C. is that no such occurrence has taken place and injured have been assaulted in some other way and at some other place and time and the appellants have been implicated in false and concocted case.

11. The learned trial court on conclusion of the trial has convicted the appellant Ram Nath Choudhary under Section 307, 326 and 148 of the IPC and other appellants under Section 307/149 of the IPC as well as under Section 147/341 of the IPC, however, the learned trial court has acquitted the other accused persons.

12. The learned counsel for the appellants have



assailed the judgment on the ground that in this case P.W.4 is said to be informant but he is not eye witness of the occurrence, which will appear from the evidence of P.W.5 who has stated that after some time of the occurrence his son came on cycle and saw him fallen on the ground and so far P.W.1 is concerned, he has been declared hostile as in his earlier statement he has taken name of all the accused persons including the appellants but during the trial he has named only five appellants in the court and further the evidence of P.W.1 and 5 is also contradictory. So far place of occurrence is concerned, the I.O. has not been examined in this case as such the prosecution has failed to establish the place of occurrence. Further statement of the learned counsel for the appellants is that though P.W.1 claims to be eye witness of the occurrence but his evidence itself shows that he is not eye witness of the occurrence as he has stated that he was going along with P.W. 5 whereas P.W.5 has stated that he was going on rickshaw along with P.W.1, as such evidence of P.W.1 is not reliable and so far P.W.5 is concerned, though his evidence supports the prosecution case but his evidence is not reliable and the evidence shows that houses of independent witnesses were situated near the place of occurrence but none of the independent witnesses have been examined and that also goes against the prosecution.



13. Further submission of the learned counsel for the appellants is that in this case, no case is made out under Section 307 of the IPC and 326 of the IPC, as though the Doctor has stated that injury no.1 and 2 has been found to be grievous in nature but the Radiologist has not been examined as the witness as such finding of the Doctor is not sustainable in the eye of law and further submission is that evidence of the appellants will also show that there was no intention of the appellants to kill the injured though it is alleged that 12 persons had surrounded the injured and appellants assaulted him but in a situation if the intention of the appellants was to kill the father of the informant, they would have assaulted on the vital part of the body, in such a situation conviction of the appellants under Sections 307 and 307/149 of the IPC is also not sustainable in the eye of law.

14. On the other hand learned counsel for the State has supported the factum of the guilt held by the learned trial court on the fact that P.W.1 and 5 clearly support the prosecution case about assault on him and the evidence of P.W.1 and 5 has found corroboration from the evidence of the Doctor and further there is no corroboration from the evidence of P.W. 1 and some of the injuries were found grievous in nature and there are seven injuries on the person of injured, in such a situation , conviction of the appellants



under Section 307 and 307/149 of the IPC as well as Section 326 of the IPC and other Sections of the IPC does not suffers from any infirmities and does not require any interference by this Court.

15. Having heard both sides and from perusal of the evidence available on the record it appears that P.W.4 is the eye witness of the occurrence but So far P.W.5 is concerned, he has supported the prosecution case *in toto* in his evidence in chief. His evidence also shows that he has dispute with Basdeo Das, Suraj Das, Gauri Das, Shivu Das and Ram Sagar Das for erection of the boundary wall and they have told him that they will teach him lesson. His evidence at para 5 shows that the place of occurrence was near the south of house of Ramswaroop Choudhary, Rajendra Choudhary, Yogendra Choudhary and Devendra Choudhary and north of the house of Narain Sah, Ramashish Sah, in the east house of Manu Sahni and Narain Sahni and in the west there is a road and adjacent to that there is house of Bindeshwar Choudhary, Mahesh Choudhary, Ramprit Choudhary, Ramnath Sahni, Jageshwar Sahni, Ramchandra Sah and Kailash Sahni and his evidence also shows that he has no enmity with the aforesaid persons. His cross examination also shows that when he reached near his house all the accused persons surrounded and assaulted him due to which he became unconscious after receiving *Hasuli* blow as such evidence of P.W.5



appears to be self-contradictory as he has stated in para 5 of his evidence the different place of occurrence whereas in para 7 he has shown the place of occurrence near the house of the accused persons and it further appears that P.W.1 has given a different place of occurrence and it appears that when they reached near the house of Ram Nath Choudhary, the appellants accused surrounded him and assaulted to kill him.

16. It further appears from the evidence of P.W.1 that he has been declared hostile by the prosecution as in chief he has named Ramashish Pasi, Ram Nath Pasi, Laxman Choudhary, Bharat Choudhary, Shiv Nath, Chapa Devi and Kamli Devi that they have surrounded and Ram Nath Pasi assaulted. From his evidence it appears that before *Darogaji* he has named other accused persons also and that shows evidence of this witness is not free from reasonable doubt as he is suppressing some facts from the court. His attention has also been drawn towards the statement made before the police and he has stated in para 13 that he has stated before the police on 12.5.1994 at about 11 A.M.

17. In this case, I.O. has not been examined and evidence of P.W.1 also shows that he is suppressing some facts but due to non-examination of the I.O. the same can not be confronted with the I.O. and had he been examined, he would have confronted



with the aforesaid contradiction by the defence, as such it causes prejudice to the appellants. Evidence of P.W.1 is concerned, he has suppressed some facts from the court which he had earlier told before the police and considering the same, it appears that his evidence is not free from embellishment.

18. Learned counsel for the appellants has also argued that due to non-examination of the I.O. the appellants have lost the opportunity to confront the I.O. It appears that other witnesses have been declared hostile as they are tendered witness or formal witness.

19. Considering the discussions as made above, it appears that evidence of the case is based on the evidence of P.W.5 and there is contradiction between the evidence of P.W. 5 and other witnesses so far place of occurrence is concerned and in that case also non-examination of the I.O. has also caused serious prejudice to the defence and benefits must go to the defence. Hence, the prosecution has failed to establish the place of occurrence in the present case beyond all shade of reasonable doubt.

20. P.W.7 is the Doctor Ram Lal Gami, who has examined Dip Narain Das, father of the informant and found following injuries :

- i. ***Sharp cut injury on right shoulder with cutting bone size -8 c.m. X 4 c.m. X 4 c.m.***
- ii. ***Sharp cut injury on lateral side of right arm with vertical cutting 8 c.m. X 4 c.m. X 5 c.m.***



- iii. Sharp cut injury on left side of chest perpendicular 4 c.m. X 2 c.m. X 2 c.m.*
- iv. Sharp cut injury on dorsan of left hand horigental 4 c.m. X 1 c.m. X 1 c.m.*
- v. Sharp cut injury 3" above left wrist that is dorsan of fore arm 3 c.m. X 2 c.m. X 1 c.m. with tender cut right of interrogation.*
- vi. Sharp cut injury on left index finger with loss of skin 2 c.m. X 1 c.m.*
- vi. Shart cut injury on lateral side of right thigh horigentaly 4 c.m. X ½ c.m. X ½ c.m.*

And also found that all the injuries were of two hours prior of examination caused by sharp instrument and injury nos. 1 and 2 were grievous and rest of the injuries are simple in nature and injured was referred to S.K.M.C.H. but nothing has been brought to show that Dip Narain Das has been treated at S.K.M.C.H.

21. The Doctor has also examined P.W.1 Tej Narain Mahto and found following injuries near right elbow by sharp cutting injury on injured and both the injuries were simple in nature caused by sharp instrument.

22. So far manner of occurrence is concerned, the evidence of P.W.5 is corroborated by the evidence of the Doctor and the Doctor has found seven injuries on the person of the deceased. The Doctor has come to the conclusion that the injuries were grievous in nature. Injuries were on the hand and thigh. Had the intention of the appellants to kill the deceased they would have



certainly assaulted the victim on neck or on head or on any vital part of the body. Further finding of Doctor is that injuries are grievous and dangerous to life and are also without any basis as X-ray plate has not been produced nor any radiologist was examined. Injuries on P.W.1 Teju Mandal is simple in nature. It is stated that other accused persons were surrounding him, in such a situation, conviction of the appellants Ram Nath Choudhary under Section 307 and 326 of the IPC does not appear to be sustainable in the eye of law.

23. So far other accused persons are concerned, they have been convicted under Sections 307 and 149 of the IPC but except that they were surrounding absolutely there is nothing against them to show that either they were armed with any weapon or they assaulted the victim, in such a situation coming to the conclusion that they were also carrying common object with the appellant Ram Nath Choudhary, does not inspire confidence, in such a situation, their conviction under Section 149 of the IPC does not appear to be sustainable.

24. Considering the aforesaid fact so far conviction of the appellant Ramashish Choudhary, Champa Devi, Lakshman Choudhary and Bharat Choudhary is concerned they are entitled for the benefit of doubt. So far appellant Ram Nath Choudhary is concerned at best a case under Section 324 of the IPC is made out as



such conviction of appellant Ram Nath Choudhary is modified to the conviction under Section 324 of the IPC.

25. Accordingly, so far other appellants Champa Devi and Laxman Choudhary are concerned their conviction and order of sentence are set aside and they are acquitted from the charges levelled against them as they are on bail and they are discharged from the liability of their bail bond.

26. So far appellant Ram Nath Choudhary is concerned as I have found him not guilty under Section 307, 326 and 148 of the IPC rather he has been found guilty under Section 324 of the IPC and submission of the learned counsel for the appellant Ram Nath Choudhary is that he has remained in custody for more than 1 year and 8 months, , as such his sentence is reduced to the period already undergone in custody.

27. With the above modification as stated above, both the appeals stands disposed of.

(Vinod Kumar Sinha, J)

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