

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.609 of 2002

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

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1. Sukhdeo Jha
 2. Ram Swarath Jha
 3. Shaligram Jha
 4. Sree Ram Jha
All are sons of late Parmeshwar Jha
 5. Ram Prasad Jha
 6. Ramdeo Jha alias Pholtoon Jha
Both are sons of late Dinesh Jha
 7. Perma Nand Jhas, Son of Sree Ram Jha
 8. Lallan Jha, Son of Ram Swarath Jha
 9. Ram Balak Jha Son of Late Deo Nandan Jha
 10. Kailash Jha
 11. Bhagya Narayan Jha
Both are sons of Sahdeo Jha
 12. Baidyanath Jha @ Baiju Jha son of Sukhdeo Jha
 13. Daya Nand Jha Son of Ram Balak Jha
All resident of village – Kewta, Tole Lodipur, P.S. – Dalsingsarai, District – Samastipur.
- Appellant/s

Versus

State of Bihar & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Babab Roy, Adv.

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 25.07.2002, passed by Shri Abinasi Saran Lal, learned Presiding Officer, Fast Track Court No. 1, Samastipur, in Sessions Trial No. 225/03 and 92/2002, by which the appellant Baidya Nath Jha was held guilty under Sections 148 and 324 of the Indian Penal Code (hereinafter



referred to as "the IPC") and other appellants were convicted under Sections 147 and 323/34 of the IPC. However, in spite of sentencing them, Trial Court released them on probation for one year one execution of bond of Rs. 2000/- with two sureties.

2. Prosecution case as per the *fardbeyan* in of informant in short is that on 23.06.1992, when the informant was sitting on his *darwaza*, accused – appellants came armed with *lathi* and *farsa* and asked as to why he filled up his *darwaza* causing rain water flow towards their *darwaza*, on which some wordy altercation took place. Thereafter, appellant Baidya Nath Jha inflicted *farsa* blow on the informant and as he tried to escape the said blow hit the neck of informant, which caused bleeding injury to him and when other family members rushed to save the informant, they were also assaulted by the appellants by means of *lathi*. On the basis of the said *fardbeyan* F.I.R was registered against the appellants.

3. Police after investigation submitted charge-sheet and, thereafter cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Abinasi Saran Lal, learned Presiding Officer, Fast Track Court No. 1, Samastipur, for trial and disposal.

4. It appears from perusal of the record that charges were framed against the appellants under Section 148 and 307 of the IPC and



against other appellants under Section 147, 323, 447/34 of the IPC.

5. To bring home the guilt, prosecution has examined nine witnesses. They are; P.W. 1 – Rameshwar Prasad Sinha, P.W. 2 – Ramanuj Jha, P.W. 3- Ramsakal Jha, P.W. 4 – Mahendra Choudhary, P.W. 5 – Gulo Sahni, P.W. 6 – Harinandan Jha (informant and injured) P.W. 7- Sahdeo Singh, Dr. who examined the injured and proved injury report (Ext. 4), P.W. 8- Nandlal Ram (I.O.) P.W. 9 - Harinandan Prasad, who proved Ext. 5 to 5/1.

6. From the defence side also, one witness has been examined, who proved Ext. A to A/4, attested copies of injury report, which has been marked as Ext. 4 to 4/4. Following documents have also been proved and marked as Ext. C *fardbeyan* of Kailash Jha in counter case and Ext. D is Khatiyani.

7. When examined under Section 313 Cr.P.C., defence of the accused persons is of false implication and also that the present case has been filed by the informant only to save his skin from the case filed by appellant side, in which, they also had received injuries.

8. After conclusion of trial, the learned trial court convicted the appellants and sentenced them in the manner stated above.

8. Contention of learned counsel for the appellants is that the trial court has failed to appreciate the fact that prosecution evidence is full of inconsistencies and has also failed to appreciate that a case has also



been filed by the appellant's side and only to save his skin from that case, the informant has implicated appellants in this false case. Moreover, the appellants and informant are agnates and the evidence on record also shows that there was land dispute between the parties. Further the Trial Court itself has not found the case true against the appellants under Section 307 of the IPC, however, instead of acquitting the appellant, the trial court has convicted them under Section 147, 323/34 of the IPC, which is erroneous and not sustainable in the eye of law.

On the other hand, learned counsel for the State has supported the finding of guilt recorded by learned trial court and has submitted that the trial court after considering all the materials available on record, itself has taken lenient view and has released the appellants on probation for one year on execution of bond, giving them benefit of Section 360 Cr.P.C. It has also been submitted that the evidence of the prosecution witnesses are consistent on the point of assault to the informant and in spite of rigorous cross-examination, there is nothing to doubt the manner of occurrence, which also found support from the evidence of Doctor (P.W. 7), who has found the injury on the person of the injured and, therefore, there is no infirmity in the judgment of trial court.

Heard both sides.



P.W. 6 is the informant/injured in this case and he has supported the prosecution case so far genesis of occurrence as well as the place of occurrence, is concerned. His evidence also disclosed that on some petty matter, dispute arose, in which he and his family members were assaulted by the appellants and after assaulting them appellants fled away. Evidence of doctor (P.W. &) also shows that informant sustained three injuries on his person including one sharp cutting injury caused at the right side of neck, lacerated injury with a tail 4"x 1 1/2" , lateral side and lacerated injury on head. Attested copy of injury has been brought on record by the defence to prove that there was cutting in the original writing. Doctor (P.W. 7) also found injuries on other persons. The aforesaid evidence of P.W. 6 (informant) and evidence of doctor found support from the evidence of other witnesses.

Considering the entire discussions made above and also the materials available on record, though appellants were convicted under Section 147, 323/34 of the IPC, however, the trial court instead of sentence, released them on probation for a period of one year on execution of bond of Rs. 2,000/-, giving them benefit of Section 360 of Cr.P.C., and it appears that the bond has already been executed by the appellants.

Accordingly, I do not find infirmity in the judgment of



conviction and order of sentence dated 25.07.2002, passed by Shri Abinasi Saran Lal, learned Presiding Officer, Fast Track Court No. 1, Samastipur, in Sessions Trial No. 225/03 and 92/2002, same is accordingly upheld.

Appeal is dismissed.

(Vinod Kumar Sinha, J)

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