

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.643 of 2016

Arising Out of PS.Case No. -31 Year- 1997 Thana -MARAUNA District-
SUPAUL

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1. Bambholi Mandal, Son of Ramchandra Mandal
 2. Shivnandan Mandal, Son of Bambholi Mandal
 3. Dayanand Mandal, Son of Gunai Mandal
 4. Ramu Mandal @ Ramanand Mandal, Son of Rameshwar Mandal
- All are resident of Village- Jobaha, P.S.- Marouna, District-
Supaul.

.... Appellant/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Appellant/s : Mr. Girjanand Prasad, Adv.
Mr. Arun Kumar Lal, Adv.
For the Informant : Mrs. Sarita Bajaj, Adv.
For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 06-03-2018

Heard the learned counsels for the appellants,
the informant and the State.

2. The appellants stand convicted for the offences
punishable under Sections 307 and 326 of the Indian Penal
Code (*in short "the I.P.C."*) by judgment dated 04th August,



2016, passed by the learned Sessions Judge, Supaul in Sessions Trial No. 74 of 1998, arising out of Marouna P.S. Case No. 31 of 1997. By the order dated 08th August, 2016, the appellants have been sentenced to undergo rigorous imprisonment for 5 years each, under both the counts, but the sentences have been directed to run concurrently.

3. The case in hand has been lodged by Domi Rai, who has been examined as P.W. 4 at the trial. The allegation against the appellant No.1/Bambholi Mandal is of hurling a *farsa* which led to the chopping off the wrist of Domi Rai (P.W. 4). The other accused persons were allegedly present at the time of occurrence and were armed with *lathi*, but they are not alleged to have assaulted the injured/P.W. 4. They are only said to have exhorted the appellant No. 1 for killing P.W. 4.

4. In order to appreciate whether the appellants have rightly been convicted under Sections 307 and 326 of the I.P.C., it would be necessary to refer to the First Information Report in the first instance and, thereafter, the deposition of P.W. 4/Domi Rai and other witnesses on behalf of the prosecution.

5. Domi Rai (P.W. 4) has alleged that at about 4 O'clock on 22.05.1997, while he was working in his field, appellant Nos. 1, 2 and 3, namely, Bambholi Mandal,



Shivnandan Mandal and Dayanand Mandal, came in his field. Appellant No. 1 was armed with *farsa*, whereas appellant Nos. 2 and 3 were armed with *lathi*. The appellant No. 1, on his arrival, threatened P.W. 4 of dire consequences because of his having constructed a ridge on his land. When P.W. 4 protested, a verbal scuffled ensued. In the meantime, it was alleged by P.W. 4, co-accused/Sukhai Mukhiya, Rameshwar Mukhiya and appellant No. 4/Ramu Mandal also arrived. Other persons also came to the place of occurrence and surrounded P.W. 4. All the accused persons are then alleged to have exhorted appellant No. 1 for killing P.W. 4. Appellant No. 1, thereafter, hurled the *farsa* which he was carrying in his hand; which though was aimed at P.W. 4, but P.W. 4 warded it off by his hand leading to his wrist being chopped off. P.W. 4 became injured and fell down on the ground. Thereafter, many persons of his family and neighbourhood arrived and he was taken to the Primary Health Centre, Marouna for treatment. The cause of occurrence has clearly been stated in the First Information Report to be the raising of a ridge in the field which was not to the liking of appellant No. 1.

6. On the basis of the aforesaid *fardbeyan* statement of P.W. 4 (Domi Rai), Marouna P.S. Case No. 31 of 1997, dated 22.05.1997, was registered for investigation for the offences under Sections 341, 323, 324, 325, 326 504 and



34 of the I.P.C..

7. The police after investigation submitted charge-sheet against seven accused persons including the appellants under Sections 147, 148, 149, 326, 307 and 34 of the I.P.C., whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial.

8. During trial, some of the accused persons died while some absconded and only the 4 appellants were tried together.

9. The Trial Court after examining 5 witnesses on behalf of the prosecution and 2 witnesses on behalf of the defense, convicted and sentenced the appellants as aforesaid.

10. During trial, P.W. 4 (Domi Rai) has supported the prosecution version, but he has clearly stated that nobody except appellant No. 1 assaulted him. He has also deposed that on the orders of one Sukhai Mukhiya (not the appellant), appellant No. 1 gave a *farsa* blow which hit him in his wrist. He has disclosed that the house of appellant No. 1 is near to his house and at the time of occurrence, he had been raising a ridge in his field by means of a spade. The land in question was in his possession for the last 12 years, which he had purchased through a sale-deed.

11. However, from a careful analysis of the deposition of P.W. 4, it appears that he has not been able to



support, establish and prove the actual manner of occurrence and the place where the entire occurrence took place. His statement, on close scrutiny, appears to be discrepant so far as the individual act of assault of the appellants are concerned. What strikes this Court, at this juncture, is that there was no repetition of blows and the appellant No. 1 did not carry the *farsa* and attacked him; rather the *farsa* was hurled towards P.W. 4.

12. In this context, it would be necessary to refer to the injury report, which is Exhibit-2. The report reveals that there was complete cut on the left forehand, *i.e.*, both radius and ulna near the wrist joint. The nature of injury was reported to be grievous and caused by a sharp cutting weapon.

13. Dr. D. Yadav, who has been examined as P.W. 5, has deposed that he had stitched the wounds of P.W. 4 which had taken him about 1½ to 2 hours. P.W. 4 had come to at him at around 9:50 in the night of the occurrence. At the time when P.W. 4 had come to him, he was bleeding profusely. It would be relevant to refer to the cross-examination of P.W. 5, referred to above. He has stated that when P.W. 4 (informant) had come for his treatment, he did not state about the cause of the occurrence and had come only for his treatment. In fact, the police was informed by P.W. 5 and then only the injury report was given by him. He has also deposed



that fodder-cutting machine shall also come in the category of sharp cutting weapons.

14. What stands established from the deposition of P.Ws. 4 and 5 is that P.W. 4 was injured in his hand by means of a sharp cutting weapon. Though the injury suffered by P.W. 4 is grievous in nature, but there was no other injury on the person of P.W. 4. This also establishes that but for one act of hurling *farsa* blow, there was no other act of assault even when many persons had assembled at the place of occurrence. What is further evident from the deposition of the aforesaid two witnesses is that if there had been any intention on the part of appellant No. 1 to have attempted to kill P.W. 4, he would not only have hurled the *farsa* which he was carrying in his hand; rather he would have walked up to P.W. 4 and attacked him. Admittedly, according to the deposition of P.W. 4, he was alone in the field when the occurrence took place. It also appears to be rather doubtful that in presence of so many persons, *farsa* would be hurled; because hurling of a sharp cutting weapon entails with it the risk of hurting others also who are present in the vicinity. If the occurrence would have had taken place as narrated by P.W. 4, he would have surely spoken about it to the doctor or whom he had visiting for treatment.

15. Learned counsel for the appellants, however, has submitted that from the surrounding circumstances, it



appears that with respect to raising a ridge over a plot of land, some scuffle took place between the two sides in which the P.W. 4 received certain injuries and taking advantage of the aforesaid injuries, an attempt has been made to arraign the appellants as accused in this case.

16. An attempt has been made on behalf of the appellants to demonstrate that the entire occurrence has wrongly been reported, by stating that even though the First Information Report was registered within few hours of the occurrence, but it saw the light of the day only after 4 days, when the Chief Judicial Magistrate endorsed the First Information Report. The distance of the police station and the Court was only 20 Kms. and it is rather surprising and unbelievable that it will take more than three and half days for the First Information Report to reach the Court of Chief Judicial Magistrate.

17. With this fact, an attempt has been made by the learned counsel for the appellants to demonstrate that whatever be the case, the First Information Report has been ante-dated and ante-timed; thus making the prosecution case completely doubtful. This perhaps, it has been argued, was done with the intention of bringing the case in line with the injury report (Exhibit-2), where the age of the injury was stated to be within 6 hours.



18. The other witnesses, *i.e.*, P.Ws. 1, 2 and 3 also claimed to be the eye-witnesses to the occurrence. However, they have not attributed any role to the other appellants and have only stated that on the exhortation of all the persons present at the place of occurrence, appellant No. 1 hurled a *farsa* leading to the injuries on P.W. 4. None of them (P.Ws.) have explained as to what they do when this occurrence took place. In what connection they present at the place and time of assault is also not known. However, some of them have only stated that they reached the place of occurrence on *hulla*.

19. From the perusal of the judgment impugned, it appears that the court below has not accorded appropriate attention to the deposition of witnesses offered on behalf of the defense.

20. Sindeshwar Prasad Srivastava, who has been examined as D.W. 1, though is a formal witness, but has proved Exhibit-A, which is the complaint petition filed by the appellant No. 1, on the basis of which Marouna P.S. Case No. 76 of 1997 was registered for investigation.

21. Nago Mandal, who has been examined as D.W. 2, has stated that the occurrence took place in a different way and, in fact, the appellants and the defense side were assaulted for which the aforesaid Marouna P.S. Case No. 76 of



1997 was registered for investigation against the informant/P.W. 4 and others.

22. Learned counsel appearing on behalf of the informant, however, has submitted that the appellant No. 1 is a person of criminal antecedents and is an accused in one more case.

23. Thus from the conspectus of the evidence garnered during trial, the place and manner of occurrence do not appear to have been established and proved beyond all reasonable doubts.

24. Appellant Nos. 2, 3 and 4 have not assaulted P.W. 4 or anybody and have not used their weapon, namely, *lathi*, which they were holding in their hands. The evidence with respect to exhortation to appellant No. 1 for making attempts at the life of P.W. 4 also is discrepant inasmuch as there is evidence that the assault was perpetrated at incitement of one Sukhai and not the appellant Nos. 2, 3 and 4.

25. In any view of the matter, since there is no evidence against the appellant Nos. 2, 3 and 4 of having assaulted the deceased or of having, in any manner, taken part in the occurrence, their conviction and sentence under Sections 307 and 326 of the I.P.C. cannot be sustained in the eyes of law.

26. Appellant Nos. 2, 3 and 4 are, therefore,



acquitted of all the charges. They are on bail; hence they are discharged from the liabilities of their bail bonds.

27. So far as appellant No. 1 is concerned, this Court is of the view that there could not have been any intention to kill the P.W. 4 or else, the appellant No. 1 would have walked up to P.W. 4; more so when P.W. 4 was all alone at the time of occurrence. Later, many persons in support of appellant No. 1 had also allegedly arrived. In that context, only hurling the spade reflects that there was no intention to kill P.W. 4. It could be a case of accidental hurling of the weapon in question.

28. But that as it may, taking the entire incriminating evidence against appellant No. 1, no case can, at all be said to have been made out against him for convicting and sentencing him for the offence under Section 307 of the I.P.C. However, for having caused grievous injury to P.W. 4 (Domi Rai), his conviction under Section 326 of the I.P.C. is sustained.

29. Thus, appellant No. 1 is acquitted of the charge under Section 307 of the I.P.C., but his conviction under Section 326 of the I.P.C. is sustained and affirmed.

30. However, regard being had to the fact that the occurrence is 20 years old and that the appellant No. 1 has participated in the trial for so long, this Court is of the view that



interest of justice would be met if the sentence imposed upon the appellant No. 1/Bambholi Mandal is reduced to the period of custody which he had already undergone.

31. Learned counsel appearing on behalf of the appellants has submitted that, by now, the appellant No. 1/Bambholi Mandal has remained in jail for more than 2 and ½ years.

32. Thus, the appeal of appellant No. 1/Bambholi Mandal is partially allowed. He stands convicted under Section 326 of the I.P.C. and is sentenced to the period which he had already undergone.

33. The appellant No. 1 is in custody. He is directed to be released forthwith, if not wanted in any other criminal case.

34. A copy of the judgment be transmitted to the Superintendent of concerned Jail for necessary compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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