

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.14 of 2004

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JITENDRA CHAUDHARY & ORS

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. PRAMOD KUMAR SINHA, Advocate
	:	Mr. Rakesh Kumar Sinha, Advocate
	:	Mr. Arvind Kumar Sharma, Advocate
	:	Mr. Chetan Kumar, Advocate
For the Respondent/s	:	Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 28-02-2018 This Criminal Appeal is directed against the judgment and order of conviction and sentence dated 12.12.2003 passed by Baikunta Nath Shahi, learned 9th Additional Sessions Judge, Saran at Chapra in Session Trial No. 374 of 2002/ 5 of 2002, by which learned Additional Sessions judge has convicted appellant No. 4 Hari Nath Chaudhary under Sections 148 and 307 of IPC and rest appellants under Section 147 and 307 read with 34 of IPC and sentenced appellant No. 4 Hari Nath Chaudhary to undergo rigorous imprisonment of six years and to pay a fine of Rs. 5000/- or in default to further undergo rigorous imprisonment for six months for the offence punishable under Section 307 of IPC and further sentenced appellant No. 4 to undergo rigorous imprisonment for one year for the charge under Section 148 of IPC and sentenced the rest



of appellants to undergo rigorous imprisonment for 8 months under Section 147 of IPC and is to undergo rigorous imprisonment for five years and to pay a fine of Rs. 3000/- in default to undergo rigorous imprisonment for four months under Section 307 read with 34 IPC, sentences to run concurrently.

2. Briefly stated, the facts of the case is that informant Shyam Deo Chaudhary (P.W.5) son of Late Bhagwath Chaudhary gave a fardbeyan (Exhibit-3) on 03.11.2000 giving rise to Revilganj P.S. Case No. 142 of 2000 registered on 03.11.2000 (Exhibit-2). The allegations made by the informant is that the appellants are Gotias and are on enimical terms due to land dispute. On 02.11.2000 at about 8:00 PM when informant was sitting at his Darwaja accused-appellants started abusing him and Gopal Chaudhary (appellant No. 5) ordered his sons appellant Nos. 1 to 4 to eliminate the informant and said Gopal Chaudhary assaulted the informant with Laptha on his left arm causing injuries. Hari Nath Chaudhary (Appellant No. 4) gave a fasuli blow on his chest and Jitendra Chaudahry (appellant No. 1) assaulted informant by Bhujali causing injuries on his chest and belly and Janeshwar Chaudhary appellant No. 3 and Patlu Chaudhary appellant No. 2 assaulted informant on various



parts of his body with lathi and danda. The informant became unconscious and was taken to the hospital and has also named Dhrub Chaudhary, Sikandra Yadav and Birendra Prasad as accused.

3. After investigation the police submitted charge sheet dated 27.02.2001 under Sections 147, 149, 447, 341, 323, 324 and 307 against the appellants and after taking cognizance of the offence case was transferred to the Sessions Court for trial where on 11.07.2002 charges were framed under Sections 147 and 307 read with 34 IPC against all the appellant Nos. 1,2,3 and 5 and charges under Sections 148 and 307 of IPC was framed against appellant No. 4 Hari Nath Chaudhary.

4. Prosecution has examined altogether seven witnesses in this case and apart from oral evidences have also adduced the documentary evidence, namely Exhibit-3 fardbeyan of PW-5, Exhibit-1/1 signature of informant on the fardbeyan, Exhibit-2 FIR, Exhibit-4 injury certificate of the informant given by PW-7 and Exhibit 5 Admission and discharge certificate of the informant issued by the Sadar Hospital, Chapra.

5. PW-1 is Satyendra Kumar Chaudhary who in his deposition has stated that on 02.11.2000 at 8:00 PM he was



sitting alongwith his father Shyam Deo Chaudhary at the door of his house, meanwhile Gopal Chaudhary and his all four sons came there and dragged his father on the road and he followed his father. Gopal was ordering to kill of his father and assaulted on the arm of his father by a Laptha and Hari Nath Chaudhary assaulted his father by Hansuli on his chest, Jitendra Chaudhary assaulted by Bhujli on hand and back of his father and Janeshwar and Patlu assaulted with Lathi and Danda and his father fell down on the place of occurrence. His father was taken away to Sadar Hospital and was treated there and fardbeyan was recorded in the Sadar Hospital in the next morning which was signed by his father. In his cross-examination he has stated that his father used to sell Tari and accused Gopal Chaudhary is his grand father and other accused are his cousin brothers and their house is situated about 50 Gaj west from his house even prior to incident there was litigation with accused. At the time of incident, there were four male members and three female members in his house. Accused took away his father 15 steps ahead and assaulted him but at that time he did not raise any alarm, they assaulted for about 2-3 minutes. Blood also came out from injury and fell on the



ground. The clothes worn by his father were also cut by sharp cutting weapon thereafter accused fled away.

6. PW-2 Kewal Devi who in her deposition has stated that her son and her husband were sitting at the door, when Gopal Chaudhary along with his four sons Hari Nath, Janeshwar, Jitendra and Patlu took her husband by dragging towards the road. She and her son followed her husband, Hari Nath assaulted on the chest of her husband by Fasuli, which caused injury to her husband. Gopal Chaudhary hit her husband by Laptha on his arm. Jitendra assaulted on arm by Bhujali. Janeshwar and Patlu also assaulted her husband by Lathi danda and he became unconscious and fell there and thereafter she carried her husband to Sadar Hospital where he was treated.

7. In her cross-examination she has stated that accused appellants reside in same locality and they are not in talking terms with Gopal Chaudhary from before the incident. She has raised alarm but no one came. Her husband was wearing shirt and there was cut mark on shirt on account of sharp weapon.. My son was also injured while saving his father, her son suffered injury on arm and back. My husband regain consciousness after 24 hours. The clothes of her husband was



stained with blood and blood had fallen on soil also at the place of occurrence (assault). The police station and hospital is in near to the place of occurrence. Her husband was taken to Chapra for treatment on tempo but she does not remember how much expenditure was incurred on treatment. Police did not come to Hospital and she did not meet any Daroga, she is not aware if blood stained soil was seized from the place of occurrence or not.

8. PW-3- Jitendra Singh who is a chance witness has stated in his deposition that on 02.01.2000 at 8:00 PM he had gone to residence of Shyamdeo Chaudhary to collect money and when he reached the Chauraha he saw that Gopal Chaudhary and his four sons were assaulting Shyam Deo Chaudhary. Gopal Chaudhary assaulted Shyam Deo Chaudhary on his left arm. Hari Nath Chaudhary by Fasuli, Jitendra Chaudhary assaulted by fists and Janeshwar and Patlu assaulted by lathi and danda, thereafter his family members took him to Chapra Sadar Hospital. He has further stated that injured Shyam Deo Chaudhary was bleeding and blood had fallen on soil and thereafter he was taken to local hospital Riveliganj Hospital.



9. PW-4 Rajendra Chaudhary has been declared hostile.

10. PW-5- Shyam Deo Chaudhary, the informant himself has stated that on 02.11.2000 at about 8:00 PM he was sitting near his door with his wife and son. Meanwhile, Gopal Chaudhary and his four sons came there, Hari Nath was carrying Fasuli, Jitendra was carrying Bhujali, Gopal Chaudhary was carrying Laptha and Janeshwar and Patlu were carrying Danda in their hands. They all dragged him outside and Gopal assaulted on his arm by Laptha, Hari Nath by Fasuli on his chest, Jitendra by Bhujali on his stomach and Janeshwar assaulted him by lathi and danda on his back and waist and he became unconscious and thereafter was carried to Chapra Sadar Hospital and his fardbeyan was recorded in the Hospital.

11. In his cross-examination he stated that he does not remember the khata number and plot number of the disputed land and dispute with accused is from last seven years. He has further stated that accused Jitendra Chaudhary had also lodged a case against him.

12. PW-6 Kishun Das who is I.O. of the Case, has stated that at the relevant time he was posted in the police station and he had recorded the fardbeyan of Shyam Deo Chaudhary in



the Chapra Sadar Hospital and he received the fardbeyan of Shyam Deo Chaudhary recorded at Chapra Sadar Hospital and on basis of said fardbeyan, FIR was registered and thereafter he started investigating the case. He had recorded the statement of Satyendra Chaudhary and Kewal Devi and thereafter he had inspected the place of occurrence. In his cross-examination he has stated that he did not find blood stained soil at the place of occurrence nor he found any foot prints. Satyendra Chaudhary did not showed blood at the place of occurrence. Kewal Devi did not tell that Gopal Chaudhary had came accompanied by his four sons. She also did not state that the accused had dragged her husband from the house to outside but the husband had accompanied them. She also did not said that she followed her husband and she had also not stated that who assaulted from which weapon on which part of the body of her husband. Hari Nath had assaulted with Fatta from which the left arm of her husband was injured. Kewal Devi had not stated to him that Jitendra had assaulted on arm but she had stated that Hari Nath and Jitendra had assaulted by Fasuli and Bhujali on head, stomach and chest, causing grievous injury.

13. PW-7 Dr. Vishnu Kant Gupta is a Doctor who, in his



deposition has stated that on 03.11.2000 he was posted at Sadar Hospital, Chapra and on that date at 12.40 AM he examined Shyam Deo Chaudhary and found

- (i) incised wound 3 ½ inch x 1 inch x muscle deep on left upper back.
- (ii) Incised wound 6 inch x 2 inch x muscle deep on left upper arm.
- (iii) Incised wound 7 inch x ½ inch x muscle deep on left forearm.

14. All wounds were bleeding and caused by sharp cutting weapon and all injuries are simple in nature.

15. PW-8 Sanjay Chaudhary has stated that informant Shyam Deo Chaudhary is his father-in-law and he had gone to Sadar Hospital, Chapra on 02.11.2002 to see him and he was in injured condition. He had gone to the hospital in the morning. Informant Shyam Deo Chaudhary in his initial version has stated that accused Gopal Chaudhary assaulted him on his arm by Laptha which is a small danda and hard & blunt object. However doctor PW-7 has not found any injury caused by hard blunt substance on the arm of informant. It has been further alleged that accused Hari Nath Chaudhary



assaulted the informant on his chest by Fasuli but the doctor PW-7 has not found any injury on the chest. Accused Jitendra Chaudhary has assaulted the informant with Bhujali on his abdomen but doctor has not found any injury on the abdomen of informant. Accused Janeshwar Chaudhary and accused Patlu assaulted the informant with lathi and danda on different parts of the body but the doctor PW-7 has not found any hard blunt injury on person of injured informant. Doctor has found only three incised wounds on left upper back, left upper arm and left forearm and has stated that all these injuries are simple in nature and caused by sharp cutting weapon. There is material contradiction in ocular evidence and injury report and no injury has been found on any vital part of the body of informant or any injuries caused by hard blunt substance. The three injuries which are simple in nature has been found on non vital part of the body i.e. upper arm, lower arm and upper back on the body of informant, as such, no offence under Section 307 of IPC is made out. There are consistent evidence of assault on informant which has been corroborated by the witnesses as well as injury report of causing injury by dangerous weapon,



as such, the conviction of Hari Nath Chaudhary under Section 307 and 148 of IPC is modified to 324 and 148 of IPC and sentence is reduced to the period already undergone.

16. The conviction of rest of the appellants convicted under Sections 307/34 and 147 of IPC is modified to Section 324/34 and 147 of IPC and sentence is reduced to period already undergone.

17. Appellants are discharged from their liabilities of their bail bonds.

18. The appeal is partly allowed.

(S. Kumar, J)

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