

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.12 of 2009

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1. Lorik Rai son of Late Basropan Rai
 2. Deorajit Rai son of Late Basropan Rai
 3. Nirmal Rai son of Lorik Rai
 4. Indar Rai @ Indal Rai son of Samru Rai
- All residents of Village Kolha Rampur, P.S. Barhara, District Bhojpur

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	None
For the State	:	Mr. Bal Mukund Prasad Singh APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 08-02-2018

On repeated calls, no one turned up on behalf of the appellants.

Ms. Dr. Indihar Kumari appeared as amicus curiae. However, counsel for the State is present.

Heard learned counsel for the State.

This appeal arises out of judgment of conviction dated 11.12.2008 and order of sentence dated 16.12.2018 passed by 2nd Assistant Sessions Judge, Bhojpur, Ara in Sessions Trial No. 268 of 1996 by which the appellant no.1 was convicted for the offence under Section 307 of the I.P.C. and appellant nos.2 to 4 were convicted for the offence under Section 307/34 of the I.P.C. Appellant no.2 was further convicted for the offence under Section 324 of the I.P.C. and appellant nos. 3 and 4 were further convicted under Section 323 of the I.P.C. The learned Trial Court has sentenced



appellant no.1 to undergo R.I. for ten years for the offence under Section 307 of the I.P.C. with a fine of Rs. 5,000/-. The appellant no.2 was sentenced to undergo R.I. for seven years with fine of Rs. 5,000/- for the offence under Section 307/34 of the I.P.C. and to undergo R.I. for six months for the offence under Section 324 of the I.P.C. Appellant nos. 3 and 4 were sentenced to undergo R.I. for 07 years for the offence under Section 307/34 of the I.P.C. and a fine of Rs. 5,000/- each and R.I. for one month for the offence under Section 323 of the I.P.C. All the sentences shall run concurrently.

The prosecution case, as per the '*Fardbeyan*', in brief, is that there is land of Govt. of Bihar in front of the house of the informant which is used as exit of the house. The aforesaid land was grabbed by Lorik Yadav and family members. The informant asked Lorik Yadav on 19.11.1995 at about 6 A.M. the reason for blocking the road causing harassment to him then he became angry and abused the informant. He called his family members. Lorik Yadav brought '*Bhala*' from his house and Deorajit Yadav came armed with '*Barcha*'. Lorik Yadav, Nirmal Yadav and Indal Yadav attacked the informant. Nirmal Yadav caught hold the informant and Lorik Yadav gave *Bhala* blow on his chest with intention to kill causing injury. Second blow was given by Lorik Yadav which was saved with hand by the informant and he sustained injury in his hand. Sheoji Rai came to rescue then Deorajit Yadav gave *Barcha* blow to him causing injury on chest. Lorik Yadav and Indar Yadav also caused



hurt by *lathi*, *danda* and bricks. The villagers arrived and accused persons fled away.

During trial, altogether 10 witnesses were examined on behalf of the prosecution. No defence witness has been examined.

The Court below after appreciating the evidences of the witnesses passed the impugned judgment of conviction and order of sentence.

The informant Kitab Rai is one of the injured. He has been examined as PW-8. He has stated in his evidence that at the time of occurrence he was going for natural call and accused persons arrived and surrounded him. Lorik Yadav gave '*Bhala*' blow on his chest. He fell down. Sheoji Rai came to rescue then Deorajit Rai gave '*Barcha*' blow on his chest and he became senseless. Thereafter, Lorik Yadav took out three hundred from his pocket. Indar Yadav and Nirmal Yadav also caused hurt by '*danda*'. He was taken to hospital for treatment where his '*fardbeyan*' was recorded. The occurrence has taken place on account of dispute for passage.

The another injured Sheoji Rai has been examined as PW-1. He has stated that when he reached the door he saw Lorik Yadav gave '*Bhala*' blow to Kitab Rai. Deorajit Rai gave '*Barcha*' blow to this witness causing injury on his right side chest. The other prosecution witnesses, namely Banshi Rai (PW2), Budhu Rai (PW3), Jivan Rai son of the informant Kitab Rai (PW4), Hawaldar Rai (PW5), Bidyanand Rai (PW6), Asharfi Rai (PW7) have stated that



Lorik Rai assaulted the informant and Deorajit Rai gave '*Barcha*' blow to Sheoji Rai when he came to save the informant.

Dr Arshad Ekram (PW-9) has examined both the injured(s). The doctor has found (1) lacerated wound over right upper chest size 1/4"x1/4" x 1/4". (ii) Lacerated wound over dorsum of right hand size 1/8"x 1/8" x 1/8". The injuries were caused by hard, blunt and penetrating substance, on the person of Kitab Rai. The doctor has opined both the injuries to be simple in nature.

The doctor has found only one lacerated wound over right mid chest size 1/8" x 1/8" x 1/8" over the person of the injured Sheoji Rai caused by hard, blunt and penetrating substance.

The Investigating Officer has not been examined in this case. PW.10 is a formal witness who has proved the '*Fardbeyan*' in the hand writing of S.I. Rajeev Ranjan.

In this manner, there is consistent evidence of both the injured Kitab and Sheoji Rai that Lorik Yadav assaulted Kitab Rai on chest with '*Bhala*' and Deorajit Rai assaulted Sheoji Rai on chest with '*Barcha*'. The doctor has found one injury on the chest of both the persons, as stated above, caused by hard, blunt and penetrating weapon to be simple in nature.

As such, from the injury report itself, it appears that there was no repetition of blows on the chest of the injured. The injuries were found to be simple in nature. Besides, allegation against the accused Lorik Yadav and Deorajit Yadav, the witnesses have not levelled any



specific allegation of assault against Nirmal and Indar Rai. There is no iota of evidence against them that they have also assaulted the informant. There is general allegation against Indar Rai that he was also armed with '*lathi*' and caused hurt to the informant. Therefore, on the basis of such evidence of the prosecution witnesses this Court finds that the judgment of conviction and order of sentence passed with regard to appellant nos. 3 and 4 is not justified. They are entitled for benefit of doubt. As the prosecution has failed to prove the charges against them beyond all reasonable doubt, the judgment of conviction and order of sentence passed against the appellant nos. 3 and 4 are set aside and they are acquitted of the charges levelled against them.

So far allegation against appellant nos. 1 and 2 are concerned, they are said to have assaulted the informant Kitab Rai and Sheoji Rai on the chest with '*Bhala*' and '*Barcha*' which has been supported by the witnesses. The doctor has found one injury on the chest. The injury report of both the injured have been marked as Ext(s). 1 and 1/A. The doctor has opined both the injuries simple in nature caused by hard and blunt substance. From the nature of injury found on the person of the both the injured(s), this Court is of the view that there was no intention on the part of the appellants to kill both the injured. There was no repetition of blow.

Therefore, the conviction of appellant nos. 1 and 2 for the offence under Section 307 and 307/34 of the I.P.C. is not in



accordance with law.. The conviction of Lorik Yadav under Section 307 of the I.P.C. is modified and he is convicted for the offence under Section 324 of the I.P.C. So far the judgment of conviction passed against appellant no.2 with regard to offence under Section 324 of the I.P.C. is concerned, the same is hereby affirmed. However, the conviction of appellant no.2 for offence under Section 307/34 of the Indian Penal Code is hereby set aside.

The case is of the year 1995. The appellants have suffered the rigour of the trial for such a long period. Therefore, this Court does not deem it justified to again order to send appellant nos.1 and 2 to custody. Therefore, the sentence passed against these appellants are modified to the period already undergone.

This appeal is, accordingly, allowed in part.

(Sanjay Priya, J)

shyambihari/-

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