

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.57 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- SEKHPURA

- =====
1. Hari Singh, S/o Indradeo Singh
 2. Tulu Singh, S/o Kedar Singh, r/v- Gagaur, P.S. Korma, District- Sheikhpura
- Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ram Swarup Prasad, Amicus Curiae

For the Respondent/s : Mr. Bal Mukund Prasad Sinha

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-08-2018

Heard the learned counsel for the appellants as well as the State.

2. The appellants, namely, Hari Singh and Tulu Singh have been convicted under Sections 147, 323 and 427 of the Indian Penal Code by judgment and order dated 16.01.2009 passed by the learned Additional Sessions Judge, Fast Track Court IVth, Sheikhpura in S. Tr. No. 548/2001, arising out of Sheikhpura (Korma) P.S. Case No. 35/2001 and they have been sentenced to undergo R.I. for six months each for all the offences.

3. In the written report, it is alleged that in the night of 10.02.2001 at about 9:00 P.M. the informant along with his son Dukhi Kewat went to see their field in which Khesadi and Masoor crops were standing. As soon as they reached at their field they saw his



villagers Shiva Ram Singh, Pintu Kumar, sons of Mundrika Singh, Hari Kumar, the younger son of Kedar Singh and three unknown persons uprooting his Khesari crop standing in his field. He could not identify the unknown persons in the light of moon. It is further alleged that those persons who were uprooting his crop fled away from the land on seeing him and his son. It is further alleged that the informant and his son returned from the field at about 11:00 P.M. and when they reached near the Middle School in village Gagaur, accused persons came out from a community hall and started assaulting them. The accused persons badly assaulted his son Dukhi Kewat on head and whole body. The doctor referred his son to P.M.C.H. for treatment in unconscious stage.

4. Sheikhpura (Korma) P.S. Case No. 35/2001 was registered under Sections 323, 341, 325, 427, 307 and 34 of the Indian Penal Code, on the basis of aforesaid *fardbeyan*.

5. In this case altogether five witnesses have been examined on behalf of the prosecution.

6. P.W. 4, Brihaspat Kewat, is the informant of this case. He has stated in his examination-in-chief that he had identified the accused persons, who were looting his crop. In para 7, he has stated that first his son was badly assaulted by the accused persons and when he fell down, thereafter, he (informant) was assaulted by



them. Due to assault, his hand was fractured. He has stated in his evidence in para 8 that villagers and Gotiya brought him and his son to Sheikhpura where they were treated by Dr. Mirgendra Babu. His son was referred to P.M.C.H. after giving first aid and injection. He was hospitalized in Sheikhpura hospital and remained there for 45 days. In this period he also visited his village. His x-ray was done twice. First was done after two days of the alleged occurrence. In para 9 of his evidence, he has stated that he does not remember as to who had assaulted him on the particular part of his body.

7. P.W. 3, who is son of informant, is also injured. He has stated in his evidence that in the night of 10.02.2001 at about 9:00 P.M. he had gone at his field with his father to see Khesari and Masoor crop where he was assaulted by appellants and other accused persons upon raising objection for looting crop. He has stated in his evidence that Shiv Ram Singh, Pintu Singh, Hari Singh and Tullu Singh assaulted him with lathi on whole body causing head injury. Puttu Singh, Socha Singh and Ranjit Singh assaulted his father. During his cross-examination, he has stated that Lal Nursing Home is a private nursing home.

8. P.W. 5, Dr. Mirgendra Prasad Singh, has stated that he was posted at Subdivisional hospital, Sheikhpura on 11.02.2001 as Civil Assistant Surgeon and on the same day he had examined



Brihaspat Kewat (informant) and found following injuries on his person:

(I) Swelling and pain on right fore arm 2”X1”

(II) Pain echomosis over right side of waist 2”x1”

X-ray shows fracture of lower end of right radius ulna.

Nature of injury no. I was grievous and injury no. II was simple caused by hard blunt substance. In absence of original injury report photo copy of injury report was marked as ‘X’ for identification.

9. P.W. 1 has admitted in para 2 of his cross-examination that his father is full brother of informant. He has also admitted that Arbind is son of his own uncle Janki Kewat.

10. P.Ws. 1 and 2 are interested witnesses in this case. Both witnesses are not an eye-witness. They have stated that they had gone to latrine at about 11:00 P.M. From the written report, it is apparent that they reached at the P.O. after the occurrence on hulla raised by informant and saw the informant and his son in injured condition and thereafter, they managed to take them to Sheikhpura hospital for treatment.

11. In the instant case, original injury report of informant was not produced. Photo copy of the injury report was produced, which has been marked as ‘X’ for identification. Injury report of the son of informant was also not produced. The certified



copy of the reference slip of P.W. 3 has been marked as Ext. 3 in S.Tr. No. 548A/2002.

12. It appears that P.W. 3, son of the informant, was referred to P.M.C.H. but his injury report was not filed during trial in the court below. Further it appears that I.O. has not been examined in this case. It further appears that P.Ws. 1 and 2 were not produced before the court below for cross-examination which has highly prejudiced the case of prosecution. P.W. 4 has stated that his son was referred to P.M.C.H. after giving first aid and injection but no injury report of his son was produced in the court below during trial. P.W. 3 has stated in his evidence in para 12 that after regaining sense he came to know from P.W. 2 that he was brought to P.M.C.H. from Sheikhpura Hospital first and thereafter he was brought to Lal Nursing Home. He has admitted in his evidence that Lal Nursing Home is a private nursing home.

13. In such circumstances, this Court does not find any cogent evidence in this case on behalf of the prosecution to substantiate the charge for the offences under Sections 147, 323 and 427 of the Indian Penal Code against the appellants. The prosecution has failed to substantiate the charge beyond all reasonable doubt.

14. Accordingly, the impugned judgment of conviction and order of sentence dated 16.01.2009 is hereby set aside.

15. The appellants are on bail. They are discharged



from liability of their bail bonds.

16. This Criminal Appeal is accordingly allowed.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	21.08.2018
Transmission Date	21.08.2018

