

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.92 of 2009

1. Parasnath Singh
2. Arun Singh
3. Nawal Kishore Singh All Sl no. 1 to 3 sons of late Rijhan Singh
4. Hari Shankar Singh
5. Ravindra Singh, both sons of Paras Singh
All are R/o village Pauni Hasanpur, P.S. Vaishali, Dist. Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (SJ) No. 213 of 2009

1. Subodh Kumar Singh @ Subodh Singh
2. Nagendra Singh
Both sons of late Rijhan Singh, R/o village Pauni Hasanpur, P.S. Vaishali,
Dist. Vaishali.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 92 of 2009)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the State : Dr. Rabindra Kumar APP

For the informant : Mr. Ramesh Kumar Choudhary,
Advocate

(In Criminal Appeal (SJ) No. 213 of 2009)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

For the State : Dr. Rabindra Kumar APP

For the informant : Mr. Ramesh Kumar Choudhary,
Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 06-09-2018

Both the appeals have arisen out of common judgment
and as such they have been heard together and are being
disposed off by this common judgment.



Both the appeals have been preferred against the judgment of conviction dated 29.1.2009 and order of sentence dated 4.2.2009 passed by the Additional Sessions Judge Fast Track Court –III, Vaishali in Sessions Trial no. 198 of 2000 arising out of Vaishali P.S. case no. 8 of 1999 , G.R. No. 93/99 whereby all the appellants have been convicted under Sections 341, 307 and 34 of the Indian Penal Code. All the appellants have been sentenced to undergo simple imprisonment for one month each under Section 341 of the IPC.

Appellants of Cr. Appeal no. 92 of 2009 have been further sentenced to undergo rigorous imprisonment for seven years under Section 307/34 of the IPC and to pay a fine of Rs. 3000/- each and in default of payment of fine to further undergo simple imprisonment for six months each.

Appellants Subodh Kumar Singh @ Subodh Singh and Nagendra Singh (Cr. appeal no. 213 of 2009) have been sentenced to undergo rigorous imprisonment for seven years under Section 307 of the IPC and to pay a fine of Rs. 3,000/- each and in default of payment of fine to further undergo simple imprisonment for six months each.

Heard learned counsel for the appellants, learned counsel



for the informant and learned counsel for the State.

Learned counsel for the appellants has submitted that there is apparent contradiction in the evidence of witnesses. It is further submitted that doctor and I.O. have not been examined in this case.

Learned counsel for the informant, on the other hand, has submitted that two injured witnesses, namely, Ram Narayan Singh (PW5) and his wife, namely Ramjori Devi (PW3) have fully supported the case. He has further submitted that doctor has found four injuries on the person of both the injured(s).

The prosecution case as per written report filed by Ram Narayan Singh (PW5) is that on 14.1.1999 he had gone to Gawalpur Haat to purchase vegetables and other articles. While he was returning to his house at 5 pm in the evening and when he reached near Chamartoli Pauni Hsanpur in front of the house of Nanhku Ram, accused persons, namely, Subod Singh armed with Farsa, Nagendra Singh armed with Garasa, Parasnath Singh and Rijhan Singh armed with Lathi came out and caught hold the handle of his bicycle and Rijhan Singh abused and told that cut him into pieces and throw the same. Thereupon, Subodh Singh, in order to kill him, gave Farsa blow on the forehead of the informant which informant saved by his right



hand and which caused injury on his thumb and palm. Nagendra Singh assaulted him with Garasa on his forehead causing injury to his left side and the blood started oozing out. As a result of which, he fell down. It is further alleged that Nawal Kishore Singh, Arun Singh, Ravindra Singh, Hari Shankar Singh arrived armed with lathi and all the accused persons assaulted him with lathi as well as fist and slaps and got him injured. Neighbours arrived on hulla and thereafter accused persons went away to his house and also assaulted his wife Ramjori Devi and got her injured. Accused Subodh Singh took away her ear ring and Ravindra Singh took away her golden chain and also damaged the plant which was standing in the field. The informant has further alleged that occurrence has been seen by witness, namely Ajay Kumar, Deepak Singh, Awadhesh Singh, Shatrudhan Singh. The cause of occurrence is said to be old enmity and the cases were going on from each side.

The prosecution during trial has altogether examined five witnesses.

Ajay Singh @ Ajay Kumar (PW1) has been named as an eye witness in the F.I.R.. But, during his evidence in the Court he has not deposed as an eye witness rather he has



deposed as an hearsay witness.

Awadhesh Singh (PW4) has not supported the case and he has been tendered by the prosecution.

Siyaram Singh (PW2) has appeared as an eye witness although he is not named in the written report as an eye witness. He has stated in his evidence that accused Subodh Singh attempted to assault Ram Narayan Singh with Farsa which was saved by Ram Narayan Singh with his right hand on account of which he sustained injury on his thumb and palm. Appellant Nagendra Singh assaulted the informant Ram Narayan Singh with Garasa on his head, as a result of which, he fell down. This witness has not said anything with respect to the injury having sustained by the wife of the informant, namely, Ramjori Devi.

The wife of the informant, namely Ramjori Devi has been examined as PW-3. She has stated in her evidence that appellant Subodh Singh assaulted her with back portion of the farsa, on account of such assault, she sustained injury. The other accused persons assaulted her with lathi, danda, fists and slaps.

This witness, in her cross examination, at paragraph no. 20, has stated that she cannot say where the occurrence took



place and she has further stated at paragraph no. 30 of her cross examination that she became unconscious after the assault and when she regained consciousness then she found mark of assault on her back and hand etc. This witness has not said anything about the injury having been caused by the accused persons to Ram Narayan Singh (informant).

Ram Narayan Singh, who is the informant of this case has been examined as PW-5. He has stated in his evidence in examination-in-chief that appellant Subodh Singh assaulted him with Farsa which he saved with his right hand and sustained injury in his right palm and thumb. He has further stated in his examination in chief that Nagendra Singh assaulted him with Garasa causing injury on his left Pakhura on account of such assault blood started oozing out. This witness is the author of FIR, wherein, he has stated that Subodh Singh attempted to assault him with Farsa on his head and appellant Nagendra Singh assaulted him on his head with Garasa. There is apparent contradiction in the evidence of this witness and the allegation made by him in F.I.R. In his evidence before the Court, this witness has not stated about the assault having been made by the accused person on his head.

Ajay Singh @ Ajay Kumar (PW1) has been named as



an eye witness in the F.I.R.. But, during his evidence in the Court he has not deposed as an eye witness rather he has deposed as an hearsay witness. This witness in his cross-examination has stated that injured, namely, Ram Narayan Singh in collusion with local village doctor prepared the injury report . The doctor has not appeared for evidence. But the injury reports of both the injured(s) have been marked as Ext. 3 and 3/1. The doctor has found all the injuries to be simple in nature except the injury no.1 on the person of informant, namely, Ram Narayan Singh for which opinion was kept reserved. The injury report speaks that some injury has been caused to both the injured(s). But, during evidence both the injured(s) PWs 3 and 5 as well as other prosecution witnesses have not been able to attribute specific overt act done by the appellants resulting in aforesaid injury.

In fact, the evidence of both the injured is contradictory to each other. The evidence given by the informant regarding the injury caused to him in Court is totally different with the story which he has narrated in the FIR. The I.O. has not appeared in the case for his evidence which has caused great prejudice to the case of defence. The defence could not get opportunity to test correctness of evidence of prosecution witnesses in court vis a



vis their statement recorded by the I.O. during investigation.

Therefore, this court finds that conviction and sentence of the appellants of both the appeals is not in accordance with law. The prosecution has failed to prove the charge against the appellants beyond all reasonable doubt.

Accordingly, impugned judgment of conviction and order of sentence dated 29.1.2009 and 4.2.2009, respectively passed by the Additional Sessions Judge Fast Track Court –III, Vaishali in Sessions Trial no. 198 of 2000 arising out of Vaishali P.S. case no. 8 of 1999, G.R. No. 93/99, is hereby set aside. The appellants are acquitted of the charge(s) levelled against them. They are discharged from the liability of their respective bail bonds.

These Criminal Appeals are , accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
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