

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.40 of 2011

1. Triveni Singh, son of late Gauri Shankar Singh
2. Jitendra Singh @ Jitendra Kumar Singh
3. Manash Singh @ Manash Kumar Singh
Both sons of Triveni Singh, All residents of village- Saraiya, P.S.-Sakara,
District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (SJ) No. 78 of 2011

1. Ram Nath Singh @ Ram Nath Suman Singh
2. Kedar Singh, both sons of Late Guri Shankar Singh R/O Vill-
Saraiya, P.S- Sakara, Distt- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In both cases)

For the Appellant/s : Mr. K.P.Singh, Sr. Advocate.
Mr. Alok Kumar, Advocate.
Mr. Birendra Kumar Singh, Advocate.
Mr. Pratik Mishra, Advocate.

For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
CAV JUDGMENT

Date : 14-08-2018

The criminal appeals i.e., Cr. Appeals No. 40 of 2011 as well as 78 of 2011 have been preferred by all five convicts of S.T. No. 257 of 1995 against the judgment of conviction and order of sentence dated 28.12.2010 and 05.01.2011 respectively, whereby learned Additional Sessions Judge-6th, Muzaffarpur, finding them guilty for committing offence under Section 307 of



I.P.C., sentenced to undergo five years of rigorous imprisonment and fine of Rs. 2000/- each and in case of default in payment of fine, to further undergo two months of simple imprisonment, however, period already undergone in custody shall be set off.

2. The prosecution case, in brief is that on 13.04.1994 at 6:30 a.m. (approximately), informant Ram Niranjana Singh (PW-4) went to his agricultural field for cutting the wheat crop. He had called Raju Paswan (PW-1), his crop-sharer (*Bataedar*), who was cutting the crop, after visiting the field he returned back to home. Again he came back to the field and found accused persons armed with *lathi*, rod and *farsa* and wordy duel followed leading to assault as Ram Nath Singh and Kedar Singh assaulted him with iron rod and *Farsa*, thereafter, some co-villagers Jai Prakash Singh, Manu Singh, Vijay Singh, Basant Singh, Ramji Singh and others interfered and tried to pacify both sides but Kedar Singh and Ramnath Singh started assaulting him with rod and from back of the *Farsa*. In the meanwhile, his son Shankar Dayal Singh (PW-2) came to his rescue then he was assaulted on his head and ear causing injury to him, his brother, Ganga Singh (PW-3) was also assaulted. The motive as alleged for committing the occurrence is dispute over cutting the wheat crops standing in the field of the informant.



3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellants Triveni Singh, Jitendra Singh and Manas Singh of Cr. Appeal No. 40 of 2011 and appellants, Ram Nath Singh and Kedar Singh of Cr. Appeal No. 78 of 2011, have preferred present both appeals on the ground that conviction is bad as evidence has not been carefully appreciated rather major contradictions appearing in the evidence of prosecution were ignored, further trial court has failed to appreciate that genesis as well as place of occurrence too have not been proved by the prosecution. The case of the prosecution is that the land, in question, from which standing crop was being cut by informant side became bone of contention between both sides, but fact remains that land in question was sold to Brind Kumar (DW-1) by the informant's son Shankar Dayal Singh (PW-2) months prior to the occurrence. DW-1 has deposed that at the time of purchasing the land in question, no crop was found sown in the field hence there is no question of cutting the crop from that land. Further independent witnesses , PW-5 and 6 namely Brij Bihari Singh and Satyendra Singh have not supported the prosecution case, so declared hostile. Even none of the independent witnesses, though their names find place in the fardbeyan, has been



examined. The impugned judgment is also assailed on the ground that PW-8, Dr. Bibhuti Tiwari had not examined the injured persons, in fact, the doctor, who had examined them, was not examined and PW-8 deposed only on the basis of X-ray report of the injured but the said X-ray report was not before him while being examined by the court as a witness. Hence, the injury report too has not been proved by the prosecution. Another grounds for challenging the judgment is that there is counter case filed by the appellants' side and the same was also not considered.

4. On the basis of the *fardbeyan* of Ram Niranjan Singh, informant (PW-4), FIR bearing Sakra P.S. Case No. 77 of 1994 was registered under Sections 147, 148, 307, 323 and 324 of I.P.C. With the institution of the FIR, investigation followed and on its conclusion, police submitted charge sheet against all these accused/appellants under the aforesaid sections and taking cognizance of the offence, the Chief Judicial Magistrate committed the case to the court of sessions wherefrom case was transferred to the court of the Additional Sessions Judge and charge was framed under Section 307 of I.P.C. against Ram Nath Singh, Jitendra Singh, Manas Singh and under Sections 307/149 of IPC against Triveni Singh and Kedar Singh.



5. In support of the charge, altogether 11 prosecution witnesses have been examined and a number of documents like fardbeyan, FIR, case diary, X-ray report, medical prescriptions, copy of injury reports and medical report and all were exhibited and marked as Ext. Nos. 1 to 7 series.

6. The case of the defence is that informant's side were not in possession of the land where they had gone for cutting the crops, as the said land was sold to DW-1 months prior to the occurrence and, in fact, they were cutting the crop of appellants' side from land contiguous to the land sold by PW-2 to Brind Kumar Singh (DW-1), as both sides are agnates descendants of common ancestor. However, the counter case filed by the appellants was pending in another court at the time of passing the judgment. In situation of case and counter case, trials of both cases are required to be conducted by the same court to ascertain the truth and falsity of either one. However, the trial court finding the prosecution evidence credible convicted all the accused persons under Section 307 of I.P.C.

7. Learned counsel appearing on behalf of the State submits that informant, Ram Niranjana Singh (PW-4) and two other injured of the case i.e., PW-2 Shankar Dayal Singh and PW-3 Ganga Singh besides Raju Paswan, *Bataidar* of the



informant, these four witnesses have supported the prosecution case and injury reports as well as medical prescriptions have also proved the injuries sustained by PW-2 and PW-3.

8. Having consideration of rival contentions and on perusal of records of the case, the Court finds that prosecution, in total, has examined eleven witnesses and exhibited a number of documents including the fardbeyan, pages of case diary, X-ray report, medical prescriptions and injury reports (Exhibit 1 series to 7 series). However, out of 11 PWs, 06 are eye witnesses, PW-1 Raju Paswan, Bataidar of the informant, PW-2 Shankar Dayal Singh, s/o informant, PW-3 Ganga Singh, brother of the informant and PW-4 Ram Niranjana Singh (informant), but PW-5 Brij Mohan Singh and PW-6 Satyendra Singh have turned hostile to the prosecution case. PW-7, Girish Kumar is the Investigating Officer of the case and PW-8, Dr Bibhuti Kumar Tiwari, owner of Mahavir-X-ray Juran, Chapra, proved the X-ray report of two injured persons, PW-9, Dr. Birendra Kishore has proved the medical prescriptions i.e., Ext. 5 series and PWs-10 and 11 are formal witnesses.

9. The specific case of prosecution is that on account of dispute over cutting wheat crop standing in the field of informant, Ram Niranjana Singh (PW-4), the appellants assaulted



him, his son and brother, PW-2 and PW-3 respectively. According to *fardbeyan* (Ext.-1), the land in question was purchased on 29.12.1993 by the informant from son-in-law of the wife of late Shyam Nandan Singh and had given the land to PW-1 Raju Paswan for cultivation as *Bataidar*. The alleged occurrence is dated 13.04.1994. The deposition of Girish Kumar, Investigation Officer (PW-7) categorically establishes the fact that the agricultural field, the place of occurrence, is of Khesra No. 1096, Khata No. 323 was not of the informant Ram Nirajan (PW-4) rather the owner of the land, at the relevant point of time, was Brind Kumar Singh (DW-1). This fact is mentioned in para 2 of the examination of the I.O. and just eastern side to the said plot, land belongs to Triveni Singh, accused/appellant. The I.O. has not found any other significant evidence at the place of occurrence relating to mark of crop cutting to show sequencewise found in the field or it was a fallow land or any mark of evidence suggesting the occurrence of crop cutting or assault or presence of blood stain though specific case of prosecution is that injuries were bleeding but no blood stain or any relevant objective evidence was found at the place of occurrence. Moreover, the land owner of the said land Brind Kumar Singh, examined by defence as DW-1, has



categorically stated that said piece of land was purchased by him by registered sale deed dated 19.02.1994, approximately two months prior to the occurrence from Shakar Dayal Singh (PW-2), son of the informant. The sale deed executed in his favour was purchased and marked as Exhibit A series. He, further explained that at the time of purchase of land, it was a fallow land, means no crop was there and after purchasing the land, he had sown the crop and right from the date of execution of the sale deed, he has been coming in possession of the land. This fact is also disclosed or revealed by the evidence of PW-2, Shankar Dayal Singh, admitting the said fact in para 5 of his cross-examination that the land where occurrence took place was sold on 19.02.1994 to Brind Singh thereafter that land is in possession of the purchaser. It is also admitted that 1/3rd share of the said plot is of the accused persons and both sides are agnates as their fathers were full-brothers and also admitted in para 7 of his cross-examination that no written partition was effected in between them.

10. PW-3, Ganga Singh, also conceded that the said land was sold on 19.02.1994 and thereafter possession of the said land was given to the purchaser and occurrence took place after selling the land and according to him, after the purchase of land



wheat crop was shown. PW-4 Ram Niranjana Singh, also deposed admitting the fact that he had purchased the land in question on 29.12.1993 but it was sold by his son Shankar Dayal Singh (PW-2) on 19.02.1994 and from that day, the possession of land is with Brind Kumar Singh, the purchaser and the date of occurrence of the present case is 13.04.1994. Brind Kumar Singh is DW-1.

11. The fact discerning from the evidence is that land in question was purchased by accused persons on 29.12.1993 and then after one and half month approximately, it was sold to Brind Kumar Singh (DW-1) by a registered sale deed dated 19.02.1994 executed by PW-2 (Shankar Dayal Singh, son of the informant), and possession of the land was also handed over on the same day to the purchaser. Moreover, DW-1 Brind Singh, purchaser, in his deposition, has categorically stated that he had purchased the land on 19.02.1994 and at that point of time, there was no crop in the field rather it was a fallow land and he had sown the crop after purchasing the land, so the genesis of the occurrence is not proved by the prosecution. There is also evidence on the record that land in the eastern boundary of the land of the alleged place of occurrence, belongs to the accused persons and there is counter case filed by them that accused



persons were making attempt to cut away the crop, so accused persons objected.

12. In case and counter case, both cases should be tried together in order to ascertain truthfulness of either of the cases and in such situation, only one case is found true and not otherwise, but in the present case, trial of both cases were not conducted by the same court and at the time of delivering the judgment of the present case, counter case was pending before another court.

13. Moreover, independent witnesses have not supported the case of the prosecution. PW-5 Brij Bihari Singh and PW-6 Satyendra Prasad Singh have been declared hostile by the prosecution because they have not supported the case of prosecution and in the cross-examination done by the prosecution, nothing has been elicited to establish that accused persons assaulted injured persons. In the FIR, names of several independent persons are mentioned, namely, Jai Prakash Singh Monu Singh , Vijay Singh and Ram Ji Singh, who turned up for pacifying both sides but none of these witnesses has been examined by the prosecution which leads to adverse inference against prosecution.

14. At the requisition of the Investigating Officer (PW-7),



the injured were examined by Dr. B.N.Jha, Sakara Referral Hospital, Muzaffarpur. He found three injuries on the person of the informant, Ram Niranjana Singh(PW-4), which are as follows:

- (1) Abrasion with swelling on the left shoulder -1" x 1/6"
 - (2) Scratch on the left shoulder 1" x 1/8"
 - (3) Abrasion with swelling on the left wrist joint 1" x 1/2"
- and all injuries are simple except injury no. 3 whose opinion was kept reserved, caused by hard and blunt substance.

Likewise, three injuries were also found on the person of Ganga Singh (PW-3), which are as follows:

- (1) Swelling on the right parietal region 4" x 2" (advised X-ray)
- (2) Incised wound on the arms left side 3" x 1/6" x skin deep
- (3) Scratch on the right arm 1" x 1/8"

and the nature of injury no. 2 and 3 are found simple and opinion with regard to injury no. 1 was kept reserved till X-ray. Injury no. 2 and 3 are caused by hard and blunt substance and injury no. 2 is caused by the sharp weapon. But in view of Ext. 7/2, injury no. 1 of Ganga Singh was found grievous caused by hard and blunt substance.

15. Dr. B.N.Jha examined injured persons on 18.04.1994 but he was not examined by the prosecution. The injury reports issued by him were not got proved by him rather marked by



formal witness PW-11, Ram Chandra Jha, a Compounder. None examination of Dr. B.N.Jha also prejudiced the case of the defence because no opportunity was given to them to cross-examine him. Final opinion with regard to injury opined by Dr. B.N.Jha is based on the basis of X-ray report of Dr. Bibhuti Tiwari (PW-8), the medical prescription of Dr. Birendra Kishore (PW-9), the scanning reports of Dr. Kumar Rana Mithilesh and Dr. Uday Krishna (not examined by the prosecution). Even the scanning plates as well as the X-ray plates were not produced before the court and these are not on the records. PW-8, Dr. Bibhuti Tiwari admits in Para-4 of his cross-examination that X-ray plate is not before him. Moreover, injury report issued by Dr. Birendra Kishore (PW-9) was also not produced before the court by the prosecution. Only photocopies of the injury reports were produced marked as Ext. X and X/1.

16. A photocopy of an original is a secondary evidence, subject to condition it was made from original by mechanical process and copies compared with such original. Section 63 of the Indian Evidence Act (in short “Act”) deals with secondary evidence, which reads as follows:-

63. Secondary evidence.—Secondary evidence means and includes—

- (1) Certified copies given under the provisions hereinafter contained;
- (2) Copies made from the original by mechanical



processes which in themselves insure the accuracy of the copy, and copies compared with such copies;
(3) Copies made from or compared with the original;
(4) Counterparts of documents as against the parties who did not execute them;
(5) Oral accounts of the contents of a document given by some person who has himself seen it.

17. In view of the Evidence Act, documents are required to be proved by primary evidence in view of Section 64 of the Act except in cases or situations as mentioned in Section 65 of the Evidence Act, which reads as follows:-

65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

- (a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence²; 1[India] to be given in evidence;"
- (g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection. In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary



evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

18. None of such conditions are fulfilled in the present case. Injury report is a public document within the meaning of Section 74 of the Act and a public document may be proved by primary evidence, the original document itself or by producing a certified copy of that document as explained in Section 63 of the Act except that no other document is admissible. So, injury reports marked as Exts. X and X/1 are inadmissible evidence.

19. In view of discussion made above and on critical analysis of the evidence, the Court finds that prosecution has failed to establish the genesis of occurrence as well as place of occurrence. Generally, motive is not required to be proved, but in case of specific motive assigned leading to the occurrence is also required to be proved as in the present case that for dispute of cutting the standing crop over the land belonging to informant's side, accused persons assaulted them. However, on record, there is evidence contrary to it, as discussed above, that land in question approximately two months prior to the occurrence was already sold by the prosecution side to one Brind Singh, the vendee (DW-1) and that position is admitted by the prosecution witnesses also and possession of the land was



also given to him immediately thereafter according to purchaser (DW-1) he came into possession of the land and that time, it was a fallow land, as no crop was sowed there, so in view of such evidence, no question arise of cutting the crop only one and half month after selling the land and Brind Singh coming in its possession. Moreover, the case of the prosecution is that crop was being cut by the accused persons from their own land though the case of the defence is that they have their own land in the eastern boundary of the land sold by the accused persons to DW-1, as mentioned by the Investigating Officer (PW-7), and a counter case lodged by accused side of this case was *sub judice* at the time of passing of judgment before another court. So all these evidences and circumstances give rise to reasonable doubt to the prosecution case, coupled with the fact that even Dr. B.N.Jha, who first examined the injured person, was not examined by the prosecution, neither primary or secondary evidence of injury report issued by Dr. Birendra Kishore (PW-9), in view of Sections 64 and 65 of the Act rather only photocopy was produced before the court and there is no evidence that the said photocopy was made from the original by mechanical process or compared with the original. Therefore, prosecution has failed to establish the charge of making an



attempt on life against the appellants beyond all reasonable doubts.

20. The Apex Court, in case of Bhagwan Sahai and Anr. vs. State of Rajasthan reported in (2006) 13 SCC 171, has held that if the prosecution has suppressed the genesis and origin of the occurrence of crime, the accused are entitled to get benefit of doubt. In the present case also, genesis and origin of the occurrence of crime has been suppressed by the prosecution.

21. Therefore, the Court giving benefit of doubt, acquit the appellants from the charges aforesaid. As the appellants are on bail, they are discharged from the liability of their respective bail bonds. Accordingly, both appeals stand allowed.

(Arun Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	22.03.2018
Uploading Date	16.08.2018
Transmission Date	16.08.2018

