

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.29 of 1996

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

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1. Ram Barat Yadav son fof Jattu Yadav
2. Ganauri Dusadh son of Tapeshwar Dusadh,
Both residents of village Bedauli, Police Station Konch, District- Gaya.
..... Appellants

Versus

State of Bihar

..... Respondent

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Appearance :

For the Appellants : Mr. Baban Roy (Amicus Curiae)

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 19-01-2018

The appellant no.1 (Ram Barat Yadav) has been convicted under Section 325/147 of the Indian Penal Code and sentenced to undergo RI for one year and R.I. for six months respectively under Section 325/147 of the Indian Penal Code (hereinafter referred to as 'the IPC'). Similarly, appellant No.2 (Ganauri Dusadh) has been convicted under Section 324/148 of the IPC and has been sentenced to undergo RI for one year each in both the counts.

2. The prosecution story as per the Fardbeyan of P.W.4 Prasad Singh (informant) recorded by the Police on 24.6.1982 at 01:00 P.M. whereunder the informant has stated that on the same day at 09:00 P.M. the accused persons came including the appellants variously armed and asked the informant as to why he is not



withdrawing the case; on which the informant told that the case has been filed by Kapildeo Singh as to how he can withdraw that case. It is further alleged that thereafter all the accused persons assaulted him and also assaulted Ram Ashish Singh. Further specific allegation against Ganpat Chamar is that he assaulted Ram Ashish Singh by *Garansa* on the head of Ram Ashish Singh, Ram Barat Yadav assaulted by *Lathi* on Ram Ashish Singh on head and back and Ganauri Dusadh assaulted Ram Ashish Singh by *Bhala* on left hand, causing injury. The fardbeyan led into registration of Konch P.S. Case No.36 of 1982 under the various Sections of the Indian Penal Code and after completion of the investigation, the charge sheet has been submitted, cognizance has been taken against the accused persons including the appellants and the case has been committed to the court of session, which ultimately came to the file of Sri Sri M.P. Tiwary, C.J.M., Gaya.

3. It appears that during the trial of the case, altogether seven witnesses have been examined, they are : P.W.1 Lalan Singh, P.W.2 Ram Ashish Singh (injured), P.W.3 Kapildeo Singh (declared hostile), P.W. 4 Parsidh Singh (formal witness proved FIR), P.W. 5 Ambuj Prasad, P.W.6 Dr. Ram Naresh Singh and P.W.7 Birendra Singh (Advocate Clerk proved the case diary).

4. Defence of the accused persons is that no such



occurrence has taken place and they have been falsely implicated in this case, further the defence is of innocence and false implication.

5. Learned trial court considering the entire materials available on the record has convicted the appellant Ram Barat Yadav under Section 325/147 of the IPC and Ganauri Dusadh under Section 324/149 of the IPC. Apart from Ram Barat Yadav and Ganauri Dusadh, one Ganpat Chamar has also been convicted under Section 326/148 of the IPC and also one Bishundhari Chamar has been convicted under Section 148 of the IPC, however, they are not party in this Appeal and considering the fact that this case is of the year, 1996, this is being taken up and disposed of.

6. No one appears on behalf of the appellants. Mr. Baban Roy, Adv. is appointed as the Amicus Curiae to assist in this case.

7. Learned Amicus Curiae has assailed the judgment on the ground that the independent witness Kapildeo Singh has not supported the prosecution case and other witnesses i.e. P.W.1 Lalan Singh, P.W.2 Ram Ashish Singh and P.W. 4 Parsidh Singh are related, inimical and interested witnesses as such there is no independent witness who has been examined in this case.

8. Further submissions of the learned Amicus Curiae is that the evidence of P.W.4 Prasidh Singh in para 10, who is



informant and formal witness shows that Ram Barat Yadav came to his field and after one minute, other accused persons came to his field and that itself shows that they had not come in unlawful assembly rather they came one by one, as such their conviction under Section 147 or 148 of the IPC is not sustainable in the eye of law and further the learned trial court has not considered the aforesaid aspect of the matter. It has also been submitted that the appellant no.1 Ram Barat Yadav was aged about 29 years and Ganauri Dusadh was aged about 42 years. There was no previous conviction against them and the whole occurrence took place due to previous enmity, further the occurrence was of the year, 1982 and the conviction was made in the year, 1996; after 14 years of the occurrence, as such the learned trial court ought to have given benefit of Section 360 of Cr.P.C. to the appellants, however, neither the benefit has been given nor any reason has been assigned as provided under Section 361 of Cr.P.C. though the Hon'ble Apex Court in several decisions has held that not giving benefits of provision of Section 360 of Cr.P.C. and not assigning any reason and not granting benefit to the appellants under Section 361 of Cr.P.C. is caused miscarriage of justice.

9. Heard learned counsel for the State, who has supported the judgment on the ground that the evidence of P.Ws. 2 and 3 who are injured categorically shows that Ganpat Chamar



assaulted Ram Ashish Singh by *Garansa* on the head, Ram Barat Yadav assaulted by *Lathi* on Ram Ashish Singh on head and back and Ganauri Dusadh assaulted Ram Ashish Singh by *Bhala* on left hand. The Doctor who has examined the witnesses has found the sharp pointed injures and the lacerated injuries on the person of Ram Ashish Singh and the lacerated injures on the person of Prasad Singh, hence the evidence has been corroborated by the medical evidence, as such there is no infirmities in the judgment of the conviction.

10. On close scrutiny of the prosecution witness, it appears that Ram Ashish Singh has supported the prosecution case *in toto* that the accused persons came and asked him to withdraw the case filed by Kapildeo Singh and he told that as to how he can withdraw the case which has been filed by Kapildeo Singh and thereafter they assaulted and he has specifically stated that Ram Barat Yadav assaulted by *lathi* and Ganauri Dusadh assaulted by *Bhala* whereas evidence of P.W.4 who is informant of the case has also collaborated the evidence of P.W.2 however, his evidence shows that he was assaulted by *lathi* by the accused. It is the earliest prosecution case that the accused persons came variously armed but on close scrutiny of the evidence of P.W.4 it appears that first Ram Barat Yadav came and after one minutes of that the other accused persons



came and that falsify the prosecution story that all the accused persons came variously armed rather it appears that they came one by one, however, the aforesaid evidence of P.W.4 has been corroborated by the evidence of P.W.1 and further found corroboration from the evidence of Doctor (P.W.4), who has found injuries on the persons of Ram Ashish Singh:-

I. Incised wound 4" X 1" X ½" on occipital region of scalp in the middle longitudinally cutting bone length, breadth and depth.

II. Penetrating wound 2" X 1/2" X ½" obliquely on left palm in between thumb and forfinger.

III. Bruise on right forearm 2" X 1" with swelling .

IV. Bruise 2" X 1" on lateral side of right elbow joint.

11. According to the Doctor, the injury no.1 was caused by sharp cutting weapon and danger to the life whereas injury no.2 was caused by sharp pointed weapon like *Bhala* and injury no.3 caused by hard and blunt substance and except injury no.3 all are simple. Injury no.3 is said to be grievous in nature. Evidence of the Doctor also shows that he has examined X-ray for giving opinion on injury no.2 but no X-ray plate is available on the record. Evidence of the Doctor further shows that he has also examined Prasad Singh (P.W.4) and found two bruises caused by hard and blunt substance and all are simple in nature.

12. Considering the findings of the evidence as discussed above, so far manner of assault is concerned, it clearly shows that the



appellant Ram Barat Yadav assaulted by *Bhala and lathi* causing injury to the injured, however, so far injury no.3 is concerned, it caused by *lathi* by Ram Barat Yadav is concerned, in absence of any X-ray report, the finding of the Doctor that it is grievous in nature is not substantiated.

13. Considering the discussions as made above, conviction of Ram Barat Yadav under Section 325 of the IPC is modified to under Section 323 of the IPC and conviction of Ganauri Dusadh under Section 323 of the IPC appears to be sustainable in the eye of law and affirmed.

14. Conviction of Ram Barat Yadav does not appear to be sustainable in the eye of law as all the accused persons do not variously armed rather it appears that they came one by one as such conviction of Ram Barat Yadav under Section 147 of the IPC and Ganauri Dusadh under Section 148 of the IPC does not appear to be sustainable in the eye of law, hence, their conviction and sentence under those Sections are set aside.

15. The appellant Ram Barat Yadav has been sentenced to undergo RI for one year under Section 325 of the IPC and Ganauri Dusadh was sentenced to undergo RI for one year under Section 324 of the IPC and now the sentence of Ram Barat Yadav under Section 325 of the IPC is modified to under Section 323 of the IPC and the



occurrence is of the year, 1982 at that time both the accused persons were aged about 27 and 42 years of age, however, the learned trial court has not considered for giving benefit of Section 360 Cr.P.C. to the appellants and he has not assigned any reason as provided under Section 361 of Cr.P.C.

16. In the background of the aforesaid facts this Court found that instead of confirming the order of sentence against both the appellants, they be released on probation on execution bond of Rs.10,000/- for a period of six months and be ready to receive sentence, when required.

17. Accordingly with the aforesaid modification in the conviction and sentence, this Appeal is disposed of.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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