

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.388 of 2015

Arising Out of PS.Case No. -92 Year- 2002 Thana -WARSALIGANJ District- NAWADA

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1. Paro Singh Son of Akhileshwar Singh @ Bhuali Singh
 2. Arbind Singh Son of Akhileshwar Singh @ Bhuali Singh
 3. Pappu Singh son of Ram Sagar Singh
 4. Nawal Singh son of Dudheshwar Singh

All are residents of Village- Kumbhi, P.s Warsaliganj, District Nawadah.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Arun Kumar, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 10-01-2018

Appellants Paro Singh, Arbind Singh, Pappu Singh, and Nawal Singh have been found guilty for an offence punishable under Section 323/34 of the IPC and each one has been sentenced to undergo S.I. for one year as well as to pay fine appertaining to Rs.1000/- in default thereof, to undergo S.I. for one month, additionally, by the Additional Sessions Judge, IVth, Nawada vide his judgment of conviction and sentence dated 05.06.2015 in connection with Sessions Trial No.331 of 2005/158 of 2014.

2. Satendra Singh gave his fardbeyan on 10.09.2002 at about 04:00 PM outside hospital lying at his own village Kumbhi, P.S.-Warsaliganj, District-Nawada alleging inter alia that on the same day his co-villager Kesho Singh, son of Bhuali Singh came at his house and directed him to come along with him as, fertilizer is to be given to the field. On his denial, he began to demand the due amount which he was carrying on account of ploughing of his field



by his tractor whereupon he said that after getting money in in pursuance with a Satta (agreement) in between his brother and others, he will clear the dues over which, he directed to come along with him and disclose the same to his brother. Accordingly, he accompanied him to his place where he found Arbind Singh son of Bhuwali Singh, Paro Singh son of Bhuwali Singh, Pappu Singh son of Bum Singh, Nawal Singh son of Dudheshwar Singh who were armed with *lathi* and *danda*, since before. Arbind Singh demanded the dues whereupon he said that in a day or two same will be paid, whereupon Kesho Singh, Arbind Singh, Paro Singh, Pappu Singh, Nawal Singh began to assault with lathi and danda as a result of which he sustained hurt over different parts of the body. They were joined by other persons also. Then, thereafter, they all threw him on the ground and Nawal Singh, Paro Singh, Pappu Singh pounced upon his chest and began to press. Then, thereafter, they both caught hold his hands and in order to kill, Arbind Singh poured acid in his both eyes as well as ears as a result of which, he felt erosion. Then thereafter, they lifted him and threw outside hospital premises located at outside of the village.

3. On the basis of the aforesaid fardbeyan Warsaliganj P.S. Case No. 92/2002 was registered and after completing investigation, charge sheet was submitted against accused Indradeo Singh, Sadan Singh and Vinit Singh who were not named in the FIR and against whom, it is evident from the lower court record that charge was framed and they were proceeded accordingly. During trial, six witnesses were examined at a first



instance who happen to be PW.1-Satendra Prasad, PW.2-Nawal Singh, PW.3-Manoj Singh, PW.4-Ramakant Singh, PW.5-Indradeo Singh, PW.6-Ram Lakhani Singh. Then thereafter, prayer was made on behalf of informant Satendra Prasad Singh to allow examination of his family members and same was allowed vide order dated 16.06.2007 as a result of which Chhotan Singh was examined as CW.1, Kamla Devi as CW.2, Rinku Devi as CW.3 and Asha Devi as CW.4. It is also evident from the lower court record that while the trial was going on, a petition was filed on 31.10.2006 at the end of the informant to summon the appellants in accordance with Section 319 of the Cr.P.C. which was rejected by the learned lower court on 19-12-2006 which was challenged under Cr. Misc. No.5117/2007 and vide order dated 23.11.2007 the order dated 19.12.2006 rejecting the prayer of the informant to summon under Section 319 of the Cr.P.C. was quashed with a direction to pass appropriate order and vide order dated 10.12.2008, Arbind Singh, Paro Singh, Pappu Singh, Nawal Singh (Appellants) and Kesho Singh were summoned and accordingly, their appearance completed on 03.03.2009. It is further evident from the order sheet that without framing of charge against the accused so summoned under Section 319 of the Cr.P.C., the trial proceeded keeping the same for evidence which was lastly corrected on 11.05.2009, on which date charge was framed against them. Then thereafter, the case has been fixed for evidence. It is evident from the records that presence of only one witness Chhotan Singh has been procured after framing of charge which the learned lower court had also taken into consideration. However, considering Ext.A,B,C which happens to be the FIR of



the counter case, charge sheet of the counter case and the judgment of the counter case, though acquitted Kesho Singh but convicted and sentenced the appellants Paro Singh, Arbind Singh, Paro Singh, Pappu Singh, Nawal Singh in a manner as indicated above. The aforesaid exercise has been taken up only to enlightened the learned lower court that in terms of Section 319 of the Cr.P.C. whenever an accused is being summoned, two options happen to be available before the court. (a) To proceed independently away from the main proceeding (b) To proceed in the same proceeding, and for that it happens to be solely within the wisdom of the court but, it has to be *de-novo* trial. For better appreciation, Section 319 of the Cr.P.C. is quoted below:

“319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

4. If the court opines that the newly added accused



should be tried with the accused already on the record since before, then in that circumstance the charges have to be accordingly framed in such manner and the witnesses, being a *de-novo* trial, is to be summoned. The earlier evidence what have been recorded in absence of those accused would not be admissible, taken into consideration against them. Coming to present controversy, it is abundant by clear that only one PW Chhotan Singh has been examined and so, his evidence alone is to be seen whether it substantiate the case of the prosecution or not. It is worthless to say that in terms of Section 134 of the Evidence Act it is the quality not the quantity which matters during course of appreciation of the evidence. That means to say evidence of single witness, if reliable, trustworthy would be sufficient to substantiate the guilt. So far his examination-in-chief is concerned, he had stated that on the alleged date and time of occurrence Kesho Singh came to place and called Sato whereupon Sato came out from the house. Kesho Singh directed him to put fertilizer in his field which was denied by him whereupon, he demanded the dues which he was carrying on account of ploughing of field by his tractor. On his disclosure that after return of his brother, the dues will be cleared, he directed to accompany him to his place where he should disclose the same to his brother. Sato proceeded along with Kesho Singh to his place. He was also following. When Sato reached at the place at that very time, Arbind Singh, Paro Singh, Bhuwali Singh, Pappu Singh, Mantu Singh, Naresh Singh, Maheshwari Singh, Rajendra Singh and Nawal Singh armed with lathi and danda were present who demanded the money whereupon, Sato said that in a day or two



the said due will be paid. Then thereafter, all the accused began to assault on an order of Rajendra Singh. Nishu Kumari brought led and that was administered to him by Rajendra Singh and then, thereafter, on an order of Bhuwali Singh, acid was poured in his both eyes, ears. When he intervened, he was assaulted by Bhuwali Singh by lathi. Then thereafter, they lifted Sato and dumped in front of hospital. Police was informed who got him admitted at Warsaliganj and then to Nawada and then to PMCH and then to Delhi. His one eye has become damaged while also became deaf. During cross-examination at para-2, he had stated that he had gone to Police Station and had narrated the incident but the police had not recorded anything. He had also shown injuries over his person even then the police had not taken cognizance thereof. He had got himself examined by the doctor. In para-3 he had stated that he not returned back to his house from the place of occurrence rather they all have gone to police station. He had further stated at para-15 that he had found his son near the hospital. At that very time, he was semiconscious. In para-20 he had stated that Sato, Chunchun have gone to jail in a case instituted by Kauslesh. He had further stated that he had seen the fardbeyan. He had seen the injury report of Kauslesh. Fardbeyan of Kauslesh was recorded at Nawada Sadar Hospital. He had further stated that his son Sato has been convicted and sentenced for ten years in a rape case. Then at para-22, 23, there happens to be contradiction. In para-25 there happens to be details of the counter case. From Ext.-A, B and C, it is evident that for the same occurrence Warsaliganj P.S. Case No.93/2002 was registered on the fardbeyan of Kauslesh Kumar wherein trial concluded and



vide judgment dated 21.05.2010 Sato was found guilty for an offence punishable under Sections 341, 307/34 of the IPC in connection with Sessions Trial No.81 of 2003/121 of 2010 passed by Additional Sessions Judge, IInd, Nawada.

5. Apart from deficiency persisting on the record as indicated above, on account of non-examination of informant/injured, doctor as well as non-examination of Investigating Officer more particularly in the background of contradiction visualizing from para-22, 23 of deposition of PW.1 which happens to be material one, the conviction and sentence recorded by the learned lower court appears to be in apt whereupon, same is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	12.01.2018
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