

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.505 of 2015

Arising Out of PS.Case No. -25 Year- 2009 Thana -VIJAYPUR District- GOPALGANJ

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1. Manager Singh Son of late Chanari Singh
2. Jagdish Singh Son of late Chanari Singh
3. Ramswaroop Singh Son of late Chanari Singh
4. Gulab Singh son of Manager Singh All are Resident of village- Birwat ,Police
Station Vijaipur, District Gopalganj. Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Curiae

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 02-05-2018

No one appears on behalf of appellant on repeated calls, whereupon, Sri Arun Kumar Tripathi has been requested to assist as an Amicus Curiae.

2. Appellants, Manager Singh, Jagdish Singh, Ramswaroop Singh, Gulab Singh have been found guilty for an offence punishable under Section 323 IPC and each one has been sentenced to undergo RI for one year, under Section 341 IPC and each one has been sentenced to undergo SI for one month with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 25.8.2017, by 1st Additional Sessions Judge, Gopalganj in Sessions Trial No. 346/2010.

3. PW-3, Hari Prasad Yadav filed a written report on 27.03.2009 disclosing therein that they have got possession over Khesra No- 330, Area 4 decimal, Khesra No- 422, Area 2 decimal irrespective of having its nature *Gairmajarua Malik*. Today i.e., on



27.03.2009, Manager Singh, Ramswaroop Singh, Jagdish Singh and Gulab Singh attempted to encroach over the same which was resisted, as a result of which, they all began to assault with Lathi and axe. Manager Singh gave axe blow over head of his mother, Lalita Devi causing injury thereupon. Other family members of his house have also been assaulted by the others. Gulab Singh snatched away his wrist watch, mobile as well as Ramswaroop Singh snatched away Mangalsutra from the neck of his wife. On hue and cry, villagers assembled, seeing whom, the accused persons escaped therefrom.

4. After registration of Vijaypur PS- Case No. 25/2009 investigation commenced and after concluding the same, charge-sheet was submitted, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C is that of complete denial. It has also been pleaded that accused persons forcibly tried to encroach upon their land which was resisted and during course thereof, they were assaulted and for that Vijaypur PS- Case No. 26/09 was registered wherein charge-sheet has also been submitted. Certain documents have been exhibited in order to substantiate this case.

6. Prosecution, in order to prove its case have examined altogether five PWs who are PW-1 Indu Devi, PW-2, Lalita



Devi, PW-3, Hari Prasad Yadav, PW-4, Yogeshwar Ram and PW-5, Dr. Nurool Bassar. Side by side had also exhibited, Ext.1 signature of PW.3/informant over written report, Ext- 1/1, endorsement over the written report, Ext-2 Formal FIR, Ext-3, 3/1 injury report of Lalita Devi, Ext-3/2, 3/3 injury report of Indu Devi.

7. Though no oral evidence has been adduced on behalf of defence but, Ext-A, c.c of order of cognizance relating to Vijaypur PS. Case No. 26/09, Ext-B c.c of FIR of Vijaypur PS. Case No. 26/09, Ext-C, c.c of charge-sheet of Vijaypur PS. Case No. 26/09 have been made exhibits.

8. Heard learned amicus curiae for the appellant and learned APP.

9. Also gone through the records. It is apparent that whoever been examined are the mother, son, daughter-in-law. Not even a single independent witness has been examined. In the aforesaid background, when the version of the prosecution has been gone through, it is apparent that PW-1, PW-2 and PW-3 have asserted that PW-1 was assaulted by *lathi, danda* while PW-2 Lalita Devi was given single axe blow over her head. She was not assaulted furthermore. Although, PW-3 had claimed that he had also been assaulted, no injury report is found relating to him. When the evidence of PW-5 has been gone through, it is apparent that he had not found sharp cut injury over person of PW-2 Lalita Devi. Furthermore he had



found four injuries caused by hard and blunt substance over the person of Lalita Devi, all simple in nature and in likewise manner, two injuries have been found over the person of Indu Devi, PW-1 caused by hard and blunt substance, simple in nature.

10. From the evidence of PW-2, it is evident that she had accepted presence of counter case as well as injury having over the person of wife of Manager Singh as well as wife of Ramswaroop Singh but for that, she explained that those injuries were as self inflicted injuries. Furthermore, there happens to be an admission at their end that counter case has also been registered. When the evidence of PW-4, Para-7 has been gone through, it is apparent that he was I.O of both the cases. He had further deposed that there was free fight amongst both the parties.

11. Now coming to the place of occurrence, the prosecution party, from their initial version, whereunder they have disclosed that accused persons have tried to disposses them, narrated that they were filling earth which was protested and for that occurrence had taken place, happens to be development which is evident from the evidence of PW-4, I.O para-2.

12. Apart from this, PW-4 during course of inspection of place of occurrence had not found the place of occurrence being filled by the soil. So, the motive is found not at all substantiated. Furthermore, from the evidence of PW-4, it is evident



that there was no occasion for the prosecution party to have their possession over the land as the house of prosecution party lies other side of the road while place of occurrence happens to be in between the house of the appellant, Manager Singh and the road having length of four hands and the same is found duly incorporated with the specific boundary North-Aklu Singh, South- Manager Singh, East-Hari Prasad Yadav and West- Jagdish Singh.

13. During cross-examination at Para-5, he had reiterated the same. PW-1 at Para-7, had also reiterated the same. PW-2 Para-6 had also substantiated the same. She had further stated that with regard to aforesaid land both the parties have contested at an earlier occasion. She had further stated that brother of Manager Singh has got possession over the same. She had further explained that now they have raised dispute over the area having in their possession. Informant, PW-3 at Para-4, had stated that his forefathers were saying that this land happens to be their Khatiyani land but he is unable to disclose name of his grandfather. In Para-5, he had stated that though there was case at an earlier occasion but he is unable to say whether he lost. Then had disclosed that learned counsel will explain the same. Then had said that he is not knowing plot number. As the members of the police have disclosed plot number, so he had incorporated the same. In Para-8, he had further identified the land to be in between the house of Manager Singh as well as road. Then had submitted at Para-



10 that after institution of the case he got necessary information regarding the land under dispute whereupon, he came to know that it happens to be *Bhoodani* land. In Para-14, he had stated that though the case had been instituted at the end of Manager Singh but none of his family members sustained injury. In Para-15, he had stated that he had sustained injury in between the house of Manager Singh as well as road.

14. Considering the evidence in its totality, it is apparent that neither the place of occurrence has been substantiated nor the manner of occurrence. There happens to be free fight and in the aforesaid facts and circumstances of the case, it was incumbent upon the prosecution to have properly identified the appellants to be aggressor wherein they failed. That being so, the judgment impugned is set aside.

15. Appeal is allowed. Since appellants are on bail, they are discharged from the liability of the bail bonds.

16. The first and last pages of the instant judgment may be handed over to the Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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