

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.260 of 2015

Arising Out of PS.Case No. -54 Year- 2004 Thana -KRITYANAND NAGAR District- PURNIA

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1. Kare Yadav S/o Sukhdev Yadav r/o vill. - Parora, P.S. K Nagar, Distt. - Purnea
.... Appellant/s

Versus

1. The State of Bihar
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Animesh Kumar Mishra, Amicus Curiae

For the Respondent/s : Mr. S. A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-08-2018

On repeated calls none appears on behalf of appellant, on account thereof, Sri Animesh Kumar Mishra, learned Advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Kare Yadav has been found guilty for an offence punishable under Section 307 IPC and sentenced to undergo RI for 7 years as well as to pay fine appertaining to Rs. 5000/-, in default thereof, to undergo SI for 6 months additionally, under Section 341 IPC and sentenced to undergo SI for 1 year with a further direction to run the sentences concurrently vide judgment of conviction dated 04.04.2015 and order of sentence dated 06.04.2015 passed by 2nd Additional Sessions Judge, Purnea in Sessions Trial No. 196/2005.

3. Girija Nand Yadav gave his Fard-e-beyan on 14.04.2004 at 1.30 PM (over-writing) at Primary Health Centre, K-



Nagar where his wife Laxmi Devi was admitted in an injured condition divulging the fact that on the same day at about 10.00 AM, his brother, Kare Yadav and nephew, Santosh Yadav @ Fucho were engaged in harvesting wheat crop belonging to him whereupon his wife Laxmi Devi had gone and forbidden the labourers not to harvest. She further instructed his brother, Kare Yadav that first of all, her share properly be identified and then, harvesting be done whereupon, his brother, Kare and nephew Santosh @ Fucho began to abuse her and said that they would not carve out their share whereupon, his wife stood adamant not to allow harvesting. Then his brother, Kare with an intention to kill gave rod blow over head of his wife as a result of which she sustained injury. His wife fell down and became unconscious. His nephew, Santosh also assaulted her with Lathi. On hue and cry, he along with other co-villagers rushed, seeing whom, accused persons fled away. He lifted his wife, who was in unconscious state, lying in a wheat field, to hospital where she was being treated. Even at the time of recording Fard-e-beyan, she was unconscious.

4. After registration of K-Nagar PS Case No. 54/2004, investigation commenced and after concluding the same, charge-sheet has been submitted against the appellant keeping the investigation pending against Santosh Yadav @ Fucho which happens



to be the basis of trial, subject matter of instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that the concerned plot along with others were under exclusive domain of the accused which they got under Bataidari proceeding affirmed by appellate court having no intervention at the end of prosecution party who, later on, advanced illegally their claim that they should also be given share in the aforesaid property and for that, they indulged in hooliganism during course of which sustained self inflicted injury and in order to coerce, this false case has been instituted leveling false and frivolous allegation. Furthermore, oral as well as documentary evidences have been led to support.

6. The prosecution, in order to substantiate its case had examined altogether 10 PWs who are PW-1, Ashok Kr. Yadav, PW-2, Dinesh Kumar Sah, PW-3, Bhushan Yadav, PW-4, Gopal Thakur, PW-5, Awadhesh Kr. Yadav @ Awadhesh Kumar Bharti, PW-6, Girija Nand Yadav, PW-7, Kuldip Yadav, PW-8, Brahamdeo Yadav, PW-9, Umesh Pd. Singh and PW-10, Dr. Ramji Singh. Side by side had also exhibited Ext-1 series, signature of respective persons over an agreement, Ext-2, rent receipt, Ext-2/1, Formal FIR, Ext-3, requisition made to the Medical Officer, Ext-4, Injury report, Ext-5,



supplementary injury report.

7. Defence had also examined one DW, namely, Shailendra Kumar Yadav and had exhibited Ext-A, rent receipt, Ext-B, judgment of Bataidari Case No. 66/88-89 under Section 48E, Ext-B/1, order of CO relating to Case No. 1/2001, Ext-B/2, order of appellate court (SDM) relating to Appeal No. 2/2002-03.

8. Twin submissions have been made at the end of learned Amicus Curiae in order to challenge the finding recorded by the learned lower court. The first and foremost happens to be on account of non examination of the Investigating Officer, the case of the prosecution could not be allowed to survive as, admittedly, both the parties are full brothers. Property is not the ancestral one rather it happens to be on account of recognition of Bataidari under the guise of BT Act and so, had there been examination of the Investigating Officer, then in that event, the physical feature of the land would have been exposed, that means to say, whether the informant has got his presence over the land or not. This happens to be sole ground in deciding this appeal. Had there been presence of prosecution party over the land, then in that event, the prosecution party could have an opportunity to protest, if not then has got no right to go over the land as, the status of prosecution party would be of stranger as right of Bataidari is not a right to be partitioned, more particularly, in the



background of the fact that it happens to be an admitted fact that appellant right has been acknowledged by the competent court to be Bataidar under Section 48 of the B.T. Act. So the appeal is fit to be allowed. In its continuity, it has also been submitted that there happens to be specific discloser in the Fard-e-beyan that injured Laxmi Devi had demanded proper identification of her share and then and then only, she would allow harvesting, is indicative of the fact that that there was no presence of prosecution party over the land however, during course of evidence PW-6 had tried to patch up the lacuna. So, non examination of Investigating Officer has seriously caused prejudice to the appellant whereupon the judgment would not survive.

9. It has also been submitted that from the nature of evidence whatever been deposed at the end of prosecution witnesses, it is apparent that they utterly failed to substantiate the case of the prosecution. Furthermore, it has also been submitted that there happens to be presence of three injuries over the head of the injured but, the prosecution had not explained the same in the background of the fact that there happens to be consistent version of the prosecution witnesses that appellant, Kare Yadav gave single rod blow over head of Laxmi Devi causing injury thereupon, as a result of which she fell down and became unconscious, even considering nature of injury as



found by the doctor, one could not infer that appellant was carrying an intention to commit murder, nor he was knowing that the injury having been at his end, will ultimately cause death of the deceased.

10. So, in any view of the matter, Section 307 IPC is not attracted even in the worst case, though, the witnesses failed to substantiate the charge levelled against the appellant.

11. On the other hand, while supporting the finding recorded by the learned lower court, it has been urged by the learned APP that before coming to the finding, the learned lower court minutely scrutinized the evidence, circumstances so prevailing. Therefore, does not attract interference.

12. PW-10 had examined victim on 14.04.2004 and found the following:-

- (i) One lacerated wound at the front of the skull skin deep with fresh red colour oozing blood measuring 3" x ½" x ¼".
- (ii) One lacerated wound at the middle of the skull bone deep with fresh red colour oozing blood measuring 2. ½" x ½" x ¼".
- (iii) One lacerated wound at the back of the skull skin deep 3" x ½" x ¼" with fresh red oozing blood
- (iv) One lacerated wound on the middle side of the wrist joint measuring 1" x ¼" x ¼".

13. At the first instance, the nature of injury was not



disclosed, on the other hand, X-ray was advised and after seeing the X-ray, injuries have been assigned to be simple in nature caused by hard and blunt substance. Nothing relevant has been explicated at the end of defence during cross-examination.

14. From the evidence of PWs-1 and 6 as well as from the judgment impugned, it is apparent that injured Laxmi Devi died whereupon could not be examined. PW-10 has been cross-examined on that very score who had stated that no death could be caused by the injuries which he had found. However, PWs-1 and 6 have stated that deceased died during course of treatment. No other material is available on the record. From the perusal of the case diary, it is evident that there happens to be no whisper. That being so, the matter being clumsy one, is accordingly, left out.

15. Now coming to the status of the witnesses having been adduced on behalf of prosecution, it is evident that only PWs-1 and 6 have claimed themselves to be an eyewitness to the occurrence. PWs-2, 3, 4 and 5 are hearsay witnesses. PW-7 has been declared hostile. PW-8 happens to be formal in nature who had exhibited deed of relinquishment having allegedly at the end of appellant, Kare Yadav while PW-9 is also formal in nature, on account of non examination of Investigating Officer and so had exhibited relevant documents.



16. PW-1 during course of his evidence, has stated that while he was in a way to K-Nagar market, he heard rumour with regard to quarrelling as a result of which he has gone to the field of Girija Nand Yadav wherein wheat crop was standing. He saw Laxmi Devi was forbidding from harvesting the wheat crop which was being harvested by Kare and Santosh. They have not paid heed to the request of Laxmi Devi. Furthermore, Kare Yadav gave rod blow over head of Laxmi Devi as a result of which, she sustained injury and fell down and became unconscious. Then thereafter, Santosh gave Lathi blow. Thereafter the accused fled away. Villagers lifted Laxmi Devi to Hospital and during course of treatment, she died. Identified the accused. During cross-examination at para-2, he has stated that he has got no knowledge with regard to nature of land under dispute. He does not know name of the owner and in likewise manner, how it was being claimed by the rival parties. He has further stated at para-3 that he does not know under whose possession the land happens to be. He does not know Khata, Khesra and area of the land. He has got no knowledge whether the land under dispute happens to be under exclusive possession of accused, Kare Yadav. In para-4, he has stated that he reached at the place of occurrence first of all. At that very time, altercation was going on in between Laxmi and accused. Laxmi was forbidding the accused from harvesting the crops. At that very



time, he was over the road at a distance of 2 Lagga. He has seen both the accused persons indulged in assaulting Laxmi with Lathi as a result of which, she fell down. Then thereafter, Girija Nand, Dinesh, Awadhesh, Gopal and others arrived. Then Laxmi was taken to hospital in unconscious condition. She regained sense at hospital. He returned back from the hospital. Then had denied the suggestion that being friend of Girija Nand, he has deposed falsely.

17. PW-6 is Girija Nand Yadav. He happens to be informant as well as husband of Laxmi, the injured. He has said that on the alleged date and time of occurrence, he has gone over plot after coming to know that appellants were engaged in harvesting his wheat crop. When he rushed there, he had seen Kare sitting armed with rod and Lathi. His wife Laxmi protested whereupon, they began to abuse and during course thereof, Kare assaulted with rod while Santosh with Lathi over her head, as a result of which, she sustained injury and fell down. Villagers came and lifted her to hospital. Police came, recorded Fard-e-beyan over which he put his LTI. Identified.

18. During cross-examination, he has stated that his father is alive. Kare and Khaltar are his full brothers but all the brothers are living separately. His father lives with Khaltar. About 20-25 years ago, partition took place. About 10-15 years ago, Kare is living separately from his father. At para-3, he had stated that



Deomuni Chaudhary was the owner of the land. His father, Sukhdeo Yadav was Bataidar of Deomuni Chaudhary. In due course of time, his father had instituted Bataidari Case in the name of Kare Yadav wherein by the lower court as well as by the appellate court, they won. Because of the fact that their father was Bataidar, as such, all of them got partition of the land. Accused Kare Yadav had executed deed of relinquishment in support thereof. But he is unable to disclose Khata, Khesra Number. In para-5, he has further stated that he has gone to the PO land along with his wife. He has further stated boundary of the PO land. He has further stated that Shyama, wife of land holder, after his death had filed an appeal wherein she lost. He has further stated that his wife died during course of treatment. Then had denied the suggestion that no such kind of occurrence had taken place rather, in the background of land dispute, this case has been instituted.

19. PW-2 has stated that when he reached at the place of occurrence, he has seen Laxmi lying over the ground having injury over her head. Blood was oozing out. Then thereafter, he returned back therefrom. At para-2, he has also disclosed the event of Batai. PW-3 has stated that on the alleged date and time of occurrence while Laxmi was engaged in harvesting wheat crop, Kare and Santosh assaulted her. He has also admitted the event of Bataidari. PW-4 had stated that on the alleged date and time of occurrence, he heard



rumour that wife of Girija Nand has been murdered. Then had gone to the place of occurrence where he found wife of Girija Nand over a rickshaw going to K-Nagar Hospital. On query, Girija Nand said that while his wife was forbidding. The accused persons, Kare and Santosh have assaulted her. During cross-examination, he has admitted the event of Bataidari. In para-4, he has stated that when he reached at the place of occurrence, 10-15 persons were present since before.

20. PW-5 has stated that on the alleged date and time of occurrence, he was at his house. He has not gone to the place of occurrence. Later on, he came to know that on account of land dispute in between Girija Nand and Kare, Laxmi was assaulted by Santosh and Kare. PW-7 completely disowned whereupon, was declared hostile. PW-8 is a witness, formal in nature who had simply exhibited the signature of the respective persons over the deed of relinquishment. Defence has examined oral evidence being formal in nature, exhibited the relevant documents relating to Batai.

21. After going through the evidences, it is apparent that it has also been admitted at the end of the prosecution that during course of Bataidari proceeding was contested in name of Kare Yadav. Though, informant had claimed that his father, Sukhdeo Yadav had contested Bataidari case in the name of Kare Yadav, even then, there



happens to be no document to substantiate the same nor his father came in dock to support the same. Furthermore, it looks improbable to accept when Sukhdeo was doing Batai, then what was occasion for him to contest Batai proceeding in name of his son. Prosecution has not explained the same. Apart from this, the Bataidari Right recognized under BT Act did not give title rather it happens to be a possessive right and that being so, it was incumbent upon the prosecution to have substantiated his position over the land through appellant, Kare Yadav.

22. Be that as it may, from the evidence available on the record, it is evident that Laxmi, an injured was empty handed. Her activity was not at all detrimental to the interest of the appellant as, save and except verbal interruption, nothing more has been alleged nor pleaded. It has also not been disclosed/suggested that they were armed with deadly weapon and during course of retaliation, victim had sustained injury. Even then, allegation of assault, presence of injury could not be said to be motivated to cause death, apart from the fact that three injuries have been found over the head of the injured but simple in nature giving colour of being superficial.

23. That being so, the findings recorded by the learned lower court identifying the appellant guilty for an offence punishable under Section 307 IPC is hereby set aside and in likewise



manner the sentence. On the other hand, appellant is held guilty for an offence punishable under Section 323 IPC and in likewise manner, sentence is reduced to already undergone. In terms thereof, this appeal is partly allowed.

24. Since appellant is on bail hence, he is discharged from the liability of the bail bond.

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

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06.09.2018
Transmission Date	06.09.2018

