

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.400 of 2003

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

=====

1. Manoj Kumar Singh son of Sachida Singh
2. Murari Pd. Singh son of Jawahar Singh
3. Sudhir @ Sudhir Kumar Singh son of Hira Singh
4. Hira Pd. Singh, son of Prabhakar Singh
5. Sachida alias Sachidanand Singh son of Prabhakar Singh
6. Jawahar Pd. Singh son of Prabhakar Singh
All resident of village Alam Nagar, P.S. Alamnagar district Madhepura

.... Appellants

Versus

State of Bihar

.... Respondent

with

=====

Criminal Appeal (SJ) No. 431 of 2003

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

=====

Sanjeev Kumar Singh son of Prabhakar Singh, resident of village and P.S. Alam Nagar, district Madhepura.

.... Appellant

Versus

State of Bihar

.... Respondent

=====

Appearance :

(In CR. APP (SJ) No.400 of 2003)

With

(In CR. APP (SJ) No.431 of 2003)

For the Appellants : Mr. Pratik Mishra, Advocate

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

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 29-03-2018

1. Appellants Manoj Kumar Singh, Murari Pd. Singh, Sudhir Singh, Hira Pd. Singh, Sachidanand Singh and Jawahar Pd. Singh of Cr. Appeal No.400 of 2003 have been convicted under



Section 307/149 of the IPC and appellant Sanjeev Kuamr Singh of Cr. Appeal No.431 of 2003 has been convicted under Section 307/149 of the IPC and appellant Sanjeev Kuamr Singh has been sentenced to undergo R.I. for seven years whereas other appellants were sentenced to undergo R.I. for five years.

2. During the course of argument, the learned counsel for the appellant has pointed out that one of the appellants has died and as such a report was called for from the S.P., Madhepura and from his report, it appears that the appellant no.3 (Sudhir Singh) has died during the pendency of the appeal, as such the appeal against him stands abated.

3. The prosecution case as per Fardbeyan of the P.W.4 Krishnand Singh (informant) in short is that on 08.01.1990 at about 12 noon while he was talking to the local *Sarpanch* in the meantime the accused persons were uprooting *baghandi* plant and uprooting the *tatti*, which has been kept there for fencing, which was protested by the informant and his sons and on the order of appellant Jawahar Pd.Singh, Sanjeev Kumar Singh assaulted to Kundan Singh by spade on his head due to which he fell down and further case is that Jawahar Pd. Singh tried to assault him again by the spade but it was caught by Sunil Kr. Singh (P.W.2) and further case is that Sunil Kumar Singh and Lal Bahadur Singh were also assaulted by fists and slaps and



thereafter the villagers intervened and the matter was pacified. Further case is that the victim Kundan Singh was taken to the hospital.

4. The aforesaid fardbeyan led to registration of Alamganj P.S.Case No.3 of 1990 against the appellants, after cognizance and commitment of the case, it was traveled to the file of Sri Uday Shanker, Ist Additional Sessions Judge, Madhepura for trial and disposal, charges were framed and during the trial altogether six witnesses have been examined on behalf of the prosecution, they are :- P.W.1 Narayan Pd. Singh, brother of the informant and claims to be eye witness, P.W.2 Sunil Kumar Sigh son of the informant and claims to be eye witness, Kundan Singh son of the informant and claims to be eye witness and injured, P.W.4 Krishnanand Singh, informant, P.W.5 Bhuneshwari Singh, claims to be witness and P.w.6 Dr. Vijay Pd. Modak, Medical Officer, who treated Kundan Singh and Lal Bahadur Singh.

5. Apart from the above, one witness has been examined as court witness C.W. 1 Yogendra Pd. Singh, who is I.O. of this case.

6. On behalf of the defence, no ocular evidence has been adduced but a copy of the judgment has been filed to show that Kundan Singh was accused in the case of demand of extortion lodged by one Chandan Mishra and Ext.3 is Khatiyon to show that land was joint property.



7. The learned trial court has convicted the appellants under Section 307/149 of the IPC. From perusal of the judgment of the learned trial court it appears that all the accused persons are of the same family, having common ancestors and further held that P.W.1 Narayan Pd. Singh, P.W.2 Sunil Kumar Singh, P.W.3 Kundan Singh and P.W.4 Krishnanand are close relatives to each other and relying on the various judgment of the Hon'ble Apex Court, the learned trial court has convicted the appellants under Section 307 read with Section 149 of the IPC.

8. Submission of the learned counsel for the appellants is that even though the large number of witnesses named in the Fardbeyan i.e. Nageshwar Singh and Shivendra Singh who according to prosecution case was also present there and Lal Bahadur Singh who also received injuries caused by the appellant no.1, 3 and 5 but they have not been examined in this case and that certainly cause prejudice to the defence as had they been examined in this case, they would have brought some light about the facts in the prosecution case?

9. Further submission of the learned counsel for the appellants is that there are several vital contradictions, which will appear from the fact that in the FIR it is stated that while Jawahar Pd. Singh tried to assault again to P.W.3, Kundan Singh, Sunil Kumar



Singh stopped him by hand and some witnesses have also stopped, however, Sunil Kumar Singh who has been examined, has stated that when Jawahar Pd. Singh tried to assault again to P.W.3 Kundan Singh the members of the society stopped his hand and evidence further shows that most of the witnesses have stated that no blood was oozing out of the injury, however, P.W. 5 Bhuneshwari Singh has stated that blood was oozing out of the wound and the Doctor has also found bleeding and apart from that there is contradiction with regard to evidence of the prosecution witness between the prosecution witness and the I.O. with regard to place of occurrence is concerned. The witnesses have stated that partition has already been made and the Bari is in his possession, however the evidence of the I.O. discloses that he found that the cattle of the informant and the cattle of appellant no.4 and 5 were used to be tied and *Nad* was also found there. The evidence of the I.O. also shows that a latrine was found covered with *tatti* and a suggestion has been given to P.W. 1 in para 5 and P.W.4 in para 5 that the latrine of the appellants was situated in the *bari* though they have denied the same and stated that the latrine was constructed after the occurrence. It has also been submitted that the evidence of the I.O. also shows boundary at the place of occurrence and in the north ditch, in the south Kali Sthan, in the east Tatti of Bhola Singh in the west house of the informant and appellant Sachidanand Singh and



Hira Singh and that clearly shows that Bari was actually used by both the appellants and his evidence also discloses that there was altercation prior to assault between the parties.

10. Further submission is that the evidence shows that though there is allegation against the other accused persons of assault to Sunil Kumar Singh and Lal Bahadur Singh but Lal Bahadur Singh has not been examined. All these contradictions and omissions clearly show that the prosecution case is false and concocted. Further submission of the learned counsel for the appellant is that in this case appellants have been convicted under Section 307/149 of the IPC, however, the evidence itself shows that there was no repeated blow given to Kundan Singh (P.W.3). Had he intended to cause death, he would have repeated blow. Further submission of the learned counsel for the appellants is that other accused persons have also been convicted with aid of Section 149 of the IPC, however, they were armed with *Bhala*, *Khanti* and *Lathi* but no such weapon has been used by them assault to Sunil Kumar Singh and Lal Bahadur Singh rather the prosecution case is that they have been assaulted by fists and slaps, as such it can not be said that they were carrying any object to assault Kundan Singh rather evidence discloses that an altercation took place and in the spur of moment and it was Sanjeev Kumar Singh who assaulted by the blunt portion of the spade. Further submission is



that evidence of the Doctor discloses that the injury was grievous in nature and it does not appear to be believable on the ground that X-ray plate has been produced by the father of the victim after one month of the occurrence and further there is no opinion of the Doctor on the x-ray report of Madhepura.

11. On the other hand learned counsel for the State pointing out the evidence of the Doctor has stated that the Doctor has found injury no.1 grievous in nature and stated that the patient was in coma and he remained unconscious condition for 24 hours and his evidence also shows that the victim has fracture on his head which appears from the x-ray report and there is allegation that Sanjeev Kumar Singh assaulted by blunt portion of the spade to the victim causing such injury and other accused persons also assaulted to Sunil Kumar Singh and Lal Bahadur Singh, in such a situation, it appears that all the accused persons made unlawful assembly and assaulted the informant side as such conviction of the appellants under Section 307/149 of the IPC appears to be just and proper and does not require any interference by this Court.

12. Considering the contention of the parties and on perusal of the record it appears that no doubt prosecution witnesses have supported the manner of assault, however, it appears that there are several infirmities in the prosecution evidence and they tried to show



that Kundan Singh was again assaulted by spade by Jawahar Pd. Singh and it was stopped by Sunil Kumar Singh but Sunil Kumar Singh has not stated so in his evidence. Similarly it is stated by P.W.1 and other witnesses that no blood was coming out from the person of the P.W.3 whereas the Doctor and P.W.1 has stated that it was bleeding and furthermore there is contradiction with regard to place of occurrence is concerned. The evidence of the I.O. shows that in the *Bari* cattle of both the appellants and the informant were used to tied and *naad* was found there and there was latrine over there.

13. It further appears from perusal of the evidence that there is allegation against all the appellants except Sanjeev Kumar Singh that they have assaulted by fists and slaps but there is no allegation that they have used *Bhala*, *lathi* and *Khanti* with which they were armed and on the other hand prosecution evidence shows that there was altercation between the parties and thereafter occurrence took place. It also appears that there was dispute with respect to partition and its fencing. In such a situation, false implication of the appellants can not be ruled out. No doubt there is evidence against Sanjeev Kumar Singh that he assaulted by back portion of spade causing injury on the head of the victim. Evidence of the Doctor shows that the victim was carrying following injuries :

“(i) Lacerated wound 1 ½” X ¼” X ¼” on the left side of the scalp in the parietal bone



***(ii) An abrasion 1" X
1" on the left side of the scalp."***

14. He has stated that injury no.1 was grievous in nature but the evidence of the Doctor itself shows that though he referred for x-ray examination but x-ray was made after seven days of the occurrence and the same was produced by the father of the victim. Evidence of the I.O. also shows that x-ray report has not been produced before the I.O. Further it appears that the evidence of the Doctor shows that he has produced x-ray plate in the court, which has been marked as material exhibit. As such genuineness of the material exhibit is itself under doubt as the same has not been produced before the I.O and the same has been directly produced in the court and further appears that there is no medical opinion attached to the report and radiologist has also not been examined in this case.

15. The learned trial court has failed to consider the aforesaid discrepancies while coming to a conclusion that the injury was grivous in nature.

16. In this case all the appellants have been convicted under Section 307/149 of the IPC but as I have discussed above, firstly there was no repetition of the blow secondly blunt portion of the spade has been used thirdly even though the other accused persons were carrying *khanti Bhala* and *lathi* , they have not used the same and further on the ground that the x-ray report itself does not appear to be



genuine and the same has been produced by the Doctor in the court after getting it from the informant after one month. No doubt the intention for causing such injury committing murder or causing injury can be gathered from the circumstances and the evidence available on the record, however, as I have discussed above, the circumstances and the evidences does not show that it is a case in which Sanjeev Kumar Singh has assaulted the victim by *Kudal* with an intention to cause his death rather it appears that after altercation he was carrying spade so he assaulted that too with blunt portion of the spade and as such offence under Section 307 of the IPC is not made out in the facts and circumstances of the case. Further it appears that so far other accused persons are concerned the allegation has been made only with a view to implicate whole family members in this case which can not be ruled out in the facts and circumstances as discussed above. Furthermore, as discussed above it can not be said that they were carrying same object, as such the appellants except appellant Sanjeev Kumar Singh can not be convicted with the add of Section 149 of the IPC rather they will be liable for their individual act and there is no evidence of assault against them.

17. In the result, the conviction of the appellant Sanjeev Kumar Singh under Section 307/149 of the IPC is modified to conviction under Section 324/34 of the IPC so far conviction of other



appellants under Section 307/149 of the IPC is concerned it appears that they are entitled for the benefit of doubt in this case as such Cr. Appeal No.400 of 2003 is partly allowed and the impugned judgment and order of sentence with respect to appellants in Cr. Appeal No.400 of 2003 are set aside and so far criminal appeal no.431 of 2003 is concerned, conviction of appellant Sanjeev Kumar Singh is modified to Section 324 of the IPC.

18. Submission of the learned counsel for the appellants is that he has remained in custody for about 2 ½ months during pendency of the appeal and the case is of the year, 1990 i.e. 27 years prior as such lenient view maybe taken and the period of sentence is reduced to the period already undergone in custody. As the occurrence is of the year, 1990 as such he is sentenced under Section 324 of the IPC to the period under which he has already remained in custody.

19. With the aforesaid modification in conviction and sentence, Cr. Appeal No.431 of 2003 is disposed of.

(Vinod Kumar Sinha, J)

chn/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	05.04.2018
Transmission Date	05.04.2018

