

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.398 of 2003

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1. Ranbir Singh

2. Vijay Kumar Singh @ Vijay Singh

Both Sons of Late Kapildeo Singh

3. Manoj Kumar Singh, Son of Vijay Singh

All are residents of village – Parsurampur, P.S. – Amnour, District – Chapra.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar, Adv. (Amicus Curiae)

For the Respondent/s : Mr. Bipin Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 07-03-2018

In spite of repeated calls, nobody appears on behalf of appellants and as the case is of the year 2003, I deem it appropriate to appoint Mr. Manoj Kumar, learned Advocate, who is present in the court as *Amicus Curiae* to assist the court.

2. By way of the present appeal, appellants seek to challenge the judgment of conviction and order of sentence dated 19.07.2003, passed by Sri Shyam Nandan Prasad Verma, the then Adhoc District & Sessions Judge, Fast Track Court No. 1. Saran, Chapra, in Sessions Trial No. 165 of 1989, by which the appellant nos. 1 and 3, namely,



Ranbir Singh and Manoj Kumar Singh were convicted under Section 324 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo R.I. for 01 year. Appellant nos. 2 and 3, namely, Vijay Kumar Singh and Manoj Kumar Singh were convicted under Section 323 of the IPC and were sentenced to undergo R.I. for one year each. Appellant No. 3 Manoj Kumar Singh was also convicted under Section 379 of the IPC and was sentenced to undergo R.I. for 01 year. Appellant nos. 1 and 3, Ranbir Singh and Manoj Kumar Singh were further convicted under Section 380 of the IPC and were sentenced to undergo R.I. for two years. All the sentences were directed to run concurrently.

3. Prosecution case as per the fardbeyan of informant (P.W. 4) Chand Kishori Devi recorded by police on 14.11.86, in short is that on the same day, her husband’s elder brother appellant Ranbir Singh along with Rameshwar Chamar and Raghu Chamar went to plough a certain piece of land in order to take possession over the said land. Seeing that, the informant went there and objected them from ploughing, on which appellant called his brother appellant Vijay Singh and his nephew appellant Manoj Kumar Singh. Thereafter, appellant Vijay Singh and Manoj Kumar Singh ordered to assault her, on which appellant Ranbir Singh gave a knife blow to the informant, which caused injury in her neck. Appellant Manoj Kumar Singh also gave knife blow, which caused injury on her finger and left wrist. It



has further been alleged that appellant Manoj Kumar Singh snatched away her golden ear ring and nose pin. The occurrence was witnessed by Yogendra Singh, Sheodhar Singh, Gajendra Singh, Bhagat Singh, Rama Singh and Arun Singh and Dharendra Singh, who intervened in the occurrence. Thereafter, accused persons went away from the place of occurrence and informant also proceeded towards her house and when she reached to her house, she found that appellant Manoj Singh and Ranbir Singh were committing theft of a box from her house, which was containing ornaments and the other lady members, who accompanied the appellants also assaulted her by means of fists and slaps. On *hulla* villagers assembled and they fled away. On the basis of the said fardbeyan, Amnour P.S. Case No. 189 of 86 was registered against the appellants.

4. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Sri Shyam Nandan Prasad Verma, the then Adhoc District & Sessions Judge, Fast Track Court No. 1. Saran, Chapra for Trial and disposal.

5. Charge was framed under Section 307 of the IPC against the appellant Ranbir Singh and charge was framed under Section 307/34 against appellants Manoj Kumar Singh and Vijay Singh.

6. In order to prove its case, prosecution has examined altogether seven witnesses, they are; P.W. 1 - Bhagat Singh (tendered for cross-



examination), P.W. 2 – Rana Singh, claimed to be eye witness of the occurrence, P.W. 3 – Dhirendra Singh also claims to be eye witness of the occurrence, P.W. 4 – Chand Kishori Devi (informant and injured), P.W. 5 – Uma Shankar Singh, a formal witness, who proved the F.I.R. (Ext. 1), P.W. 6 – Dr. S.C. Shrivastava, who examined and treated the injured and proved Ext. 2 – Injury report, P.W. 7 – Kapileshwar Prasad (I.O.).

7. Apart from that following documents have been brought on record and marked as: Ext. 1 – F.I.R of Amnour P.S. Case No. 189/86, Ext. 2 – Injury report and Ext. 3 is also an injury report.

8. On behalf of the defence, no ocular evidence has been brought on record but certified copy of F.I.R of Amnour P.S. Case No. 124/87 was brought on record and marked as Ext. A.

9. Learned Trial Court after considering the evidence available on record, though not found the case true under Sections 307 or 307/34 of the IPC, however, he convicted the appellants and sentenced them under other Sections of IPC as stated above.

10. Being aggrieved, the appellants preferred the present appeal.

11. Contention of learned *Amicus Curiae* is that in this case no independent witness has been examined and though P.W. 2 and P.W. 3 claim themselves to be eye witness of the occurrence but it appears that they had purchased land from the informant and with respect to that there was dispute between the appellants and these two witnesses.



It has also been submitted that it is apparent that there was land dispute between the parties and they all are agnates and in the backdrop of the said land dispute, appellants have falsely been made accused in this case. Further contention of learned counsel for the appellants is that in this case though there is allegation against the ladies members also but the police during investigation has not found the case true against them and as such they have not been sent up for trial and, therefore, the allegation that appellants also took away the ornaments from the box, which was kept in the house of the informant, appears to be concocted and fabricated one and the trial court without considering all these facts has convicted the appellants in this case, which is out and out perverse and not sustainable in the eye of law.

12. Learned counsel for the respondent – State, on the other hand, supported the finding of guilt recorded by the trial court and submitted that in this case P.W. 4 is informant and she has consistently stated in her evidence that she was assaulted by the appellants by knife and *lathi* and her evidence has also been corroborated by the evidence of doctor, who found certain injuries on the person of the informant. Further P.W. 2 and P.W. 3 are the eye-witness of the occurrence and they have also supported the prosecution case with regard to assault on the informant and with regard to manner of occurrence and, therefore, there is no infirmity in the impugned judgment of trial court



and conviction of appellants in this case is just and proper.

13. Considered the rival contentions of the parties. It appears that P.W. 4 is the informant in this case and she has stated that she had seen Ranbir Singh along with Rameshwar Chamar and Raghu Chamar ploughing her two and half *kathas* of land with a view to take possession over the said land and when she objected them for not ploughing the said field, thereafter, Ranbir Singh called his brother appellant Vijay Singh and his nephew appellant Manoj Kumar Singh, thereafter, on the order of Vijay Singh, appellant Ranbir Singh gave her knife blow causing injury to her on right side of her neck and Manoj Kumar Singh also gave her a knife blow causing injury in her index finger and appellant Vijay Singh assaulted her with *lathi* and Manoj Singh with *danda*. Witnesses came and saved her. Evidence of this witness also disclosed that when she went to her house, she found appellant nos. 1 and 3 were committing theft of ornaments kept in a box as such she has supported the prosecution story in *toto* in her evidence in chief. However, her evidence in cross-examination shows that appellant Ranbir Singh and Vijay Singh are the brothers of her husband and appellant Manoj Singh is the son of appellant Vijay Singh. Her evidence in para -11 of her cross-examination shows that she had sold one and half *katha* of land to P.W. 2 Rana Singh. She has also stated in para -12 of her cross-examination that at the time of occurrence, she and appellants had joint house but the kitchen was



separate. Her evidence further shows that a large number of people had assemble at the place of occurrence.

P.W. 6 is the Doctor, who treated the informant and found the following injuries:-

- (i) Incised wound 1"x1/8"x muscle deep on root of neck on right side.
- (ii) Lacerated wound 1/4"x 1/8"x muscle deep on left forearm flexon surface 2" above left wrist joint.
- (iii) Lacerated wound 1/4"x 1/4" x muscle deep on tip of left little finger.
- (iv) Bruise, 1/2"x1/4" on left scapular region.

14. In the opinion of doctor, all the injuries were simple in nature. Injury no. 1 was caused by sharp cutting weapon and all other injuries were caused by hard and blunt substance. He further opined that injury no. 1 could be caused by knife. Injury no. 2 might be possible by knife if the knife slips. Injury no. 4 might be possible by *lathi* and *paina*. His evidence also disclosed that all the injuries cannot be manufactured.

15. P.W. 1 was tendered for cross examination and as such, there is nothing in his evidence for just adjudication of the case.

16. P.W. 2 and P.W. 3, claimed themselves to be eye witness of the occurrence and P.W.3 is the son of P.W. 2 and they were sowing potato near the place of occurrence and saw the occurrence and their



evidence corroborate the evidence of P.W. 4 (informant) except one minor contradiction that P.W. 2 had not stated about knife blow by appellant Manoj Kumar Singh.

17. P.W. 7 is the A.S.I., who had conducted investigation in this case. His evidence also disclose that informant Chand Kishori Devi Had two and half *kathal* of land, part of which was found ploughed. His evidence in cross – examination in para -9 shows that he did not find any sign of theft nor he has recovered any box during investigation. His evidence also shows that there was some contradiction in evidence of P.W. 1 and 2 from their earlier statement.

18. Considering the entire discussions made above, it appears that both informant and appellants are close relatives and there was dispute between the parties with respect to a certain piece of land and further the witnesses are also agnates. It has also come in evidence that P.W. 2 and P.W. 3 were the only eye-witness except P.W. 4 and they had purchased land from P.W. 4 and as such, probability of their being interested witnesses cannot be ruled out. However, their evidence is consistent on the point of assault to P.W. 4 (informant) by appellants by knife, *lathi* and *paina* and the same has also been corroborated by the medical evidence. So far allegation of snatching of golden ear rings and nose pin from the informant as well as committing theft of ornaments from a box in the house of informant is



concerned, the same appears to be ornamental as the evidence of P.W. 7, (I.O.) shows that he had not find any sign of box kept in the house and there was no recovery either of box or ornaments and further the details of articles kept in the said box has also not been given either in the F.I.R or in the evidence in court.

19. Accordingly, so far conviction of appellant nos. 1 and 3, namely, Ranbir Singh and Manoj Kumar Singh under Section 324 of the IPC and conviction of appellant nos. 1 and 2, namely, Vijay Singh and Manoj Kumar Singh under Section 323 are concerned, the same appears to be just and proper. So far conviction of appellant No. 2 Manoj Kumar Singh under Section 379 of the IPC and conviction of appellant nos. 1 and 3, namely, Ranbir Singh and Manoj Kumar Singh under Section 380 of the IPC, are concerned, in the facts and circumstances of the case, does not appear to be sustainable.

20. Hence convictions of appellant nos. 1 and 3 under Section 324 and convictions of appellant nos. 1 and 2 under Section 323 of the IPC are upheld. Conviction of appellant No. 3 under Section 379 and conviction of appellant nos. 1 and 3 under Section 380 of the IPC are set aside.

21. However, so far sentence is concerned, a submission has been advanced by learned *Amicus Curiae* that the occurrence is of the year 1986 and 32 long years have passed since then and no fruitful purpose will be served to send the appellants behind the bars.



22. I find force in submission of learned *Amicus Curiae* that the case is of year 1986 and the appellants have also suffered the pain and agony of trial and appeal for 32 long years, as such, in stead of confirming the sentence of imprisonment, they are directed to deposit a fine of Rs 2,000/- each, which shall be payable to the informant (P.W. 4), and in default of payment of fine, they have to suffer simple imprisonment for 03 months.
23. With the above modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.03.2018
Transmission Date	12.03.2018

