

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.273 of 2003

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

- =====
1. Uday Singh, son of Indradeo Singh
 2. Arvind Singh, son of Shamlal Singh
 3. Arun Singh, son of Shamlal Singh
 4. Kishori Singh, son of Shamlal Singh, all residents of village Kulana, P.S.
Akabarpur, District Nawadah

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi (amicus curiae)

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-05-2018

All the four appellants have been convicted under Sections 323 and 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months and a fine of Rs.300/- each with default clause vide judgment and order dated 7.3.2003 passed by Sri Hamid Hassan, the then 3rd Additional District and Sessions Judge, Nawadah in Sessions Trial No. 54 of 1991. It further appears that there were two other accused persons, namely, Indradeo Singh and Hriday Singh, Indradeo Singh has been convicted under Sections 148 and 324 IPC and Hriday Singh has been convicted under Sections 147 and 323 IPC but they have been released on probation instead of passing of sentence against them.

2. Prosecution case, in short, is that on the day and time of



occurrence while the informant Kapildeo Singh (PW 7) was sitting in his Baithka the accused persons, including the appellants armed with Farsa, Khanti and Lathi came there and started hurling abuse. It is further alleged that accused Hriday Singh ordered to kill on which Indradeo Singh gave a Garasa blow on the head of informant and when Brujnandan Singh and Mahesh Singh came to save him, accused Kishori Singh assaulted Brijnandan Singh with Khanti on his head and Mahesh Singh was assaulted by accused Uday Singh with lathi. It is stated that Rajnandan Singh, Ramwaran Singh others came to rescue him and it is said that reason behind the occurrence was that the water meant for irrigating the land of the informant had entered into the field of accused and damaged the crops.

3. On the basis of aforesaid fardbeyan Akbarpur P.S. Case No. 2 of 1988 was registered. Post investigation charge sheet has been submitted, cognizance has been taken and after commitment the case ultimately traveled to the file of learned Trial Judge for trial and disposal.

4. During trial altogether nine witnesses have been examined on behalf of prosecution, they are PW 1 Ramnandan Singh, PW 2 Ramwaran, PW 3 Abhimanu Singh, PW 4 Rajendra Singh, who claims to be eye-witness to the occurrence, PW 5 Mahesh Singh, who is nephew of the informant, PW 6 Brijnandan Singh is brother of the



informant and injured, PW 7 Kapildeo Singh is informant of this case, PW 8 Doctor Sikandar Afjal and PW 9 Jagannath Ram is I.O. of this case.

5. Apart from that following documents have been brought on record as exhibits on behalf of prosecution, they are Ext.1- signature of informant on fardbeyan, Ext.2 series- injury reports, Ext.3 is fardbeyan, Ext.4- formal FIR and Ext.5 is seizure list.

6. On behalf of defence two witnesses have been examined, they are DW 1 Jamuna Prasad Sharma, who has proved the complaint petition filed by appellant Kishori Singh (Ext.A) and DW 2 is a Doctor who has proved the injury report of Kishori Singh (Ext.B). Defence of the accused persons is of false implication and of innocence, rather they have received injuries and filed complaint petition.

7. Since no one appears on behalf of the appellants Mr. Arun Kumar Tripathi, Advocate has been appointed as amicus curiae to assist this Court.

8. On conclusion of trial learned trial court has convicted the appellants under Sections 323/147 IPC and sentenced them as stated above. Besides that, co-accused persons have also been convicted but released on probation.

9. Submission of learned amicus curiae is that in this case



there is counter case also and injury was also received by one appellant Kishori Singh and the same has not been explained by the witnesses and in such a situation prosecution has not come with clean hands. Further submission is that though benefit of Section 360 Cr.P.C. was given to accused Indradeo Singh and Hriday Singh and there was specific allegation against them of assaulting by Garasa and Khanti, whereas the appellants against whom there is general and omnibus allegation, have not been given the same benefit, as such the same will cause miscarriage of justice and the same has been deprecated by Hon'ble Apex Court in various judgments.

10. On the other hand, learned counsel for the State has supported the finding of guilt and has stated that there are consistent evidence available on record and the witnesses, including the informant, who is injured, and PWs 5 and 6, who are also injured in this case and that has been corroborated by the evidence of PWs. 1 to 4, who claim to be eye-witnesses to the occurrence, have supported the prosecution case and Doctor has found injuries on their persons, as such conviction of the appellants under Section 323/147 IPC is just and proper and does not require any interference by this Court.

11. In the background of rival contentions of the parties, on examination of evidence it appears that PW 6 is the informant in this case and he has supported the place of occurrence and manner of



occurrence in his evidence in chief and also stated that appellants came and abused him and on the order of Hriday Singh, Indradeo Singh gave a Garasa blow on his head and Hriday Singh assaulted him by lathi and on hulla Brijnandan Singh and Mahesh Singh came to rescue him and they were also assaulted by Kishori Singh by means of Khanti on his head and by Uday Singh by means of lathi respectively. He has also stated that water meant for irrigating land of the informant had entered into the field of the accused and for that occurrence took place. Even in his cross examination in paragraph-10 this witness has stated that appellants and other accused persons came and assaulted him.

PWs. 5 and 6 are injured witnesses and they have also supported the prosecution case and stated in their evidence about genesis of occurrence and manner of occurrence and PW 5 has stated further in his evidence that he was assaulted by Udai Singh by lathi and Brijnandan Singh, brother of informant, was assaulted with Khanti by Kishori Singh and this witness has been cross examined and there is nothing in his cross examination. PW 6 is another injured and he has supported the prosecution case about manner of occurrence and stated about assault by Kishori Singh assaulted him by khanti and also assaulted other witnesses, who also claims to be eye-witness to the occurrence and has supported the prosecution case.



PW 8 is Doctor in this case and he has found the following injuries on three injured persons :

Kapildeo Singh : (i) Incised wound over the right side of skull (parietal area) 3" x ½" x ½" with superficial bone cut of one place with posterior aspect, (ii) Abrasion over the right wrist ¼" x ¼" x skin deep, (iii) Contusion over the right knee joint ½" x ½". All the above injuries are simple in nature. Injury No.(i) was caused by sharp weapon and Injury Nos. (ii) and (ii) were caused by hard and blunt weapon, may be by lathi.

Brijnandan Singh : (i) Lacerated wound over the right side of skull ¼" x 1/8" x 1/8", (ii) Contusion over the right knee joint 1" x ½", (iii) Contusion over the front of chest 1" x ½". All the above injuries are simple in nature caused by hard and blunt weapon.

Mahesh Pd. Singh : (i) Contusion over the right elbow joint ½" x ½", (ii) Contusion over the right knee joint ½" x ½". All the injuries were simple in nature caused by hard and blunt substance may be by lathi.

And evidence of Doctor supports the prosecution case on manner of occurrence.

PW 9 is the I.O. in this case and he has also given description of place of occurrence in his evidence. In paragraph-3 of his evidence he has stated that he found blood on the earth below



Khatia and he has sent the same.

12. On discussion of above prosecution evidence it appears that prosecution evidence is consistent about the occurrence is concerned so far manner of occurrence, place of occurrence and time of occurrence. No doubt defence has brought evidence to show that a complaint case was filed by appellant **Kishori Singh**, who has received injuries and from evidence of DW 2 Doctor, who has examined him and found the following injuries :

(1) Bruise 2" x 1/3" over left side of forehead, (2) Swelling 1/2" over right angle of mandible, (3) Three bruises (i) 1/2" in diameter (ii) 1" x 1/8" (iii) 2" x 1/8" over upper part of left side of back, (4) Bruise 1" x 1/6" over posterior surface 2" below elbow posterior surface, (5) Bruise 1-1/2" x 1/4" over posterior surface of right forearm 4" below elbow. All the injuries are simple in nature caused by hard and blunt substance.

Thus, defence could show that defence side also received injuries. However, there is consistent evidence available on record so far manner of occurrence and place of occurrence are concerned.

13. Considering the entire evidence as discussed above it appears that prosecution has established its case beyond all reasonable doubts by cogent and reliable evidence. Hence conviction of the appellants under Sections 323/147 IPC appears to be sustainable in



the eye of law and the same is affirmed.

14. So far sentence is concerned, submission of learned counsel for the appellants is that other co-accused persons have been given the benefit of Section 360 Cr.P.C. and further they were released on probation and their allegation is more serious than the appellants, as such appellants are also entitled to the same benefit under Section 360 Cr.P.C. Further submission is that the occurrence is of the year 1988 and 30 long years have passed, as such, lenient view may be taken on the point of sentence.

15. In such view of the matter, instead of affirming the sentence, the appellants are directed to be released on admonition under Section 360 Cr.P.C.

16. With the above modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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