

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.148 of 2003

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1. Rameshwar Singh, Son of Late Ram Ekbal Singh
 2. Banarash Singh @ Anarash Singh, Son of Ram Ekbal Singh
 3. Krishna Singh, Son of Rameshwar Singh
All residents of village – Arwa Kothi, P.S. – Khaira, District – Saran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Vijay Kumar Sinha, Adv
Mr. Arvind Kumar Srivastava, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-01-2018

By way of the present appeal, appellants seek to challenge the judgment of conviction and order of sentence dated 17.02.2003, passed by Shri Shyam Nandan Prasad Verma, Adhoc Dist. & Sessions Judge, Fast Track Court No. 1, Saran at Chapra, in Sessions Trial No. 332 of 1988 by which the appellants stood convicted under Section 324/34 and 341/34 of the Indian Penal Code (in short the “IPC”) and were sentenced to undergo R.I. for one year under Section 324/41 of the IPC. No separate sentence was passed for conviction under Section 341/34 of the IPC.

2. Prosecution case as per the fardbeyan of Bharat Singh (P.W. 4), recorded on 15.08.1987 in Sadar Hospital, Chapra, in short is that on



the relevant day, he was returning after attending the call of nature and when he reached near the house of Ram Chandra Singh, all of a sudden, appellants Rameshwar Singh, Banaras Singh @ Anaras Singh and Krishna Singh came variously armed and instigated other accused person to kill him, on which, appellant – Banaras Singh @ Anaras Singh gave a knife blow on the neck and right side of abdomen of informant and when he tried to escape, appellant Krishna Singh gave another knife blow from behind, which caused injury to left side of his ear and thereafter, appellant Rameshwar Singh assaulted him on his chest and back by the butt of pistol. On alarm being raised, people assembled and appellants fled away. On the basis of the above *fardbeyan* Champra Muffasil P.S. Case No. 292/87 was registered against the appellants.

3. 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 Shri Shyam Nandan Prasad Verma, Adhoc Dist. & Sessions Judge, Fast Track Court No. 1, Saran at Chapra, for trial and disposal.

4. To prove its charges, prosecution examined altogether four witnesses. They are;- P.W. 1- Dharendra Kumar Tiwary, P.W. 2 - Bhagirath Singh, P.W. 3 – Mani Singh and P.W. 4- Bharat Singh, (informant and injured). In this case doctor, who examined the injured



as well as I.O. has not been examined and injury report has been proved by another doctor, namely, Amarjeet Rai as C.W. -1 and from perusal of his evidence, it appears that he simply proved the injury report (Ext. 3 to 3/1), written by Doctor. A.K. Sinha, in which following injuries were found on the person of injured:-

- (i) Incise wound bleeding wound right side back 1" x 0.2 deep x linear.
- (ii) Incise wound bleeding 1¼"X 2" deep x linear on right side of abdomen (legible) and neck.
- (iii) Incised wound on left ear 1"X0.3" x linear.
- (iv) Abrasion on right thigh 3" x 1"
- (v) Complains of pain in the chest.
- (vi) Abrasion on the back at two places about 3" x 1".

5. On behalf of the defence, no ocular evidence has been brought but certified copy of F.I.R of counter case has been brought on record as (Ext. A). Further defence of the appellant as per trend of cross-examination as well as from statement of accused under Section 313 Cr.P.C is of innocence and further a large number of cases were going on between the parties, due to which, they have falsely been made accused by the informant.

6. Post trial, the trial court, relying on the evidence of prosecution witnesses as well as the injury report (Ext. 3 to 3/1) convicted the



appellants under Section 324/34 and 341/34 of the IPC and sentenced them in the manner aforesaid.

7. Contention of learned counsel for the appellants is that admittedly, there was dispute between the parties from before and all the witnesses are interested and inimical witnesses and in such a situation non-examination of any independent witness or who are attesting witnesses of the F.I.R as well as the family members of the informant, itself shows that no such occurrence had ever taken place. It has further been submitted that evidence of P.W. -1 clearly shows that there was dispute with respect to post of *Pujari* in the Bhatuha temple, for which a *Panchayati* was also held in which Rameshwar Singh and Banaras Singh were the panches. Similarly, evidence of P.W. 2, so far manner of occurrence is concerned, is contradictory to the manner of occurrence as alleged in the F.I.R and further so far P.W. 3 is concerned, he was at inimical terms with the appellants from before and a First Appeal was also going on between him and one of the appellants and other criminal cases were also going on. Further contention of learned counsel for the appellants that all the injuries were found to be simple in nature and in this case I.O. has not been examined which has caused great prejudice to the defence as had he been examined, he would have been cross-examined on the point of manner of occurrence and place of occurrence. It has also been



submitted that evidence of P.W. 4 also disclose that one of the appellants gave knife blow in his abdomen and blood started oozing out profusely, however, his evidence discloses that shirt (kurta) was not torn and the trial court without considering all these infirmities have convicted the appellants under Section 324/34 and 341/34 of the IPC, which is not sustainable in the eye of law.

8. On the other hand, learned counsel for the respondent – State has defended the impugned Judgment of Trial Court and has submitted that there are consistent evidence of witnesses with regard to assault by the appellant on P.W. 4, which has been corroborated by the injury report (Ext. 3 to 3/1) and, therefore, there is no infirmity in the impugned judgment and conviction of appellant under Section 324/34 and 341/34 of the IPC is just and proper.

9. Heard rival contention of the parties. It appears that P.W. 4 is the informant in this case and he has supported the prosecution case so far manner of occurrence and assault is concerned. He stated in his evidence that convict – Banaras Singh (though he has stated the name of this convict as Narad Singh) inflicted knife blow on his right shoulder and abdomen and while he was trying to escape convict – Krishna Singh assaulted on his left ear by means of knife and other convict – Rameshwar Singh assaulted him on his back and chest by butt of the pistol, thereafter, he was taken to Chapra Hostipal, where



he was treated and his statement was recorded, which was signed by Shri Ram Upadhyaya and one Subhash Ranjan Singh, who were not examined in this case. His evidence further disclose that there was dispute between the parties from before and only to put pressure on him to withdraw the cases filed by him, appellants have committed such offence. In his cross-examination, this witness has admitted that Jalalpur Hospital is nearer from his house than Sadar Hospital, Chapra. Further his evidence also discloses that in spite of assault on his abdomen, his shirt (kurta) did not get torn. Since the I.O. has not been examined in this case, there is nothing to prove as to whether the said shirt (kurta) was recovered or not and sent for chemical examination. Certainly, the same has not been produced in the Court.

10. Other witnesses have also supported the prosecution case. However, P.W. 1 is has denied a suggestion that his father was removed from the post of *Pujari* in a panchyati, in which, appellants – Rameshwar Singh and Banaras Singh were *panches*. He also denied a suggestion that appellants got a sale deed executed from his cousin brother, in which he was also interested and due to that he has been deposing in this case against the appellant. Similarly so far evidence of P.W. 3 is concerned, it appears that a suggestion was also given to him that a partition case was going on between him and one of the appellants and a First Appeal is also pending, however, he denied the



suggestion but he has admitted about the criminal case being Muffasil P.S. Case No. 332/92, lodged by appellant's side against his father and brothers.

11. So far evidence of P.W. 2 is concerned, it appears that there is contradiction in the evidence of this witness with regard to manner of occurrence as he has stated in his evidence that appellant – Banaras Singh inflicted knife blow on the right shoulder of the informant and abdomen and he fell down, thereafter, appellant - Krishna Singh assaulted the informant by knife and appellant - Rameshwar Singh assaulted him on his back and chest by butt of the pistol, however, F.I.R shows that informant was assaulted by appellant Krishna Singh and appellant Rameshwar Singh, when he tried to escape.

12. It also appears that in this case doctor has not been examined and the injury report has been proved by another doctor and injury caused to the informant was also found to be superficial.

13. Considering the entire discussions made above, it appears that there are material discrepancies in the evidence of witnesses coupled with the fact in this case neither I.O. nor doctor, who first treated the informant, has been examined and from the evidence, it also appears that there was case and counter case between the parties and large number of cases were going on. In such a situation appellants certainly deserve the benefit of doubt.



14. Accordingly, this appeal is allowed. Judgment of conviction and order of sentence dated 17.02.2003, passed by Shri Shyam Nandan Prasad Verma, Adhoc Dist. & Sessions Judge, Fast Track Court No. 1, Saran at Chapra in Sessions Trial No. 332 of 1998 is set aside.

15. As the appellants are on bail, they are discharged from liability of bail bonds.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
CAV DATE	N/A
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