

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.17 of 2003

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1. Marai Rai, Son of Anmol Rai.

2. Jitendra Rai, Son of Chandeshwar Rai.

3. Chandeshwar Rai, Son of Anmol Rai.

All are residents of Village – Sadha, P.S. – Chapra (Muffasil), District –
Saran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Udai Shankar Singh, Adv.

Mrs. Madhuri Kumari, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 19-03-2018

This appeal is directed against the judgment of conviction dated and order of sentence dated 19.12.2002, passed by Sri Uma Kant Srivastava, the then 7th Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 186/96, by which the appellants, above named, stood convicted under Section 324/34 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo R.I. for 01 year each.

2. Prosecution case as per the fardbeyan of Sabad Rai (P.W. 8) in short is that on 26.06.95, some children of family of Anmol Rai were throwing sand of the informant and when they objected, some altercation took place between the informant and appellant Marai Rai.



In the meantime, appellants Jeetendra Rai and Chandeshwar Rai arrived there being armed with knife. Appellant Marai Rai assaulted the informant by means of fists and slaps and appellant Jeetendra Rai gave a knife blow to the informant and appellant Chandeshwar Rai opened fire but that did not hit the informant and he assaulted the informant by butt portion of the pistol. On hulla, people assembled and appellants –accused fled away.

3. Aforesaid fardbeyan of the informant led to registration of Chapra (Muffasil) P.S. Case No. 174/95.s

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 Uma Kant Srivastava, the then 7th Additional Sessions Judge, Saran at Chapra, for trial and disposal.

5. Charges were framed under Section 307/34 of the IPC against the appellants.

6. In order to substantiate the charges, prosecution examined altogether eleven witnesses, they are; P.W. 1 – Pawan Rai, declared hostile, P.W. 2 – Radha Kishun Rai, declared hostile, P.W. 3 – Din Dayal Rai, declared hostile, P.W. 4 – Krishna Sharma, declared hostile, P.W. 5 – Chandrika Prasad, declared hostile, P.W. 6 – Tribhuvan Rai, son of informant, P.W. 7 – Sitabo Devi, wife of



informant, P.W. 8 – informant and injured, P.W. 9 – Doctor Uma Shankar Prasad, who treated and examined the injured Sabad Rai, P.W. 10 – Rajeshwar Tiwari, Radiologist, who proved the X-ray report (Ext. 4) and P.W. 11 – Ravindra Nath, a formal witness, who proved fardbeyan (Ext. 5) and formal F.I.R. (Ext. 6).

7. On behalf of defence, two witnesses have been examined, they are; D.W. 1 – Shashi Bhushan Prasad, who proved the counter case lodged by Anmol Rai father of one of the appellants and proved the F.I.R. of counter case as (Ext. A) and fardbeyan as Ext. (B) and D.W. 2 - Doctor Uma Shankar Prasad, who has also been examined as P.W. 9 in this case and he has proved injury report of appellant Chandeshwar Rai (Ext. C) and had found following injuries on the person of Chandeshwar Rai;-

- (i) Lacerated wound 1 ½”x ½” x scalp deep over forehead.
- (ii) Incised wound 1 ½” x ½” muscle deep.
- (iii) Incised wound 1” x ½”x muscle deep over left area.
- (iv) Abrasion 1” x ¼” over the left area.
- (v) Incised wound ½” x ½” x muscle deep over the palmer surface of left little finger tip.
- (vi) Incised wound ½” x ½” x muscle deep over palmer aspect of left ring finger.
- (vii) Incised wound ½”x ½”x skin deep above left wrist joint



region.

8. Defence of the accused person as per the trend of cross examination and per the ocular evidence is that no such occurrence as alleged has ever taken place and the prosecution party in order to save their skin from the case filed by the defence side has lodged this false and concocted case

9. Post trial, learned Trial Court, though not found a case under Section 307/34 IPC, however, convicted the appellants under Section 324/34 of the IPC and sentenced them in the manner as stated above.

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

11. Learned counsel for the appellants has assailed the judgment of trial court on the ground that in the counter case for the same occurrence, appellant Chandeshwar Rai has received altogether seven injuries and some injuries were also sustained by father of appellant no. 1. It has been submitted that no independent witness has supported the case of prosecution. Further submission is that though it is alleged that appellant Marai Rai assaulted by fists and slaps and appellant Jitendra Rai gave a knife blow to the informant and appellant Chandeshwar Rai assaulted by butt portion of the pistol but injury report shows that only incised injury was found on the person of informant, which clearly suggest that evidence of informant and other witnesses are exaggerated and in order to implicate the appellants,



informant has lodged the false and concocted case and the trial court without considering all these infirmities have convicted the appellants under Section 324/34 of the IPC, which is not sustainable in the eye of law.

12. On the other hand, learned counsel for the respondent- State has defended the impugned judgment of Trial Court on the ground that the evidence of P.W. 8 informant clearly shows that he was assaulted by appellant Marai Rai by fists and slaps, appellant Jitendra Rai assaulted him by knife and appellant Chandeshwar Rai assaulted him by butt portion of the pistol and the evidence has also been corroborated by the evidence of P.W. 7 and also from the medical evidence, as such, there is no infirmity in the judgment of Trial Court and conviction of appellants under Section 324/34 of the IPC is just and proper.

13. In the background of the contentions of the parties, on examination of the evidence, it appears that that P.W. 8 has stated about assault by appellant Marai Rai by fists and slaps, appellant Jitendra Rai by knife and appellant Chandeshwar Rai by butt portion of the pistol and P.W. 7, who is the wife of informant has also stated so in her evidence. P.W. 6, who is the son of informant has supported the occurrence, however, from perusal of para -11 of his evidence, it appears that he is not an eye witness of the occurrence. It further



appears that P.W. 9 the Doctor, who treated the P.W. 8 Sabad Rai, has found altogether three injuries on his person, which are as follows:-

- (i) Incised wound 1" x ½" x muscle deep over right lumber region lateral aspect.
- (ii) Incised wound 1 ½" x ½" x muscle deep over external ear near the tragus of right ear.
- (iii) Incised wound 1 ½" x ½" x muscle deep over the back of the chest right side.

In the opinion of doctor, all the injuries were found to be simple in nature except injury no. III, in respect of which X-ray was advised. However, from X-ray report also the said injury was found simple in nature.

14. It further appears that for the same occurrence, an F.I.R has also been lodged by the appellants' side and the F.I.R lodged by the appellants' side appears to be earlier than that lodged by the informant in the present case and that there is case and counter case between the parties and injuries have also been sustained by the appellants' side, which will appears from Ext. C, the injury report of appellant Chandeshwar Rai and Anmol Rai and altogether seven injuries were sustained by the appellant Chandeshwar Rai and father of appellant no. 1 Anmol Rai has also sustained some injuries and in such a



situation, exaggeration of in the evidence of prosecution witnesses, cannot be ruled out. From the evidence adduced by both sides, it appears to be a case of free fight between the parties on the date of occurrence, in which persons from both sides sustained injuries. Further it appears that only allegation of assault by fists and slaps and by butt portion of pistol has been levelled against the appellants Marai Rai and Chandeshwar Rai and no such injury was found on the person of P.W. 8. The allegation has been levelled against the appellant Jitendra Rai to have inflicted the knife blow to the informant.

15. In view of the discussion made above, the appellants Marai Rai and Chandeshwar Rai at least deserve the benefit of doubt in the present case as such so far conviction and sentence with regard to appellants Marai Rai and Chandeshwar Rai is concerned, the same is here by set aside.

16. So far appellant Jitendra Rai is concerned, considering the discussions made above, conviction of appellant Jitendra Rai is affirmed.

17. However, it is submitted by learned counsel for the appellants that the occurrence is twenty two years old and at the time of conviction, the appellant Jitendra Rai was aged about 26 years and, therefore, a lenient view may be taken and he may be given the benefit of Section 360 Cr.P.C.



18. From perusal of the record, it appears that the occurrence is of year 1995 and further it appears from the order of sentence that the learned trial court had not granted the appellants, the benefit of Section 360 Cr.P.C. and gave the reasons for the same. However, since the occurrence is very old, no fruitful purpose will be served to send the appellant Jitendra Rai to serve the sentence. Accordingly his sentence of R.I. for 01 year is modified and in stead of sentence, he is directed to pay a fine of Rs. 2,000/- to be deposited in the court within a period of two months and in default of payment of fine, he will have to undergo S.I. for two months.

19. With the aforesaid modification in conviction and sentence, this appeal is partly allowed.

(Vinod Kumar Sinha, J)

sunil/-

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