

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.193 of 2003

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

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1. Monayab Bhagat, son of Chandrama Bhagat
 2. Harendra Bhagat, son of Monayab Bhagat, both residents of Karmaini, P.S.
Kateya, District Gopalganj

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ajay Mishra, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 08-02-2018

Two appellants before this Court stand convicted under Sections 323 and 341 of the Indian Penal Code and sentenced to undergo simple imprisonment for six months and one month respectively and both the sentences were directed to run concurrently by the judgment and order dated 26.3.2003 passed by Sri Lakshman Sinha, the then Additional Sessions Judge, F.T.C. No.3, Gopalganj in Sessions Trial No. 252 of 1997/160 of 2002.

2. An F.I.R. has been lodged being Kateya P.S.Case No. 27 of 1996 on the basis of fardbeyan of Dudhnath Bhagat (P.W.2) for the occurrence of 29.3.1996 at 6 A.M. and fardbeyan was recorded on the same day at 7.30 A.M. and the prosecution story as per fardbeyan is that when the informant went to his field in the morning he saw the appellants cutting the mustard crops from his field and on his protest he was assaulted by appellant Monayab Bhagat by means of Dab and by appellant Harendra Bhagat by means of lathi and thereafter his



sons were also assaulted by lathi.

3. Post investigation charge sheet has been submitted against the appellants under Sections 323, 341 and other sections of the IPC. Cognizance of the case has been taken and as the offence under Section 307 IPC was found in this case the case has been committed to the court of sessions, which ultimately came to the file of Sri Lakshman Sinha, the then Additional Sessions Judge, F.T.C. No.3, Gopalganj for trial and disposal. Charges were framed against the appellants under Sections 379, 323, 324, 325, 307, 341 and 447 of the IPC.

4. During course of trial altogether eight witnesses have been examined on behalf of prosecution, they are P.W.1 Balam Bhagat, son of informant and injured, P.W.2 Dudhnath @ Jagarnath Bhagat, informant and injured, P.W.3 Awadesh Bhagat, son of informant and injured, P.W.4 Anirudh Kurmi, claims to be eye-witness to the occurrence, P.W.5 Ramashish Kurmi has been declared hostile, P.W.6 Buneli Kurmi has been declared hostile, P.W.7 Usu Miya has been declared hostile and P.W.8 Rajjak Miya has been tendered for cross examination. It appears that I.O. has not been examined in this case nor injury report has been brought on record nor Doctor has been examined in this case and the whole case is based on evidence of P.Ws. 1 to 4 and on perusal of evidence of P.W.4 it appears that he is a chance witness.

5. Defence of the accused persons as per trend of cross



examination and the statement under Section 313 Cr.P.C. is of innocence and false implication.

6. Learned trial court after conclusion of trial has convicted the appellants under Sections 323 and 341 IPC and acquitted them from all other charges leveled against them and sentenced them accordingly.

7. Contention of learned counsel for the appellants is that learned trial court has failed to consider that in this case no injury report was available on record nor doctor has been examined nor I.O. has been examined but in spite of that he has convicted the appellants under Section 323 IPC and in the present case there is absolutely nothing to show that the informant and his sons had gone to any hospital for treatment except evidence of P.W. 4. Further submission of learned counsel is that there is vital contradiction between the evidence of witnesses from the earliest version and as per evidence of P.Ws. 1 to 3, who were injured, the informant had gone to his field and saw the accused appellants cutting mustard crops from his field and on protest by him the accused appellants assaulted him and fled away and informant returned to his house and when informant along with his two sons came at the place of occurrence again it is alleged that the accused appellants assaulted his sons and informant also, whereas prosecution case shows that informant went to his field and saw accused appellants cutting mustard crops from his field and on protest he was chased and assaulted by Dab and lathi by the accused



appellants, hence there is omission/contradiction in their evidence and contradiction is not minor rather vital once that dents the credibility of P.Ws. 1 to 3. It has also been argued that each and every circumstance has also not been put to the appellants in their statement under Section 313 Cr.P.C.

8. Learned counsel for the appellants has also submitted that P.W.4 cannot be an eye-witness to the occurrence as firstly he is a chance witness and secondly he has stated that he was watching the occurrence from a distance of 1-1/2 bigha away from the place of occurrence, as such his claim does not appear to be probable. On the basis of aforesaid inconsistencies and discrepancies submission of learned counsel for the appellants is that the impugned judgment is not free from infirmities and not sustainable in the eye of law.

9. On the other hand, learned counsel for the State has defended the impugned judgment stating that the evidence clearly shows that informant and his two sons were assaulted and for conviction under Sections 323 and 341 IPC ocular evidence does not require to be corroborated by medical evidence and, as such there is no infirmity in the impugned judgment which appears to be just and proper and does not require any interference by this Court.

10. In the background of the contentions of both sides, on examination of evidence it appears that P.W.2 is the informant in this case and he has stated that when he went to his field he saw the accused appellants cutting the mustard crops and on protest they



chased and assaulted him and he came back to his house and again went to the field along with his two sons and thereafter the accused appellants assaulted his sons with lathi and thereafter he was assaulted by appellant Monayab Bhagat by Dab and appellant Harendra Bhagat by lathi and his earlier version shows that he went to his field and saw the accused appellants cutting mustard crops from his field and on protest he was assaulted and thereafter his sons were also assaulted, so that the manner of occurrence, as stated in the court, is in complete variance with statement of P.W.2 as stated in the F.I.R., which is the earliest version. Moreover, in this case I.O. has not been examined and had he been examined he would have thrown some light with respect to the place of occurrence. It further appears that a suggestion has been given that appellants got the land in gift in 1984 and they claim the title over the same. It also appears from the evidence that Title Suit No. 150 of 1999 was also going on in the court of Munsif and, as such it appears that the appellants were claiming title over the land, in such view of the matter, possibility of false implication of the appellants cannot be ruled out. It further appears from perusal of evidence of informant that not a single witness has stated in his evidence that after receiving injuries they got themselves treated in hospital or any private clinic. No doubt P.W.4 has stated that they had gone Kateya Hospital but there is nothing in the evidence of other witnesses that injured were treated anywhere after the occurrence. In the above background two days delay in registering F.I.R. in the



present case also creates doubt and possibility of manipulation in the fardbeyan cannot be ruled out. All these facts cast serious doubt about the manner of occurrence and on the point of assault being received by the informant and other injured persons in this case. Learned trial court has not considered the aforesaid infirmities and discrepancies as per discussions made above.

11. In the facts and circumstances, I find the conviction of the appellants under Sections 323 and 341 IPC is not sustainable in the eye of law. Accordingly, this appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
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