

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.219 of 2003

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1. Haider Ali Son of Abdul Gani
 2. Nabi Rasool Son of Mazid Mian
 3. Lal Babu Bhagat Son of Khedan Bhagat.
 4. Hasmuddin Son of Abdul Gani
 5. Murtaza Son of Abdul Mazid
 6. Badujan Mian Son of Abdul Gani
 7. Khedan Bhagat Son of Late Kailash Bhagat.
 8. Khurshid Mian Son of Abdul Gani
 9. Abdul Mazid @ Mazid Mian Son of Daroga Mian.
- All are residents of Village – Gayspur Tola, Lewari, P.S. – Siwan, District – Siwan.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Uday Bhanu Roy, Advocate.
Mr. Sunil Kumar, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 26-03-2018

This appeal is directed against the judgment of conviction and order of sentence dated 08.04.2003, passed by Sri Anant Prasad Srivastava, the then Ad hoc District & Sessions Judge, Presiding Officer 1st Additional Fast Track Court, Siwan, in Sessions Trial No. 162/96, 121/02, by which the appellants Haider Ali, Badujan Mian, Khurshid Mian, Murtaza Ansari, Nabi Rasool, Khedan Bhagar @ Khedan Koyari, Lal Babu Bhagat and Abdul Majid were convicted under Section 323 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo R.I. for three months



and appellant Hasumuddin Mian was convicted under Section 324 of the IPC and was sentenced to undergo R.I. for six months.

2. Earlier a report was called for with regard to death/alive status of all the appellants were called for from the S.P. Siwan, from which it appears that appellant No. 7, namely, Khedan Bhagat and appellant no. 9, namely, Abdul Majid has died during pendency of appeal, as such, this appeal as against the above two appellants shall stand abated.

3. Prosecution case as per the written report of informant Kamla Bhagat in short is that the field of informant was in the west of the village, in which he had grown brinjal paddy and *maize* crop and at about 9. A.M. on 7.8.94, accused persons came armed with *lathi*, *bhala*, *farsa* and country made pistol and started ploughing the field and when the informant stopped them from ploughing the field, on the order of appellant Haider Ali accused persons assaulted the informant with respective weapons, causing injury to the informant and he fell down and on alarm being raised by the informant, his uncle, namely, Ramjee Bhagat and his brother, namely, Bhagwan Bhagat came to save him, they were also assaulted by the accused persons. Further prosecution story that on hearing the sound of *hulla* witnesses Baccha Bhagat, Chandrama Bhagat, Bleshwar Bhagat and others came there and the accused persons fled away.



4. On the basis of the aforesaid written Statement of the informant, Siwan P.S. Case No. 63/94 was registered.

5. 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 Anant Prasad Srivastava, the then Ad hoc District & Sessions Judge, Presiding Officer 1st Additional Fast Track Court, Siwan, for trial and disposal.

6. Charges were framed and following seven witnesses were examined to substantiate the charges: P.W. 1 – Chandrama Bhagat, P.W. 2 - Musafir Bhagat, P.W. 3 – Asharfit Sah, P.W. 4 – Rambachan Bhagat, P.W. 5- Kamla Bhagat (informant and injured), P.W. 6 - Shri Bhagwan Bhagat (injured) and P.W. 7 – Ramjee Bhagat (injured).

7. Apart from that Ext. 1 to 1/3 are the injury reports of Kamla Bhagat, Bhagwan Bhagat and Ramjee Bhagat.

8. Defence of the accused persons is that no such occurrence as alleged has ever taken place and they have falsely been implicated in the case and further defence is that on the same date and time of occurrence, appellant no. 7 Khedan Bhagat (who died during pendency of appeal), had gone to plough his field and he has got the decree of the said land in his favour and, thereafter, the prosecution party came and asked him not to plough the land and, thereafter, they assaulted the said



Khedan Bhagat by lathi and when his son Lalbabu Bhagat came to save him, he was also assaulted by *bhala* and *lathi* and hearing the sound of hulla, people assembled and prosecution party fled away, for which a case being Siswan P.S. Case No. 64/94 was registered and the informant and others only in order to save their skin from that case has filed the present false case. F.I.R. of Siswan P.S. Case No. 64/94 has been brought on record by the defence, which was marked as Ext.

A. On behalf of defence, injury report, X-ray report and opinion on injury report has been brought on record as Ext. B, C and D.

9. Learned Trial Court after conclusion of trial convicted the appellants Haider Ali, Badujan Mian, Khurshid Mian, Murtaza Ansary, Nabi Rasool, Khedan Bhagar @ Khedan Koyari, Lal Babu Bhagat and Abdul Majid were convicted under Section 323 of the IPC and appellant Hasumuddin Mian under Section 324 of the IPC and sentenced them in the manner aforesaid.

10. It appears from perusal of the impugned judgment that the Trial Court has taken note of the fact that a case has also been filed by the appellant Khedan Bhagat (since died) with respect to the occurrence of same day, time and place of occurrence. The Trial Court has also taken note that the said Khedan Bhagat had also received injuries.

11. Contention of learned counsel for the appellants is that the evidence itself shows that a title suit was pending between Khedan



Bhagat and P.W. 2 Musafir Bhagat with respect to the land in dispute and the said title suit was decided in favour of the Khedan Bhagat against which prosecution side preferred an appeal and the counter case shows that when Khedan Bhagat had gone to plough his land, he was assaulted by the prosecution party. The aforesaid evidence clearly shows that it was the prosecution side, who was the aggressor in the occurrence and whatever the appellants have done, they have done in their right to private defence of property and they have not exceeded the same. It has also been submitted that in this case doctor has not been examined and in absence of examination of doctor, conviction of the appellants only on the basis of ocular evidence, cannot sustain. Further submission of learned counsel for the appellants is that the Trial Court has also considered that the said Khedan Bhagat had also received injuries and witnesses have also stated that Khedan Bhagat has lodged a case with respect to occurrence of same date, time and place is also same and in spite of that the prosecution side have not explained about the injury caused to Khedan Bhagat in the said occurrence, which clearly goes to show that the prosecution side is not coming with clean hands and the trial court without considering all these aspects has convicted the appellants, which is out and out perverse and not sustainable in the eye of law.

12. On the other hand, learned counsel for the respondent – State



has supported the finding recorded by the Trial Court and has submitted that all the witnesses are consistent on the point of manner of occurrence and assault by the accused persons to informant and others and though doctor has not been examined but injury report has been brought on record as Ext. 1 to 1/3, which shows the injuries sustained by the informant and other witnesses and so far the manner of occurrence narrated by the defence side is concerned, no witness has been examined to support its case and even doctor has not been examined to prove the injury caused to the Khedan Bhagat and, therefore, there is no infirmity in the impugned judgment of Trial Court and conviction of appellants is just and proper.

13. In the background of rival contentions of the parties, on examination of evidence of prosecution witnesses, it appears that it is an admitted fact that there was case and counter case with respect to the same date, time and place of occurrence as such, what is remained to be answered is as to manner of occurrence of prosecution is correct or manner of occurrence narrated by the defence is correct and as to who was the aggressor in the occurrence and as to whether the defence acted in their right to private defence. Evidence on record, especially the evidence of P.W. 2 in para -14, P.W 3 in para 14, P.W. 5 in para 14 and 15 and P.W. 7 in para 11, clearly show that a title suit with respect to the land in dispute was going in between the parties



and the said title suit was decided in favour of Khedan Bhagat against which the prosecution side had preferred an appeal. Evidence available on record clearly shows that the accused-appellants had assaulted the informant and other by various arms but in this case doctor has not been examined by the prosecution and prosecution has brought on record injury reports, which is Ext. 1 to 1/3 but those injury report does not appear to be admissible as the same has not legally been brought on record. It further appears that appellant no. 7 Khedan Bhagat (died during pendency of appeal) has also received injuries though in his case also doctor was not examined. However, evidence discloses that there was land dispute between the parties and the title suit was decided in favour of the said Khedan Bhagat and occurrence took place with respect to the said piece of land in which persons from both sides sustained injuries and all the injuries caused on the person of Kamla Bhagat, Bhagwan Bhagat and Ramjee Bhagat were simple in nature. As such, I find force in submission of learned counsel for the appellants that whatever appellants did, they did in their right to private defence and hence they are protected under Section 96 and 97 of the Indian Penal Code. However, it appears that the trial court has not considered these aspects of the matter in the correct perspective and has convicted the appellants Haider Ali, Badujan Mian, Khurshid Mian, Murtaza Ansary, Nabi Rasool and Lal



Babu Bhagat under Section 323 of the IPC and appellant Hasumuddin Mian under Section 324 of the IPC, which does not appear to be sustainable.

14. Accordingly, this appeal allowed. Judgment of conviction and order of sentence dated 08.04.2003, passed by Sri Anant Prasad Srivastava, the then Ad hoc District & Sessions Judge, Presiding Officer 1st Additional Fast Track Court, Siwan, in Sessions Trial No. 162/96, 121/02, is hereby set aside.

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

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	NAFR
CAV DATE	N/A
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