

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.201 of 2003

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

=====

1. Rama Rai @ Ramai Rai
2. Kedar Rai, both sons of Chalitar Rai, residents of village Padamaul Tole
Dayalpur, P.S. Kurahani, District Muzaffarpur

..... Appellants

Versus

The State of Bihar

..... Respondent

=====

Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi (amicus curiae)
For the Respondent/s : Mr. Binod Bihari Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-04-2018

Both the appellants stand convicted under Sections 324/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years but they have not been found guilty for the offences under Sections 307/34 IPC in which charge has also been framed, vide judgment and order dated 6.3.2003 passed by Sri Zubairul Hassan, the then 2nd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 479 of 1989.

2. Prosecution case as per fardbeyan of informant Phudena Rai (PW 8), in short, is that on 25.10.1987 at about 9 A.M. both the accused appellants were cutting bananas from banana orchard of the informant and when he objected appellant Kedar Rai went inside his house and brought a “Kudali” (spade) from there and handed over to appellant Rama Rai. Further case is that appellant Kedar Rai caught hold of waist of the informant and appellant Rama Rai gave Kudali



blow upon the informant on his head, causing cut injury and Kedar Rai also assaulted him by fists and slaps.

3. On the basis of aforesaid fardbeyan Kudhani P.S. Case No. 169 of 1987 was registered. Post investigation charge sheet has been submitted, cognizance of the offence was taken and after commitment the case ultimately traveled to the file of the learned Trial Judge for trial and disposal.

4. During trial altogether nine witnesses have been examined on behalf of prosecution, they are PW1 Ramdeo Rai, not supported the prosecution case, PW 2 Nagendra Rai, tendered for cross examination, PW 3 Sakaldeo Rai, brother of informant and claims to be eye-witness to the occurrence, PW 4 Yogendra Rai, tendered for cross examination, PW 5 Kapildeo Rai claims to be eye-witness to the occurrence and named in the FIR, PW 6 Ganga Rai claims to be eye-witness to the occurrence, PW 7 Ramashray Rai claims to be eye-witness to the occurrence, PW 8 Phudena Rai is informant and injured and PW 9 Bigan Singh, the then ASI and I.O. of the case, who has proved Ext.1.

5. Apart from that, the following documents have been brought on record as exhibits, they are Ext.1-FIR and Ext.2- injury report. It appears that Doctor has not been examined in this case.

6. From perusal of the evidence it appears that informant (PW 8) has stated in his evidence in chief that accused persons were



cutting bananas from his banana orchard and when he objected Kedar Rai brought a spade and given to Rama Rai and Rama Rai assaulted him by spade while Kedar Rai caught hold of his waist. He has been cross examined also but in spite of that there is nothing in his evidence to doubt the place of occurrence and time of occurrence. From perusal of evidence of PWs. 3, 5, 6 and 7, who claimed to be eye-witnesses to the occurrence, it appears that occurrence occurred at 9 A.M. with respect to cutting of bananas from the banana orchard of the informant and accused Kedar Rai brought a spade and accused Rama Rai assaulted the informant by spade. However, evidence of PW 6 shows that accused Kedar assaulted the informant though it is not the prosecution case. On perusal of entire evidence it appears that evidence is consistent so far time of occurrence, place of occurrence and manner of occurrence. The evidence of I.O. (PW 9) shows that he inspected the place of occurrence and found banana trees were cut and it was in the “Kelabari” of the informant and, as such, prosecution has supported so far the place of occurrence.

7. Despite repeated calls no one has appeared on behalf of the appellants to press the appeal. However, Sri Arun Kumar Tripathi, Advocate has been appointed as amicus curiae to assist this Court. Contention of learned amicus curiae is that in this case Doctor has not been examined and for non-examination of Doctor the injury report (Ext.2) which has been brought on record, is not admissible in the eye



of law and evidence of PW 6 Ganga Rai creates doubt about the manner of occurrence, as such conviction of the appellants under Sections 324/34 IPC does not appear to be just and proper and there are inconsistencies in the evidence also.

8. On the other hand, learned counsel for the State has supported the impugned judgment and stated that there is consistent evidence so far manner of occurrence, place of occurrence and time of occurrence are concerned and the same is found corroboration from the evidence of I.O. and he has found the place of occurrence as “Kelabari” of the informant and he found banana trees were cut there.

9. As discussed above, evidence is consistent so far time of occurrence, place of occurrence and manner of occurrence are concerned. No doubt, Doctor has not been examined and there is no repetition of blow, as such learned trial court has not found the appellants guilty for the offence under Section 307/34 IPC, however convicted the appellants under Sections 324/34 IPC.

10. Further submission of learned amicus curiae is that in this case appellant Kedar Rai, who has been convicted on the allegation that he caught hold of waist of informant and brought a spade from his house and handed over to Rama Rai and Rama Rai assaulted the informant, has not been put to him any question under Section 313 Cr.P.C which is mandatory and Hon’ble Apex Court in several judgments, including in the case of **Sukhjit Singh vs. State of**



Punjab : (2014) 10 SCC 270 has held that all the circumstances which come against accused person on which learned trial court has relied upon have to be put to the accused, otherwise miscarriage of justice will be caused and conviction of the appellant is not maintainable. On perusal of the decision of Hon'ble Apex Court in Sukhjit Singh's case (supra) it appears that Hon'ble Apex Court has considered this aspect of the matter and come to the conclusion that requisite questions are not put to the accused and if there is non-compliance of the statutory requirement of Section 313 Cr.P.C., prejudice is deemed to have been caused to the accused and this vitiates the entire trial and a conviction based on such a vitiated trial is unsustainable.

11. In the present case also the evidence that has been used for conviction of the appellant Kedar Rai that he brought a spade from his house and caught hold waist of the informant and thereafter Rama Rai assaulted him has not been put to Kedar Rai, rather general question has been asked from both the appellants that they have assaulted the informant with an intention to kill him by means of spade and, as such, there is no proper compliance of Section 313 Cr.P.C. so far appellant Kedar Rai is concerned.

12. In such view of the matter, the conviction under Sections 324/34 IPC of appellant Kedar Rai is concerned, that does not appear to be sustainable in the eye of law as it suffers from above infirmities.



Hence the conviction and sentence of Kedar Rai are set aside. However, conviction of Rama Rai under Sections 324/34 IPC is concerned, there is compliance of provisions of Section 313 Cr.P.C. and the same is affirmed.

13. Submission of learned amicus curiae is that appellant Rama Rai has remained in custody for three months and occurrence is of the year 1987 prior to 30 years and he was aged 50 years at the time of conviction and he must be by now at the age of 65 years and considering all the facts, a lenient view may be taken in reducing the sentence to the period already undergone by him in custody.

14. I find force in the submission of learned counsel for the appellants. As such, the sentence of appellant Rama Rai is reduced to the period he has already undergone in custody.

15. With the aforesaid modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.4.2018
Transmission Date	11.4.2018

