

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.419 of 2003

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

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1. Dinanath Singh, son of Late Ram Pukar Singh
2. Kalawati Devi, wife of Dinanath Singh
3. Mukesh Kumar Singh, son Dinanath Singh, all residents of village Korah, P.S.
Baniyapur, District Saran

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-07-2018

All the appellants have been convicted under Sections 323/34 of the Indian Penal Code and further appellants Dinanath Singh and Mukesh Kumar Singh have been convicted under Section 379 IPC and they were sentenced to undergo rigorous imprisonment for one year under Sections 323/34 IPC and further appellants Dinanath Singh and Mukesh Kumar Singh were sentenced to undergo rigorous imprisonment for three months each under Section 379 IPC vide judgment and order dated 5.8.2003 passed by Sri Binoda Nand Mishri, the then XIth Additional Sessions Judge, Saran at Chapra in Sessions Trial No.1676 of 1994.

2. Prosecution case as per the fardbeyan of Awadhesh Kumar Singh (PW 1), who was injured and hospitalized, in short, is that on



24.5.1994 at 5.30 A.M. while he was going to Patna from his house at village Korha to give some money to his son Arvind Kumar Singh, all the three accused appellants abused him and appellants Dinanath Singh and Kalawati Devi over-powered the informant and appellant Mukesh Kumar Singh assaulted him by means of lathi, causing injury on his head.

3. On the basis of the aforesaid fardbeyan Baniyapur P.S.Case No. 89 of 1994 was registered. Post investigation, cognizance has been taken, charge sheet has been submitted and on commitment, the case traveled to the file of the learned Trial Judge for trial and disposal.

5. During trial, charges were framed against all the appellants under Sections 307/34 IPC and further against appellants Dinanath Singh and Mukesh Kumar Singh under Sections 379/34 IPC and against appellant Mukesh Kumar Singh under Section 325 IPC.

6. In order to prove its case prosecution has examined five witnesses, they are PW 1 Awadhesh Kumar Singh, informant and injured, PW 2 Shashi Kant Kumar, son of the informant, claims to be eye-witness, PW 3 Mohan Singh, formal witness, has proved Ext.1, signature of informant on fardbeyan, PW 4 Indu Devi, wife of informant, claims to be eye-witness, and PW 5 Kamal Singh, formal witness, has proved Ext.2, the formal FIR.



7. On perusal of evidence it appears that PW 1 has supported the prosecution case stating that while he was going to Patna from his village to give money to his son he was caught hold by appellants Dinanath Singh and Kalawati Devi and thereafter appellant Mukesh Kumar Singh assaulted him by lathi. Further he has stated that appellant Dinanath Singh snatched Rs.1200/- from his pocket and appellant Mukesh Kumar Singh snatched his HMT watch. It appears from the prosecution case that there was dispute between the parties with respect to distribution of grains and evidence shows that there was dispute between them with respect to property also.

8. Learned trial court on conclusion of trial has convicted the appellants under Sections 323/34 and 379 IPC and sentenced them as stated above. However, they have been acquitted from the charges under Sections 307/34 IPC.

9. Learned counsel for the appellants assailing the judgment has submitted that in this case neither I.O. nor Doctor has been examined and even no injury report has been brought on record and dispute is admitted between the parties. Further submission of learned counsel is that in the aforesaid background non-examination of independent witness creates doubt about the prosecution case. Further submission is that non-examination of I.O. also caused serious prejudice to the defence and had I.O. been examined in this case the



place of occurrence could be ascertained and as Doctor has not been examined in this case and no injury report has been brought on record but in spite of that learned trial court has convicted the appellants under Sections 323/34 and 379 IPC, which is not sustainable in the eye of law.

10. On the other hand, learned counsel for the State has supported the judgment of guilt on the ground that informant was assaulted and from whom Rs.1200/- and HMT watch have been snatched from him by the appellants and, as such, conviction of the appellants under Sections 323/34 and 379 IPC is just and proper which does not require any interference by this Court.

11. What transpires from perusal of the evidence is that there was admitted dispute between the parties from before with respect to property and division of grains and it further appears that PW 1 is informant in this case and PW 2 is his son and PW 4 is wife of informant. Though it is alleged that several witnesses were present at that time and place of occurrence but not a single independent witness has been examined. I am well of the fact that non-examination of independent witness in itself, is not fatal but where there is admitted enmity between the parties and dispute with respect to property and I.O. and Doctor have not been examined and certainly the conviction based only on the evidence of interested and inimical witnesses



creates a reasonable doubt about prosecution case.

12. In view of above discussions, it appears that the appellants are entitled to the benefit of doubt in the present case.

13. Accordingly, this appeal is allowed. The impugned judgment and order 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/-

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