

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.479 of 2003

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

- =====
1. Ashok Manjhi @ Ashok Kumar Manjhi S/O Chandar Manjhi
 2. Ambika Manjhi S/O Manaur Manjhi

Both are residents of village- Khori Parkar Tola Parat Patti, P.S. Jamo, District Siwan.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rina Sinha, Adv./Amicus Curiae

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-08-2018

On repeated calls, no body appears on behalf of the appellants, as such Mrs. Rina Sinha, Advocate is appointed as the *Amicus Curiae* to assist this Court.

2. The appellant Ashok Manjhi @ Ashok Kumar Manjhi has been convicted under Section 323 of the Indian Penal Code and sentenced to undergo R.I. for one year and appellant Ambika Manjhi has been convicted under Section 324 of the IPC and sentenced to undergo R.I. for two years, vide judgment and order dated 5.8.2003 passed by Sri Anant Prasad Srivastava, Adhoc District and Sessions Judge, Presiding Officer, Ist Addl. Fast Track Court, Siwan in Sessions Trial No. 28 of 1991/127 of 2001.

3. The prosecution case as per the fardbeyan of the



informant Madan Choudhary (P.W.3) is that he was sitting at his door at about 9.00 A.M. on 24.9.1989, at that time, his brother Dinesh came and informed that Ashok Manjhi was cutting the foundation over his land. Further prosecution case is that the demarcation has already been done by Anchal Amin and Panches had also given an award which was registered and bricks were fixed in order to separate the land of the informant from the land of the appellants. It is also the prosecution case that the informant went there and asked Ashok Manjhi not to cut the foundation in his land on that Ashok Manjhi dealt *hura* blow of *lathi* aiming on his chest and Lalan Choudhary and son of Jari Choudhary, Banke Manjhi, Gurmali Manjhi, Lal Babu Manjhi son of Gurmali Manjhi, Jagarnth Giri a son of Lagan Deo Giri, Paraspatti caught hold to the informant in order to facilitate assault on his person and on the exhortion of Jagarnath Giri, Ambika Manjhi with an intention to kill him inflicted *farsa* blow aiming at his head and causing injury on right side of the head of the informant and further it is alleged that he set fire to his hut and on *hulla*, Lalsa Manjhi, Suraj Chaudhary and Ramashray Choudhary came there .

4. On the basis of the aforesaid fardbeyn Jamo P.S.Case No.35 of 1989 was registered. After investigation, cognizance was taken and the case was committed to the court of Sessions, which



ultimately came to the file of Sri Anant Prasad Srivastava, Adhoc District and Sessions Judge, Presiding Officer, Ist Addl. Fast Track Court, Siwan for trial and disposal.

5. On behalf of the appellants during the trial, charges were framed under Sections 147, 148, 307 and 149 of the IPC and to prove the charges, the prosecution has examined altogether four witnesses, they are P.W.1 Ramashray Choudhary, who claims to be eye witness of the occurrence, P.W.2 Rajeshwr Singh, who claims to be eye witness of the occurrence, P.W.3 Madan Choudhary informant and the injured, and P.W.4 Dr. Halwant Singh, who has examined Madan Choudhary. Apart from the above, following documents have been brought on record they are Ext. 1 FIR, Ext.2 & 2/1 Injury report, Ext.3 Report of Anchal Amin and Ext.4 deed dated 7.7.1989 .

6. On behalf of the defence also, two witnesses have been examined, they are D.W.1 Sharma Manjhi and D.W.2 Asharfi Manjhi. Following documents have been brought on record : Ext. A Charge sheet of Jamo P.S.Case No.36 of 1989, Ext.B. Certified copy of formal FIR of Jamo P.S.Case No.36 of 1989, Ext.C certified copy of fardbeyan of Jamo P.S.Case no.36 of 1989, Ext. D/1 injury report of Ambika Manjhi, Ext. E photocopy of X-ray



report and Ext. F certified copy of Judgment in T.R.No.110 of 1992.

7. The learned trial court on conclusion of the trial has convicted the appellant no.1 Ashok Manjhi under Sect 323 of the IPC and appellant no.2 Ambika Manjhi under Section 324 of the IPC and sentenced as mentioned above. However, the appellants were not found guilty under Section 307/149 of the IPC and Section 147 and 148 of the IPC and other accused persons have also been acquitted from the charges levelled against them.

8. Learned Amicus Curiae has assailed the judgment on the ground that in this case the learned trial court has failed to consider that there was land dispute between the parties and the case has also been lodged by the appellants' side for the occurrence on the same day and in which appellant Ambika Manjhi has also received injuries and as such it is a case of free fight, hence, they were given benefit of doubt but they have wrongly been convicted under Sections 324 and 323 of the IPC. Further submission is that there is contradiction in the evidence of the witnesses and moreover the I.O. has not been examined and non-examination of the I.O. has caused serious prejudice to the appellants as the place of occurrence has not been fixed in this case.

9. On the other hand the learned counsel for the State has



defended the judgment of the guilt and submitted that P.W.3 is injured in this case and he has supported the prosecution case about assault to him and his evidence found further corroboration from the Doctor who has found injuries over the person of the informant and his evidence has also found support from the evidence of P.Ws.1 and 2 who are also witnesses of the occurrence and they have stated that the informant has received injuries caused by the appellants and as such conviction of the appellant under Sections 323 and 324 of the IPC is just and proper and it does not require any interference.

10. In the background of the argument as advanced by the rival parties and on perusal of the evidence it appears that P.W.3 is the informant in this case and he has supported the prosecution case and stated that he was assaulted by Ashok Manjhi by *hura* of the lathi on his chest and by Ambika Manjhi on the head and the Doctor has also found injuries over the person of the injured and found following injuries over the person of the injured : -

“i. Sharp cut injury on the middle of head slightly towards right from the middle side size 1.75 inches $\frac{1}{4}$ ” X $\frac{1}{4}$ ”.

ii. Pain and tenderness on right side of chest below and lateral from breast.”

11. Injury no.2 was found to be simple in nature and the



injury no.1 was opined by the Doctor to be grievous however, the Radiologist has not been examined as such the learned trial court has rightly convicted the appellants under Sections 323 and 324 of the IPC only . Further the medical report supports the evidence of P.W.3 as he has also stated about the assault on chest by *hura* of lathi and on the head by sharp cut weapon. Further the evidence of P.W.3 (informant) was found corroboration from the evidence of P.Ws.1 and 2 who also appear to be eye witnesses of the occurrence and the prosecution story is also corroborated by the fardbeyan of the informant kept as Ext.1 which is FIR. No doubt it appears that there was land dispute between the parties which has already been adduced by the informant saying that the demarcation has already been made, however the defence has brought Exts. A to F on the record and Exts. A to C have already been brought by the appellants side against the informant and others and Exts. D and D/1 also shows that Ambika Manjhi has also received injuries in that occurrence and Ext.F is the judgment in T.R.No.110 of 1992 in order to say that Ambika Manjhi has also received injuries at the hands of the informant however, no evidence has been adduced on behalf of the defence in support his contention. Even if it is believed that Ambika Manjhi has also received injuries but the question is that who are the aggressor and whether the action of the appellants



was within their right to prove defence. But in the present case his evidence clearly shows that Madan was assaulted by the appellants and one of the injuries was by sharp cut weapon and another injury by the *hura* of the lathi and the Doctor has corroborated those evidence whereas the evidence has been brought on behalf of the defence to prove that he has been assaulted in the same occurrence. In such view of the matter, conviction of the appellants under Sections 323 and 324 of the IPC appears to be just and proper and it does not require any interference by this Court.

12. So far point of sentence is concerned, submission of the learned counsel for the appellants is that admittedly there is land dispute between the parties and the counter case has also been filed and the appellant no.2 has remained in custody for about 17 days and he is aged about 60 yrs and the appellant no.1 is aged about 55 years which will appear from the judgment itself and he has been convicted under Section 323 of the IPC . In such a situation, lenient view may be taken against them and they may be given benefit of Section 360 of Cr.P.C. and be released on admonition.

13. On perusal of the record it appears that the appellant no.2 has remained in custody for 17 days and moreover it appears that the appellant no.2 has also received injuries and there is case



and counter case also and it appears that there is case of land dispute, in such view of the matter, taking lenient view sentence of the appellant no.2 is reduced to the period already undergone in custody. So far appellant no.1 is concerned, he has been convicted under Section 323 of the IPC only and he is aged about 55 years, as appears from impugned judgment and the occurrence is about 29 years old as such taking lenient view in place of confirming the sentence of one year under Section 323 of the IPC is directed to be released on admonition under Section 360 of the IPC.

14. With the aforesaid modification, this appeal is dismissed. Before departing I must thanks Amicus Curiae for valuable assistance given to the Court and she will be entitled for the remuneration as provided by Patna High Court Legal Services Committee.

(Vinod Kumar Sinha, J)

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