

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.221 of 2003

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

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1. Dwarika Yadav
 2. Shital Yadav, both sons of Late Saukhi Yadav (since dead)
 3. Visheshwar Yadav, son of Late Shiva Nand Yadav
 4. Bakhori Yadav, son of Kashi Yadav
 5. Ram Swaroop Yadav, son of late Nathu Yadav
 6. Suresh Yadav, son of Pradeep Yadav
 7. Yogendra Yadav, son of Dwarika Yadav
 8. Rajesh Yadav, son of Ram Swaroop Yadav
 9. Sadan Yadav, son of Late Prabhu Yadav (since dead)
 10. Kharo Yadav, son of Late Mattar Yadav (since dead)
 11. Sadhu Sharan Yadav, son of Shital Yadav
 12. Sivan Yadav, son of Late Gaya Yadav, all residents of village Paighambarpur,
P.S. Sheikhpura, District Sheikhpura

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. N.A. Shamsi, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 03-05-2018

Twelve appellants have preferred this appeal, out of whom appellants Dwarika Yadav, Shital Yadav, Visheshwar Yadav and Bakhori Yadav have been convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and a fine of Rs.2000/- with default clause except appellant Visheshwar Yadav, who has been sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.2500/- with default clause and rest of the appellants have been convicted under Sections 307/149 IPC and sentenced to undergo rigorous imprisonment for three years vide judgment dated 25.3.2003 and order dated 27.3.2003



passed by Sri Binoda Nand Jha “Vineet”, the then Assistant Sessions Judge, Sheikhpura in Sessions Case No. 532 of 1988/Trial No. 20 of 2003.

2. Prosecution case, in short, is that the informant Lalendra Yadav (PW 3) while ploughing his field and his uncle and other relatives were also sitting there, the appellants variously armed came there and asked the informant as to why he was ploughing the field and in reply informant told that that land belonged to him, upon which appellant Shital Yadav gave a “Garasa” blow to uncle of the informant Sarju Yadav and appellant Bakhori Yadav also assaulted Sarju Yadav with ‘Bhala” on his stomach and appellant Dwarika Yadav gave “Garasa” blows to the informant and his grandfather Shital Yadav and appellant Visheshwar Yadav inflicted “saif” to the informant and others and other accused appellants were having bricks and lathi. Appellant Yogendra Yadav also snatched wrist watch of the informant when he became unconscious and appellant Dwarika Yadav snatched golden “Tabij” from the neck of informant. Thereafter villagers came and informant was taken to Sheikhpura Hospital for treatment.

3. The aforesaid fardbeyan led to registration of Sheikhpura P.S. Case No. 84 of 1987. Post investigation charge sheet has been submitted and after cognizance the case has been committed to the court of sessions, which ultimately came 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 PW 1 Hari Charan Yadav, who has been declared hostile, PW 2 Kaleshwar Yadav, who claims to be eye-witness to the occurrence, PW 3 Lalendra Yadav, the informant and injured, PW 4 Shital Yadav, who claims to be eye-witness to the occurrence and injured, PW 5 Sarju Yadav, injured, PW 6 Dr. R.P.Jaiswal, who has treated the injured persons, including the informant, PW7 Prayag Yadav, who has been tendered for cross examination, PW 8 Naresh Prasad, Advocate Clerk, who has proved Exts. 2, 2/A and 4 and PW 9 Prajapathi Yadav has proved Exts. 5 and 5/1. Apart from that one witness has been examined as court witness, Balmiki Prasad, who is an Advocate Clerk and proved Ext.6.

5. Besides ocular evidence the following documents have been brought on record as exhibits, they are Ext.1-signature of Kaleshwar Yadav on seizure list, Ext.1/1- signature of Ram Nandan Yadav on seizure list, Ext.2- signature of informant Lalendra Yadav on fardbeyan, Exts. 3 to 3/3- injury reports, Ext.2/A- fardbeyan, Ext.4 FIR, Ext.5- signature of Doctor on X-ray report, Ext.5/1- medical report of Dr. R.P.Jaiswal, Ext.6- writing and signature on seizure list, Ext.7- certified copy of order passed in Case No. 722 M/86.

6. On behalf of defence no ocular evidence has been adduced but the following documents have been brought on record as exhibits,



they are Ext.A- formal FIR of SC No. 284/90, Ext.B- copy of complaint Case No. 118C/87 in Sessions Case No. 284/90, Ext.C- certified copy of order dated 8.8.88 and 31.8.88 in Mutation Case No. 3 of 86-87 of DCLR, Ext.C/1- certified copy of order sheet dated 16.3.92 of Mutation Revision No. 108 of 87-88 of Collector, Munger and Exts. D to D/1- Notice to Rambilash Yadav and AMM Notice – case No. 3 of 86-87.

As per defence allegation it appears that there is case and counter case between the parties and the same has been admitted by PW 7 who has been tendered for cross examination and he has stated in his evidence in court that accused persons have lodged a case against the informant of the case and that also appears from the evidence of other witnesses also. Further defence is that they have falsely been implication due to land dispute between the parties.

7. Learned trial court on conclusion of trial has convicted appellants 1 to 4 under Section 307 IPC and other appellants under Sections 307/149 IPC and sentenced them as stated above.

8. Learned counsel for the appellants has assailed the impugned judgment on the ground that evidence shows that there is land dispute between the parties and FIR shows that informant was not allowed to plough the land by the appellants and, as such, occurrence took place and there is case and counter case between the parties and it is also admitted by PW 7 and other witnesses that in the



counter case appellants' side has also received injuries and suggestion has been given to the witnesses in this regard and in such a situation conviction of the appellants under Section 307 and 307/149 IPC does not appear to be just and proper and not sustainable in the eye of law. It is further submitted that in this case I.O. has not been examined as such prosecution has failed to establish its case on the background of case and counter case and land dispute between the parties and it appears that defence has also brought on record the document that mutation case was pending between the parties. Further submission of learned counsel for the appellants is that occurrence took place in the year 1987 and 30 long years have passed and appellants were in custody for some time.

9. On the other hand, learned counsel for the State has supported the finding of guilt and submitted that there are consistent evidence on record and the same has been corroborated by the evidence of Doctor who found some of the injuries were grievous in nature and as such conviction of appellants under Section 307 and 307/149 IPC appears to be just and proper and does not require any interference by this Court.

10. In the background of contention of the parties, on examination of the evidence it appears that PW 3 is the informant in this case and in his evidence in court he has supported the prosecution case so far genesis of occurrence and manner of occurrence and has



stated that while he was ploughing his field accused appellants resisted him for not doing the same and on protest they started assaulting him and he has given detailed description of assault by the appellants. He has also stated that the land was given by deed of gift to Prayag Yadav by Shankar Yadav and Prayag Yadav is his grandfather. Suggestion has also been given to this witness about assault to appellants Dwarika Yadav and Shital Yadav and he has denied the said suggestion and stated that they were not assaulted. PWs 4 and 5 are the other injured and they have also supported the prosecution case and PW 7 is also injured, who has been tendered for cross examination but there is nothing in his evidence. PW 7 has also admitted that a case has been lodged against the prosecution side. PW 1 has been declared hostile and from evidence of PW 2 it appears that earlier he has deposed against the appellants in proceedings under Sections 144 and 188 Cr.P.C. with respect to the same land and that shows that there was land dispute between the parties with respect to the said land.

11. PW 6 is Doctor in this case and from his evidence it appears that he has found the following injuries on four persons :

Rabindra Yadav : (i) Lacerated injury on left side of scalp 1-1/2" x 1/3" x 1/3", (ii) Abrasion on left side elbow size 1" x 1/6", (iii) Swelling on left elbow size 6" x 4", (iv) Bruise on left upper arm lateral size 4' x 1/2", (v) Two lacerated incised injuries on left upper arm extending to back i.e. up



to lower side of scapula size 4" x 1/6" x 1/6" and 2" x 1/6" x 1/6".

Nature of injury- simple. Injury Nos. (i) to (iv) caused by hard and blunt substance, may be caused by sticks. Injury No.(v) was caused by sharp substance, such as Garasa, Saif.

Shital Yadav : (i) Incised injury on back of neck, size 2" x 1/3" x 1/3", (ii) Incised injury on left side of the scalp, size 1" x 1/4" x 1/4", (iii) Lacerated injury on middle of the scalp, size 1-1/2" x 1/3" x 1/3", (iv) Lacerated injury in front of scalp, size 1-1/4" x 1/2" x 1/3", (v) Bruise on left upper arm, size 4" x 1/2", (vi) Lacerated injury on index finger, size 1/2" x 1/4" x 1/3", (vii) Bruise on back, size 4" x 1/2".

Nature of injury- simple caused by hard and blunt substance except injury No.(i) and (ii) which were caused by sharp substance. Injury No.(i) may be caused by Garasa and injury No.(ii) may be caused by Saif. Other injuries might have been caused by lathi.

Prayag Yadav : (i) Lacerated injury on head, size 1-1/2" x 1/4" x 1/4", (ii) Lacerated injury on right upper arm, size 1" x 1/4" x 1/4", (iii) Abrasion on left palm, size 1/2" x 1/3" x 1/3", (iv) Incised injury on back, size 1" x 1/4" x 1/4", (v) Lacerated injury on left leg, size 2" x 1/2" x 1/3".

Nature of injury- simple caused injury No.(iv) by sharp substance such as Saif and rest injuries were caused by hard and blunt substance such as



lathi.

Sarju Yadav : (i) Lacerated injury on head, size 1-1/2" x 1/3" x 1/3", (ii) Incised penetrating wound on abdomen in epigastria region, size 1-1/4" x 1/2" x depth having thickness of the abdominal wall. Viscera inspected after the leucotomy. Mild contusion was seen on surface, (iii) Incised injury on right hand, size 1-1/4" x 1/4" x 1/4", (iv) Swelling under right eye, size 2" x 1", (v) Incised injury on left side of chest, size 1" x 1/3" x 1/3".

Nature of injury No.(ii) was grievous and rest were simple, Injury No.(iii) & (iv) were caused by sharp substance, such as Saif and by Garasa respectively. Injury No.(ii) was caused by sharp penetrating substance, such as Bhala. Other injuries were caused by hard and blunt substance, such as lathi.

12. However, the Doctor in his cross examination has stated that he has not mentioned in injury report as to whether the injured persons were referred from P.S. or I have referred them to Hospital and in paragraph-7 he has stated that he did not remember if he examined them in my private capacity as a Doctor or as a Govt. Doctor.

From the evidence of Doctor it appears that one of the injuries on the person of Sarju Yadav was found to be grievous in nature, which is on abdomen.

13. It appears that X-ray report has been brought on record as



Ext.5 by formal witness but Radiologist has not been examined and Doctor has also not stated anything about X-ray report. No doubt, learned trial court has tried to explain the same that Doctor has been examined in this case and there is no cross-examination from Doctor about X-ray report. However, X-ray report has been brought on record after examination of the Doctor, in such a situation it appears that defence does not have opportunity to cross-examine Doctor on that point.

14. From perusal of entire evidence it appears that there is case and counter case and though appellants also claim to have received injuries but learned trial court has disbelieved the same on the ground that no injury report has been brought on record nor any evidence has been brought on record but PW 7 has admitted that there is a case lodged against them and admittedly occurrence took place with respect to ploughing of the land. It further appears from evidence that the appellants' side are from the side of maternal uncle of the informant and others and informant and others are descendants of one Sri Gope and Sri Gope have three daughters and informant has received the land on the basis of deed of gift, whereas appellants claim is on the basis of nephew of Sri Gope and in such a situation, it appears that there is land dispute and evidence also shows that there were proceedings of 144 and 188 Cr.P.C. and that was also held earlier between the parties. Thus, evidence clearly shows that land



dispute is from before and there is nothing available on record to show that the accused persons have assaulted the informant and others with an intention to kill them. There is also nothing on record that they have repeated any assault to the informant or any person, as such it appears that due to land dispute the occurrence took place and some of the appellants have received injuries and one injury on the person of Sarju Yadav was grievous in nature and all the injuries are simple in nature and injury on Sarju Yadav has no basis as X-ray report has not been brought on record and the injuries on the persons of others does not appear to be sustainable.

15. Considering the entire discussions made above it appears that at best it is a case of assault by accused persons to the injured and there does not appear that they carry any intention to kill the informant and others. In such a situation, the appellants can at best be held guilty under Section 324 IPC. However, learned trial court has not considered the aforesaid aspects of the matter and convicted the appellants under Section 307 and 307/149 IPC.

16. The conviction of the appellants under Section 307 and 307/149 IPC is modified to the conviction under Section 324 and 324/149 IPC. It appears from the record that the appellants have remained in custody for some days during trial and appeal.

17. Learned counsel for the appellants has submitted that some lenient view may be taken and their sentence may be modified



to the period already undergone by them.

18. In such view of the matter, the case is of 30 years old and sentence of the appellants is reduced to the period already undergone and they are directed to pay a fine of Rs.1000/- each.

19. With the above modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

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