

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.342 of 2003

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

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1. Bambam Rai, son of Net Lal Rai
 2. Prithivi Rai, son of Khelari Rai
 3. Darbari Rai, son of Late Satya Rai (since dead and appeal stands abated against him vide order dated 27.6.2018)
 4. Shyam Behari Rai, son of Net Lal Rai
 5. Binod Rai, son of Net Lal Rai
 6. Surendra Rai, son of Darbari Rai
 7. Premdhar Rai, son of Darbari Rai, all residents of village Nagatola Goraiya Asthan, P.S. Maner, District Patna

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. R.C. Sinha with Mr. Jai Prakash
Singh & Mrs. Arti Singh, Advocates

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 28-06-2018

Appellants Nos. 1, 2, 4, 5 and 7 have been convicted under Sections 324/149 and 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years under Sections 324/149 IPC and further R.I. for six months under Section 147 IPC. Appellant No.3 (since dead) has been convicted under Sections 324 and 148 IPC and have been sentenced to undergo R.I. for two years under Section 324 IPC and further sentenced to undergo R.I. for one year under Section 148 IPC. Appellant No.6 has been convicted under Sections 324/34 and 147 IPC and sentenced to undergo R.I. for two years under Sections 324/34 IPC and further sentenced to under R.I. for six months under Section 147 IPC. The sentences were directed to run concurrently vide judgment and order dated 13.6.2003 passed by Sri



N.C.Lala, the then Presiding Officer, Additional Court No.2, Patna in Sessions Trial No. 39 of 1993/268 of 2001.

2. Prosecution case as per fardbeyan of PW 5 Yogendra Rai, in short, is that on 21.8.1992 at about 2.30 P.M. when he was returning from Patna to his house he saw accused persons had come to uproot his tube well and on protest accused Kitab Rai ordered to assault and accused appellant Surendra Rai caught hold of him and accused appellant Darbari Rai (since dead) assaulted him by farsa on his head. Further prosecution case is that when informant raised alarm Megh Nath Rai (PW 3) and others came there and accused appellant Shyam Behari Rai caught hold of Megh Nath Rai and accused Net Lal Rai assaulted him with farsa on head. It is further case is that other accused persons had brick bats with them and they assaulted the informant and his brother Megh Nath with brick bats also. Further prosecution case is that in the meantime witnesses Sanchit Rai (PW 1) Basanti Rai (PW 4) and others arrived and the accused persons returned to their house.

3. On the basis of aforesaid fardbeyan Maner P.S.Case No. 159 of 1992 was registered. Post investigation charge sheet has been submitted, accordingly cognizance has been taken and after commitment the case has ultimately traveled to the file of Sri N.C.Lala, the then Ad hoc Sessions Judge, Presiding Officer, Additional Court No.2, Patna for trial and disposal.

4. Charges were framed against the accused persons. It



further appears that earlier apart from the appellants three other accused persons were named, including Netlal Rai, Kitab Rai, who died during the pendency of the trial.

5. In support of its case the prosecution has examined five witnesses, they are PW 1 Sanchit Rai, who claims to be eye-witness, PW 2 Satyadeo Rai, who also claims to be eye-witness, PW 3 Meghnath Rai, brother of informant and injured, who claims to be eye-witness, PW 4 Basanti Rai, who also claims to be eye-witness and PW 5 Yogendra Rai, the informant and injured in this case.

6. It appears that Doctor and I.O. have not been examined nor injury report has been brought on record.

7. Apart from the ocular evidence the prosecution has taken into evidence some documents as Exhibits, they are Ext.1- signature of informant Yogendra Rai on written report and Ext.2- copy of judgment of Sessions Trial No. 38 of 1993.

8. On behalf of defence no ocular evidence has been adduced but following documents have been taken into evidence as Exhibits, they are Ext.A- photo copy of formal FIR, Ext.B-certified copy of charge sheet, Exts. C & C/1- certified copy of order dated 10.8.1992 of D.C.L.R. and Ext.D- certified copy of Amin's report.

9. Learned trial court on conclusion of trial has convicted under Sections 324/149, 324/34, 147 and 148 IPC to different appellants and sentenced them accordingly as stated above.

10. Learned counsel for the appellants has assailed the



judgment that in this case, occurrence took place with respect to uprooting of tube well and prosecution evidence disclosed that house of Dalan was adjacent to the house of Yogendra Rai and a demarcation case was pending for measurement of the land and there was some dispute with respect to demarcation which will appear from Exts. C and C/1. It has also been submitted that as a matter of fact tube well was on the land of the appellants and there was dispute with respect to that and for that demarcation case was lodged, which will appear from the prosecution evidence. It has also been submitted that evidence further disclosed that demarcation case was decided in favour of the appellants, which will appear from Ext.D though learned trial court has not considered Ext.D stating that it is not a public document and no formal proof has been made. Evidence clearly shows that occurrence took place with respect to uprooting of tube well and moreover appellants were standing on their darwaja, near the tube well and in such a situation their assembly cannot be said to be un unlawful assembly, rather they were standing on their own land and mob also cannot be said to be unlawful. Further submission is that there are several contradictions in the evidence of PWs. 1, 2, 3 and 4 but I.O. has not been examined in this case and non-examination of I.O. has caused serious prejudice to the defence. Further submission is that prosecution evidence suggests that blood was fallen on the ground, which has not been examined. Further submission is that as I.O. has not been examined the place of occurrence cannot be



established, specially when the claim of the appellants is that the tube well was at their darwaja. It has also been submitted that Doctor has also not been examined in this case and so injuries caused by sharp cutting weapon cannot be established and as such the conviction of the appellants under Section 324 IPC with the aid of Section 149/34 IPC is bad in law and is not sustainable in the eye of law.

11. On the other hand, learned counsel for the State has supported the judgment of guilt and submitted that there are ocular evidences available on record showing that Surendra Rai caught hold of PW 5 Yogendra Rai and Darbari Rai assaulted him by farsa and evidence further shows that Shyam Behari Rai caught hold of Meghnath Rai, brother of informant, and Netlal Rai assaulted him by farsa and even if Doctor has not been examined, ocular evidence is sufficient to hold the appellants guilty. It further appears from the prosecution evidence disclosed that appellants were armed with weapons and they have assaulted the informant and his brother by catching hold of them by accused persons and in such a situation conviction under Sections 147, 148 and 324 with the aid of Section 149 IPC is just and proper which does not require any interference by this Court.

12. In the background of the submission advanced by both the parties while examining evidence it appears that PW 5 is the informant in this case and he has supported the prosecution case stating that when he objected accused Surendra Rai caught hold of



him and accused Darbari Rai assaulted him by farsa though he has stated in his evidence that Darbari Rai assaulted him 2-3 times by farsa but it has not been mentioned in his fardbeyan that he has assaulted by farsa 2-3 times. He has further stated in his evidence in chief that Megh Nath Rai came to save him and he was also caught hold by Shyam Behari Rai and accused Netlal Rai assaulted him by farsa 2-3 times but initial prosecution case does not disclose that he was assaulted 2-3 times.

13. So far PWs. 1, 2 and 4 are concerned, the judgment of the trial court in paragraphs 15 and 16 shows that they did not appear to be eye-witnesses to the occurrence but in spite of that learned trial court has believed their evidence stating that their evidences have been corroborated by the evidence of PWs. 3 and 5. So far evidence of PW 4 is concerned, he has also supported the prosecution case as per evidence of PWs. 1, 2 and 5, who have stated that assault was made to the injured 2-3 times but as I have discussed above, there is no such case as per FIR. It appears from perusal of the record that FIR of the counter case has been brought on record as Ext.A and charge sheet has also been brought on record as Ext.B from which it appears that appellant Darbari Rai has lodged the counter case against the informant and others in which witnesses were PWs. 1 to 5 in this case. It further appears from perusal of the evidence that witnesses are related also which will appear from the evidence of PW 2 and that has also been considered by learned trial court but learned trial court has



explained the same stating that PWs. 3 and 5 are injured and their evidence is trustworthy and their evidence is corroborated by evidence of other witnesses also. It further appears from the evidence of witnesses that house of Netlal is situated just outside the house of informant Yogendra Rai (PW 5) and tube well is in the house of Yogendra Rai though prosecution party admits that there is dispute with respect to tube well and appellants wanted to uproot the same and further it appears that order sheet of demarcation case has been brought on record on behalf of defence which shows that there was some dispute with respect to demarcation of land between the parties. Ext.D was also part of record showing that Amin found the tube well in the land of the accused Netlal though learned trial court has not considered this aspect of the matter saying that it is not formally proved. Considering the evidence it clearly appears that there was dispute between the parties from before and the house of the appellants is situated outside the house of the informant and in such a situation if the appellants were remained there it cannot be said that they formed an unlawful assembly as they were standing in front of their house and apart from that so far appellants are concerned, there is evidence that they have assaulted by brick bats and two appellants caught hold of the injured persons. In this case I.O. has not been examined and there is nothing on record that brick bats were found near the place of occurrence. Further had the I.O. been examined in this case he would have thrown some light about the occurrence and



position of tube well also. Apart from the evidence of PWs 1 and 3, in paragraphs 10 & 11 of evidence of PW 1, paragraphs 12, 13 & 14 of evidence of PW 4 attention of the witnesses has been drawn towards their earlier statement and they have denied the earlier statement and if I.O. has been examined he would have confronted with the above fact of this case as such some prejudice is caused to the defence. Learned trial court has tried to explain stating that those evidence were omission and not vitally contradicted and as such non-examination of I.O. has not made any difference. In this case Doctor has also not been examined and injury report has also not been brought on record and submission of learned counsel for the appellants is that in absence of their non-examination conviction of the appellants under Section 324 with the aid of Sections 149 and 34 IPC does not appear to be proper as there is absolutely nothing on record to show that sharp cutting injury was found on the persons of injured.

14. In course of argument learned counsel for the appellants has submitted that in view of non-examination of Doctor and non-availability of injury report the conviction of the appellants under Section 324 with the aid of Sections 149 and 34 IPC does not appear to be sustainable in the eye of law.

15. Considering the discussions made above, so far Sections 147 and 149 IPC are concerned, admittedly there was dispute between the parties from before and appellants were standing on their own



darwaja and as such it cannot be said that they formed an unlawful assembly and appellants cannot be convicted under Section 324 IPC with the aid of Section 149 IPC or under Section 147 IPC. Further conviction of the appellants under Section 324 IPC also cannot be free from reasonable doubt, in absence of examination of Doctor.

16. Considering the entire aspects of the matter, it appears that appellants were at least entitled to the benefit of doubt in the present case mainly on the ground of non-examination of I.O. and Doctor.

17. In view of the discussions made above, the 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/-

AFR/NAFR	
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