

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.307 of 2002

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

- =====
1. Sheonath Rai, Son of Lalbahadur Rai
 2. Rampravesh Rai, Son of Lal Bhadur Rai
 3. Deonath Rai, Son of Ram Dular Rai
 4. Ram Kumar Rai, Son of Lakhraj Rai
 5. Rajnath Rai, Son of Ram Dular Rai
 6. Prabhunath Rai, Son of Ram Dular Rai.
- All residents of village – Rajapur, Police Station – Basantpur, District - Siwan

.... Appellants

Versus

State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Neeraj Kumar @ Sanidh, Adv
Mr. Raghav Prasad, Adv
Mr. Rajesh Sharma, Adv
Mr. Niraj Pinali, Adv

For the Respondent/s : Smt. Abha Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-04-2018

This appeal is directed against the judgment of conviction and order of sentence dated 12.06.2002, passed by Shri Anant Prasad Srivastava, the then, Additional District & Sessions Judge, Presiding Officer 1st Additional Fast Track Court, Siwan, in Sessions Trial No. 97/92 90/2001, by which the appellant Deo Nath Rai was convicted under Section 148, 324, and 447 of the Indian Penal Code (hereinafter referred to as “the IPC”) and was sentenced to undergo R.I. for one year under Section 148 and R.I. for one year under Section 324 of the IPC and no separate sentence was passed under Section 447 of the IPC and other appellants were convicted under Sections 147, 323 and 447 of the IPC and were



sentenced to undergo R.I. for one year under Section 147 of the IPC and R.I. for six months under Section 323 of the IPC. All the above sentences were directed to run concurrently.

2. Earlier, on the submission of learned counsel for the appellant that appellant no. 2, namely, Rampravesh Rai has died during pendency of the appeal, a report was called for from the Superintendent of Police, Siwan with regard to death / alive status of the said appellant and from the report it appears that he has died during the pendency of appeal. As such this appeal with regard to appellant appellant no. 2, namely, Rampravesh Rai stands abated.

3. Prosecution case as per the fardbeyan of informant Bharat Singh (P.W. 5) recorded by the A.S.I. of Basantpur police Station, in short is that on 15.9.1987 at about 12 P.M., his uncle Ram Pujan Singh (P.W. 2) had gone to see his field of plant of *Masuri* pulse, where, he found that appellant Prabhu Nath Rai and accused Ram Pravesh Rai had been cutting *Masuria* plants, which were said to be used as fodder of the animals in his field, uncle of informant Ram Pujan Singh (P.W. 2) objected and appellants went away. It is further alleged that on the same day, all the appellants along with fifty to sixty other persons, armed with *lahti*, *bhala* and *farsa* came at the door of the informant and started abusing them and accused Ram Dular Rai, who armed with *farsa* ordered other appellants to kill the persons of the side of informant, himself gave a *farsa* blow to Ram Pujan Singh (P.W.2), which caused injury on his head and he became



unconscious and appellant Prabhu Nath Rai and Raj Nath Rai assaulted him by means of *lathi*. Further case of the prosecution is that when the informant, his brother Binod Kumar Singh (P.W. 1), Anil Kumar Singh (P.W. 3) and his grand father Sheo Balak Singh rushed to save Ram Pujan Singh (P.W.2), then appellant Prabhu Nath Rai and accused Ram Pravesh Rai assaulted the informant by means of *lathi*, appellant Deo Nath Rai assaulted Binod Kumar Singh (P.W. 1) by means of *farsa*, which hit his head and appellant Prabhu Nath Rai assaulted Anil Kumar Singh by means of *lathi*. It is further alleged that grandfather of the informant was also assaulted by Prabhu Nath Rai and appellant Deo Nath Rai further assaulted Binod Kumar Singh (P.W. 1) inside the house and one Shila Kumari (sister of the informant) and other family members have also been assaulted.

4. The aforesaid fardbeyan of informant, led to registration of Basantpur P.S. Case No. 74 of 1987. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Anant Prasad Srivastava, the then, Additional District & Sessions Judge, Presiding Officer 1st Additioanl Fast Track Court, Siwan for trial and disposal.

5. To prove its case, prosecution examined altogether nine witnesses. They are: P.W. 1 – Binod Kumar Singh, brother of informant and claimed to be injured, P.W. 2 - Ram Pujan Singh, uncle of the informant and one of the injured, P.W. 3 – anil



Kumar Singh, brother of informant and an injured, P.W. 4 – Radha Mohan Singh, an independent witness, P.W. 5 – Bharat Singh, informant and injured, P.W. 6 – Dr. Surendra Prasad Singh, who treated the informant, P.W. 7- Ram Ayodhya Singh, declared hostile by the prosecution, P.W. 8 – Mahesh Rai a formal witness and P.W. 9 – Gopal Prasad is also a formal witness, who proved the F.I.R.

6. Neither oral nor documentary evidence has been brought on record by the defence and their defence is of false implication and of innocence.

7. On conclusion of trial, the Trial Court, though not found the case under Section 307 of the IPC but has convicted the appellant Deo Nath Rai under Section 148, 324, and 447 of the IPC and has also convicted other appellants under Sections 147, 323 and 447 of the IPC and sentenced them in the manner aforesaid.

8. Being aggrieved, the appellants preferred the present appeal.

9. Learned counsel for the appellants assailed the impugned judgment on the ground that half of the prosecution story, itself has not been believed by the Trial Court as it has not found the appellant guilty under Section 307, 380 and 379 of the IPC. Further submission is that in this case though P.W. 1 , P.W. 2 and P.W. 3 claimed themselves to have received injuries but the doctor, who examined and treated these witnesses has not been examined in the court and as such, there is no corroboration of their injury by the medical evidence. So far evidence of P.W. 6 - Dr. Surendra Prasad Singh, who treated



the informant is concerned, he has been examined and his evidence disclosed that the informant sustained one lacerated wound, bruise and swelling but those injuries were simple in nature. It has also been submitted that in this case, Investigating Officer has not been examined and in absence of examination of Investigating Officer, place of occurrence and manner of occurrence remained to be proved as the defence could not get the opportunity to cross-examine him on the point of earlier statements of witnesses recorded before the police. It has further been contended that prosecution case disclosed that two other persons, namely, Sheo Balak Singh (grandfather of the informant) and Shila Kumari (sister of informant) had also received injuries but surprisingly, they have not been examined by the prosecution, which casts a serious doubt and suggests that the prosecution has suppressed some material facts and the trial court without considering all these facts has convicted the appellants in this case, which is out and out perverse and not sustainable in the eye of law.

10. On the other hand, learned counsel appearing on behalf of respondent – State has supported the finding of guilt recorded by learned Trial Court and has submitted that there are consistent evidence of witnesses to prove that on the alleged date of occurrence, appellants and others came variously armed and assaulted indiscriminately causing injuries to P.W. 1, P.W. 2, P.W. 3 and P.W. 5 and the evidence of P.W. 6, Dr. Surendra Prasad also corroborates



the said allegation as he had found the injuries on the person of the informant and, therefore, there is no infirmity in the impugned judgment of trial court and conviction of the appellants is just and proper and does not require any interference.

11. Heard both sides and considered the submissions made on behalf of the parties. On perusal of the evidence, it appears that P.W. 5 is the informant in this case and he has supported the prosecution case so far manner of occurrence and place of occurrence is concerned and his evidence has also been corroborated by the evidence of other witnesses viz. P.W. 1, P.W. 2, P.W. 3 and P.W. 4 as well as by the P.W. 6 Dr. Surendra Prasad, who found injuries on the person of the informant. No doubt, attention of the witnesses have been drawn towards their earlier statement made before the police, however, since the Investigating Officer has not been examined in this case, the defence has not got the opportunity to cross-examine the informant with regard to earlier statement of the witnesses. Further it appears that P.W. 1, P.W. 2 and P.W. 3 also claimed themselves to have received injuries but the prosecution has not examined the doctor, who had treated them in the hospital as it is stated that they were hospitalized also and one of the witnesses was also in unconscious condition and non examination of doctor has certainly caused prejudice to the defence as had he been examined, he would have been examined on the point of assault to the witnesses. As such, in the circumstances as stated, above the appellants at least deserve the



benefit of doubt.

12. Accordingly, this appeal is allowed. judgment of conviction and order of sentence dated 12.06.2002, passed by Shri Anant Prasad Srivastava, the then, Additional District & Sessions Judge, Presiding Officer 1st Additional Fast Track Court, Siwan, in Sessions Trial No. 97/92 90/2001, is hereby set aside.

13. As the appellants are on bail, they are discharged from liability of bail bonds.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.05.2018
Transmission Date	10.05.2018

