

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.343 of 2015**

Arising Out of PS.Case No. -351 Year- 2008 Thana -BARACHATTI District- GAYA

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1. Dhelan Mahto, son of late Saman Mahto
 2. Pragesh Mahto, son of Dhelan Mahto
 3. Jagdeo Prasad, son of Dhelan Mahto, all resident of Village Mushaila P. S. Barachatti, (Mohanpur) Dist Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. S. N. Yadav-Advocate
Mr. Nikhilesh Kumar-Advocate
For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 16-02-2018

Appellants Dhelan Mahto, Pragesh Mahto and Jagdeo Prasad have been found guilty for an offence punishable under Section 307/34 of the I.P.C. and each one has been sentenced to undergo S.I. for seven years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for one year, additionally, under Section 324/ 34 of the I.P.C. and each one has been sentenced to undergo S.I. three months, under Section 323/34 of the I.P.C. and each has been sentenced to undergo S.I. for one year, under Section 447/34 of the I.P.C. each one has been directed to undergo S.I. for three months, with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 30.05.2015 passed by the 9th Additional Sessions Judge, Gaya in Sessions Trial No.213 of 2014/ 280 of 2010.



2. Naresh Mistry (PW-8) had filed written report on 07.12.2008 alleging inter alia that on the same day at about 6.00 a.m., he had gone to his shop, during midst thereof, Dhelan Mahto, Pragesh Mahto and Jagdeo Prasad, co-villagers came at his house and indulged in an altercation with his wife. On account thereof, his wife came to shop and accompanied him. He along with his wife came to his house from his shop and found, all the accused persons standing at his Darwaza. He disclosed that why you people were indulged in an altercation. They all have to live altogether. On an order of Dhelan Mahto, Pragesh Mahto caught hold him and then, Dhelan Mahto and Jagdeo Prasad, who were armed with Khanti, began to assault over his head as a result of which, he sustained injury over his head and blood came out. He fell down after being unconscious. On hue and cry raised by his wife, people assembled seeing whom, the accused persons escaped there from. The motive for the occurrence has been suggested as the land of the accused persons lies adjacent to his house and for that, the accused persons frequently indulged in quarrel. Today also, they have quarreled in the aforesaid background.

3. After registration of Barachatti (Mohanpur) P. S. Case No.351 of 2008, investigation commenced and concluded by way of submission of chargesheet followed with trial meeting with ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the



Cr.P.C. is that of complete denial. It has also been pleaded that the brother of one of the appellants namely Dinesh Prasad, happens to be an idiot, was borne by the prosecution party, who succeeded in getting a sale deed with respect to the land belonging to them and to take forceful possession thereupon, got this case filed. Also exhibited certain documents as Exhibits-A, B, C.

5. In order to substantiate its case, prosecution had examined altogether ten PWs, who are PW-1 Krishna Kumar @ Mithu Kumar, PW-2 Manoj Kumar, PW-3 Lakhandeo Prasad, PW-4 Vinay Kumar, PW-5 Rinku Devi, PW-6 Lalita Devi, PW-7 Arvind Kumar, PW-8 Naresh Mistry, PW-9 Dr. Madhusudan Prasad and PW-10 Nageshwar Paswan, I.O. as well as had also exhibited viz. Exhibit-1, injury report, Exhibit-2 formal F.I.R., Exhibit-2/1, written report, Exhibit-3, original Kewala dated 11.08.2009, Exhibit-3/1, original Kewala dated 19.07.2007. Side by side, defence had, though had not adduced oral evidence, but exhibited certain documents as Exhibit-A, sale deed dated 26.09.1991, Exhibit-B, certified copy of complaint petition of Complaint Case No.525 of 2003, Exhibit-C, Kewala dated 19.07.2007 executed by Dinesh Prasad.

6. While challenging the finding recorded by the learned lower Court, it has been submitted by the learned counsel for the appellants that had there been proper judicial approach at the end of the learned lower Court over the facts and circumstances of the case so emerging from the record, appellants would not be liable to be



convicted and sentenced. To substantiate the same, it has been submitted that there happens to be admission at the end of the prosecution with regard to status of Dinesh Prasad, brother of the appellant being suffering from mental disorder. Furthermore, they have also admitted that they had purchased land from Dinesh. That being so, the prosecution party knowing full well that Dinesh Prasad was legally not competent to execute a sale deed, influenced him and then, got a sale deed, which has got no identity in the eye of law. When the evidence of informant (PW-8) is gone through, he had admitted that after execution of sale deed by Dinesh Prasad, he again got a sale deed from Chandan for the same land and that happens to be sufficient to suggest the dubious character of the prosecution, although was very much aware of the fact that aforesaid land had already been purchased by the appellants much earlier from the Chandan and others and further, were over the land peacefully. They have also admitted that with regard to the aforesaid land, the parties happen to be on strained relationship. Cases were being fought and the present one happens to be a link thereof. Therefore, whatever been asserted, could not be accepted in the background of the fact that it is prosecution, who anyhow, wants to go over the land and that being so, the allegation whatever been, could not be accepted.

7. Then, it has been submitted that though written report is absent with regard to taking away pipe through a field wherein garlic plant were standing, but during course of evidence, the same



has been introduced. PW-8 had admitted that with regard to aforesaid plot, the parties are on strained relationship and so, the aforesaid theme has been introduced only to claim possession over the land under dispute. Apart from this, the aforesaid theme is not at all found supported with by the objective finding by the I.O. (PW-10).

8. Now, coming to status of the witnesses, it has been submitted that PWs-2, 3 have not supported the case of the prosecution as they failed to claim themselves to be an eye witness to occurrence rather they claimed that after their arrival at the P.O., they were disclosed regarding the occurrence and so, comes within the category of hearsay witness. So far remaining witnesses are concerned, apart from their interestedness as the PW-8, being the informant himself, other happens to be closely associated with the informant and that being so, their evidences are not at all fit for acceptance. When the evidence of daughter-in-law of informant (PW-5) is taken together with the evidence of informant (PW-8), then in that circumstance, the same cast doubt over genuineness of the prosecution version being contradictory to each other, more particularly in the background of the fact that neither wife of the informant has been examined nor his son. Furthermore, it has also been submitted that PW-9 is the doctor, whose evidence could not be relied upon at least to the extent of corroborating the case of the prosecution in the background of deficiency persisting in the prosecution case.



9. It has also been submitted that in case, prosecution case is found duly substantiated, then in that circumstance, considering the evidence of the informant (PW-8) as well as doctor (PW-9), it could not be a case whereunder appellants could be convicted for an offence punishable under Section 307 of the I.P.C. in the background of the fact that in spite of having armed with Khanti and in spite of absence of any intervening circumstance and further, considering the nature of the injury having over the person of the informant as found by the doctor (PW-9), neither it substantiates the act of the appellants to have inflicted the injuries with an intention or with knowledge that aforesaid injuries were sufficient to cause death. That being so, the case of the prosecution is found absolutely deficient one and even if is found, at least did not justify application of Section 307 of the I.P.C.

10. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that from the evidence of PW-9, it is apparent that finding is not at all being contradicted and if taken together with the evidence of the victim (PW-8), the evidence is found sufficient to identify culpability of the accused/ appellants corroborated by the objective finding of the I.O. (PW-10). Consequent thereupon, the judgment did not require interference.

11. It is needless to say that by catena of judicial pronouncement, it has been settled at rest that the evidence of an



injured happens lies on upper pedestal, unless and until, there happens to be cogent ground to infer adverse thereto. From the record, it is evident that only PW-8, informant, is injured. In ***Chandrasekar and another vs. State of Tamil Nadu reported in 2017(4) P.L.J.R. 220 (SC)***, it has been held:-

“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to Brahm Swaroop v. State of U.P., (2011) 6 SCC 288 observing as follows:

“28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”

12. PW-9 had examined the informant (PW-8) Naresh Mistry on 07.12.2008 at 8.00 a.m. and found the following:-

i) Sharp cut wound on forehead right side 6 c.m. x bone deep, margin regular and bleeding.

ii) Sharp cut wound on right parietal region 4 c.m. x bone deep, margin regular.

iii) An abrasion behind injury no.(ii) surrounded with reddish tender contusion. Abrasion being 3 c.m. x 5 c.m. and contusion being 5 c.m. x 4 c.m.

iv) Contusion on right forearm 6 c.m. x 4 c.m.



reddish tender. All injuries are simple caused by hard and blunt substance except injury no.(i) and (ii), which were caused by sharp cutting weapon. Age of injury within 24 hours.

At Para-4 of his examination-in-chief, he had stated that injury no.1 was found bleeding and in his opinion, it might have proved fatal to the life. During course of cross-examination at Para-5, he had stated that injury nos.1 and 2 could not be manufactured. Then there happens to be cross-examination relating to injury nos.3 and 4. Lastly, he had stated that if one could take risk of life then anything could happen including creation of injury nos.1 and 2. The aforesaid suggestion is to be seen in the background of evidence of PW-8 (informant/ injured).

13. PW-8 had deposed that on the alleged date and time of occurrence, he was at his shop. His wife came to call him as Pragesh Mahto, Jagdeo Prasad and Dhelan Mahto were taking away pipe through his land over which garlic plant was standing and during course thereof, they were threatening to assault. On this, he came and forbid the accused persons, whereupon all of them began to assault. Pragesh Mahto caught hold him and Dhelan Mahto, Jagdeo Mahto assaulted with Khanti. He fell down, his wife began to raise alarm attracting so many persons, who lifted him to police station where police had recorded his statement, whereupon he put his L.T.I. Police had also sent him to Mohanpur Hospital where he was treated. He had further stated that on account of taking away the pipe through his field wherein garlic plant was standing, the crop became damaged. Garlic



plant was planted by him. He had further stated that he purchased the share of Dinesh Prasad, son of Dhelan Mahto and since thereafter, land happens to be in his possession. Because of the fact that the land happens to be in name of Chandan Mahto, on account thereof, Karmchari declined to mutate his name, whereupon he returned back the consideration amount to Dinesh Prasad and got a sale deed from Chandan Mahto, then his name has been mutated, identified the accused. During cross-examination at Para-3, he had stated that at the time of occurrence, he was at his shop, which lies at a distance of 500 yards from his house while the house of the accused lies 200 yards from his house. In Para-4, he had stated that when his wife came to shop, then he accompanied her. When he came, he saw accused persons sitting by the side of his field. The place where the accused persons were sitting belonged to Badhai Mistry. At that very time, none other than the accused persons present. In Para-5, he had stated that first of all, they indulged in an altercation and then, quarrelled and then thereafter, marpit took place. Thereafter, villagers arrived. At Para-6, he had admitted that he is claiming the land while accused persons were also claiming the land. He had further stated that occurrence took place for nearly about ten minutes. During course thereof, there was repeated lathi as well as khanti blow. He after sustaining injury, fell down and became unconscious. When people lifted, then he regained sense, accused persons after assault, fled away. More or less Paras-7, 8, 9, 10, 11, 12, 13 happens to be cross-



examination relating to the land under dispute. At Para-14, he had stated that blood had fallen down over his cloth. The blood stain cloth were shown to the police. His fard-bayan was recorded at the police station. He had put his L.T.I. He had further stated that he had disclosed the Khata number, Khesra Number of the plot in his statement. He was conscious when written report was read over to him. He had not disclosed the description of the land. He had denied the suggestion that he had falsely instituted this case. He had further denied the suggestion that he had falsely instituted the case and on account thereof, he had not detailed the description of the land. In Para-15, he had stated the boundary of the P.O. land as North-Dhelan Mahto, South-Ramo Yadav, East-he himself and West-Rameshwar Mistry. Then had denied the suggestion that no such type of occurrence had ever been committed. He had further denied the suggestion that all the plots including well belong to the accused persons and only to dispossess them, this false case has been instituted.

14. PW-10 is the I.O. He had deposed to the effect that on 07.12.2008, he was posted as A.S.I. at Mohanpur P.S. On that day at about 8.30 a.m., Naresh Mistry came and furnished written report, which was sent to Barachatti Police Station for registration as Mohanpur was attached therewith. On that very score, Barachatti P. S. Case No.351 of 2008 was registered, exhibited the relevant documents. Then thereafter, he took up investigation as per direction



of the Officer-in-Charge. Injury report was prepared relating to informant Naresh Mistry and then thereafter, he was sent to Primary Health Centre, Mohanpur for treatment. After taking up investigation, he recorded further statement of the informant, statement of the witnesses and then, proceeded towards place of occurrence. In Para-3 of his examination-in-chief, he had recorded the P.O., which happens to be the Pagdandi road lying 15 feet west to the house/ darwaza of the informant, which extend up to the house of the informant. He had identified the boundary of the P.O. as North-Well of the accused, East-House of the informant, West-Arjun Mistry and South- land of the informant wherein garlic plant was standing. He conducted raid for the apprehension of the accused, who were found absconding. On the following day, he took up statement of the other witnesses, found the accused persons absconding, procured injury report on 14.12.2008 and then, finding the case true, submitted chargesheet. During course of investigation, he had apprehended one accused Jagdeo Prasad while others had surrendered before the Court. He identified Jagdeo Prasad in Court. During cross-examination at Para-7, he had stated that wife, daughter of informant had accompanied the informant. He had further stated that informant had brought the written report having been scribed since before. He had sent the injured for treatment. Side by side, also forwarded the written report to Barachatti Police Station for registration. He had prepared injury report on the basis of injury having over the person of informant, which he scribed in the case



diary. In Para-8, he had detailed the same as he had found bleeding injury over head, bleeding injury 3" above right ear. Another bleeding injury 3" behind the right ear, swelling below right elbow. In Para-10, he had stated that he had not seen document relating to garlic field nor he is able to disclose its khata number, khesra number. People have disclosed that this plot belonged to informant. In likewise manner, he had not procured khata number and khesra number wherein well of the accused was present. Then had said that witness Arvind Kumar had disclosed that this well belonged to accused persons. At that very time, informant was not present as he was admitted at hospital. He had not mentioned whether well was duly fenced or not. He had further stated that crop was damaged, but he had not mentioned the same in the C.D. He had not found shop at the house of the informant. In Para-11, he had stated that the shop of informant lies 200 yards away from the P.O. There happens to be another shop in the vicinity of shop of the informant. It happens to be a market. He had not gone to the shop of the informant. He had not mentioned aforesaid event in the case diary. People have disclosed that shop belongs to informant. In Para-12, he had stated that he had received injury report on 14.12.2008. Then, there happens to be cross-examination relating to supervision note. Then had disclosed that he had not found pipe during course of inspection through garlic field of the informant nor he had mentioned the same. He had not mentioned the boundary of the garlic field, but claimed that he is remembering to some extent.



Then had disclosed the location of the house of the informant as well as accused persons in the village. Then had denied the suggestion that no occurrence had taken place and he had investigated, submitted chargesheet in collusion with the informant.

15. PW-5 is the daughter-in-law of the informant. She had stated that on the alleged date and time of occurrence, she was at her house. Accused Dhelan Mahto, Pragesh Mahto and Jagdeo Prasad laid pipe through her land wherein garlic plant was standing whereupon she along with her mother-in-law protested. The accused persons abused them. So, her mother-in-law rushed to call her father-in-law Naresh Mistry and after arrival of her father-in-law, he forbade, whereupon all the accused persons began to abuse. During course thereof, Pragesh Mahto caught hold him and Jagdeo Prasad and Dhelan Mahto assaulted with Khanti. There was injury over his head as a result of which, he fell down. They began to raise alarm, whereupon villagers came, lifted him to police station. Then had disclosed that they have purchased the aforesaid land from Chandan Mahto, claimed identification of the accused. During cross-examination at Para-2, she had stated that Naresh Mistry happens to be the Karta of the family. She along with her husband and Naresh Mistry occupy the same house. She had denied to have purchased land from Dinesh Prasad. She had denied the suggestion that she is deposing falsely. She had further stated that Dinesh Prasad happens to be brother of accused. Then had denied the suggestion that even



knowing full well that Dinesh was mentally retarded got a sale deed from him relating to this land and when they perceived their illegality, then thereafter, they again purchased it from one Chandan Mahto. In Para-3, she had denied the suggestion that only to dispossess the accused persons from the land, which accused persons had also purchased from Chandan Mahto since before to their Kewala, whereupon this false case has been filed to coerce the accused to give up possession. Then had denied the suggestion that no crop was standing over the aforesaid land rather whatever crop was standing, was planted by the accused persons as the land happens to be under their possession. In Para-4, she had stated that when she came out from her house, accused persons were present there. When she came out from her house, she saw her mother-in-law, father-in-law. In Para-5, she had stated that after the occurrence, when they shouted, then thereafter, accused persons ran away there from. The villagers reached at the place 10 minutes after their shouting, till then, she was there. Mintu, Munnasa and Lakhandeo Mahto and others came. In Para-6, she had stated that all the persons lifted injured to police station. Then had denied that only to dispossess the accused persons from the land, this false case has been instituted and in the similar way, she had deposed falsely. It has also been suggested that no such type of occurrence had taken place. She had further stated that there was Panchayati at an earlier occasion, but accused persons did not accede with the same.



16. PW-1 is the witness, who claimed that after hearing sound of uproar coming from house of Naresh Mistry, he rushed and then, saw the occurrence. He had substantiated the motive. During cross-examination at Para-5, he had admitted that parties are on strained relationship on account of land dispute. He had further admitted at Para-6 that on account of strained relationship, this occurrence took place. So far manner of occurrence, he was tested under Para-8. In Para-10, there happens to be admission at the end of this witness that Dinesh Prasad happens to be the brother of the accused, who happens to be abnormal and the prosecution party got sale deed through him.

17. PW-2 admittedly is not an eye witness to occurrence rather he came to know from Naresh Mistry (PW-8) with regard to occurrence, on query having been made by him seeing his condition to be injured. PW-3 happens to be in similar way.

18. PW-4 had claimed to be an eye witness to occurrence and further, supported the case of the prosecution. During course of cross-examination at Para-3, he has been cross-examined on occurrence.

19. PW-6 is daughter of informant, who had also substantiated the case. During cross-examination at Para-3, she has been cross-examined on the factum of occurrence.

20. PW-7 had also claimed to be an eye witness to occurrence and further, he has been cross-examined on the occurrence



at Para-3.

21. From the evidence available on the record, it is evident that PW-8 (informant), had not shown presence of PW-5, his daughter-in-law and PW-6 his daughter. Admittedly, his wife has not been examined nor there happens to be an explanation at the end of the prosecution on that very score. PW-2 and PW-3 are not eye witness to occurrence. PW-1, at the time, he was at his house which lies 500-600 north to the P.O. intervened by the houses of so many persons and in the aforesaid background, his appearance appears to be doubtful, when the persons of intervening houses have got no presence. Though under Para-3 of the cross-examination, he was tested on that very score and that happens to be also the status of PW-7, who under Para-2 had stated that his house lies at extremely eastern flank of the village while the house of informant lies at different flank. Furthermore, he had stated that when he reached at the P.O., he had not found anybody indulged in assaulting nor anybody being assaulted. Although, PW-1 at Para-3 had stated that house lies 300-400 yards away from the house of informant, Naresh Mistry, intervened by the house of more than 50 persons, but he happens to be fair in admitting the mental condition of Dinesh Prasad, brother of accused to be abnormal and further, land having been purchased at the end of the prosecution from the aforesaid Dinesh Prasad.

22. From the evidence available on the record, more particularly informant (PW-8), it is apparent that purchase of land



from Dinesh Prasad is an admitted fact. Though other witnesses have declined, but PW-1 had admitted his mental status and that happens to be reason behind that other witnesses have an opportunity to decline the same. Be that as it may, there happens to be also disclosure at the end of the informant that consideration money has been returned back to the Dinesh Prasad and then thereafter, land has been purchased from Chandan Mahto. Be that as it may, the criminal Court is not at all competent to give finding on that very score. Furthermore, it is also evident from the evidence of PW-8 under Para-10 that accused persons were in possession of the land after purchase. In the aforesaid background, now one has to see whether the occurrence as alleged, suggest right of private defence and if so, to what extent. From the evidence available on the record, it is apparent that informant has sustained injuries in a manner as suggested by him corroborated by the medical evidence, which the appellants could not be able to demolish. In the aforesaid background, evidence of witnesses including the injured have minutely been gone through to search out, whether they happen to be glimpse of right of private defence. They have not pleaded that the prosecution party tried to take possession, which was protested, they have not pleaded that pipe, which was being laid through his land was obstructed, they have not pleaded that occurrence took place over their land, they have not pleaded that prosecution party were aggressor. That means to say, neither there happens to be suggestion nor assertion. In an alternative, they have



not denied injuries over the person of injured (PW-8), nor challenged finding of doctor (PW-9). That means to say, injury over person of PW-8 is found out of controversy. Most surprising feature is that PW-10 was not ever suggested that occurrence took place over his land to the injured (PW-8). In terms of Section 134 of Evidence Act, it is quality not the quantity, which matters. That being so, there happens to be no cogent ground to discard evidence of PW-8 supported by PW-9 as well as doctor (PW-10).

23. From the evidence of PW-9, it is apparent that injury no.1 has been found to be dangerous to life. During course of cross-examination of PW-8, he was not at all suggested that he had manufactured the injury nor the doctor (PW-9) was suggested that no injury was found over the person of PW-8 rather injury report happens to be manufactured in similar circumstance. Although, during examination-in-chief, PW-10, the I.O., had not spoken a word, but during course of cross-examination at Para-8, the defence had himself put his neck by cross-examining over the injury over the person by him at the time of sending PW-8 to the doctor on a police requisition. Although, for attracting Section 307 I.P.C., nature of injury is immaterial, but if injury is there, its nature will suggest activity of the accused.

24. Consequent thereupon, the finding recorded by the learned lower Court did not attract intervention as a result of which, appeal is dismissed. Appellants are on bail, hence their bail bonds are



hereby cancelled directing him to surrender before the learned lower Court within fortnight to serve out the remaining part of sentence, failing which learned lower Court will proceed against the appellants in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	19.02.2018
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