

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.383 of 2003

Arising out of Judgment and order dated 29.07.2003 passed by Additional District & Sessions Judge – IV, Bettiah, West Champaran in S. Tr. No. 358/95 arising out of Sikta (Balthar) P.S. Case No. 145/1992.

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1. Awadh Bihari Yadav, son of Late Narain Yadav
 2. Yugal Kishor Yadav, son of Sri Awadh Bihari Yadav
 3. Ram Nivas Yadav, son of Late Bhola Yadav
 4. Prabhas Yadav, son of Late Bhikhari Yadav
 5. Ramchayan Yadav, son of Late Tulsi Yadav

All are resident of village – Purainia, P.S. – Balthor (Sikta), District – West Champaran.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Ranbir Singh, Amicus curiae.

For the Respondent : Mr. Sujit Kumar Singh, Additional Public Prosecutor.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 03-02-2018

Despite there being a prior notice of listing of the old cases including the present one, no one has appeared on behalf of the appellants to represent them. Learned Additional Public Prosecutor for the State is present. In the circumstances, this Court appoints Sri Ranbir Singh, learned Advocate (A.O.R. No. 02623), who is present in the court to assist on behalf of appellants as Amicus Curiae.

2. Heard Sri Ranbir Singh, learned Amicus Curiae,



on behalf of the appellants and Sri Sujit Kumar Singh, learned Additional Public Prosecutor representing the State.

3. The appellants in the present appeal have challenged the judgment of learned Additional District & Sessions Judge – 4th, Bettiah, West Champaran in Session Trial No. 358/95 (G.R. No.4054/92) arising out of Sikta (Balthar) P.S. Case No. 145/1992. By the impugned judgment dated 29th July, 2003, the learned trial court has convicted accused Awadh Bihari Yadav (appellant no. 1) under Section 307 I.P.C. and sentenced him to undergo rigorous imprisonment for 7 years together with a sum of Rs. 2000/- as fine. The other accused namely, Yugal Kishor Yadav (appellant no. 2), Ram Niwas Yadav (appellant no. 3), Prabhash Yadav (appellant no. 4) and Ramchayan Yadav (appellant no. 5) have been held guilty under Section 323 I.P.C. and they have been sentenced six months rigorous imprisonment.

4. The prosecution of these appellants were initiated pursuant to the fardbeyan of one Rajdeo Mahto (P.W.5) giving rise to Balthar P.S. Case No. 145/1992 under Section 324, 147, 148, 307/24 of the Indian Penal Code registered on 21.11.1992. The fardbeyan and the formal F.I.R.



in this case have been marked exhibit as Exhibit 3 & 4 respectively through the Investigating Officer (P.W.6).

5. The allegation against the accused persons are that while the informant (P.W.5) had gone to collect water from the hand-pump near the door of appellant no. 1, Awadh Bihari Yadav, his son Yugal Kishor Yadav objected the informant from collecting water on the ground that it was dampening the door areas of his house. Informant (P.W.5) alleged that when he told Yugal Kishor Yadav (appellant no. 2) that the informant was not collecting water from the inside courtyard of the hosue of appellant no. 2, a quarrel broke out they indulged in abusing. At this stage, Ram Nivas Yadav (appellant no. 3) allegedly ordered to kill the informant, on this Awadh Bihari Yadav (appellant no. 1) brought a Farsa from his house and attacked the informant on his head which caused a cut on his head. Ram Nivas Yadav (appellant no. 3) allegedly gave a Farsa blow which hit the left hand of the informant. Ramchayan Yadav and Prabhash Yadav allegedly gave him a lathi blow on the back. P.W.5 claimed that the accused persons are neighbours and co-villagers. Kamruddin and persons from village Biragiri came and



rescued the informant.

6. It is further alleged that the informant fell down in unconscious condition thereupon his brother Basudeo Mahto brought him to government hospital, Sikta on a *tyre gari* where he was under treatment. Informant has further stated that on 20.11.1992, he could not give his statement because he was in unconscious condition and that he was making his statement when he regained his sense on 21.11.1992 at 8.30 A.M. He put his thumb impression on the fardbeyan which was recorded by Sri B.M. Pandey, (Investigating Officer) in presence of one Basudeo Mahto and Lalbabu Prasad. Sri Pandey the then A.S.I. and the two witnesses shown on the fardbeyan who have put their signature were not examined in course of trial.

7. Investigation was handed over to Sri Mithlesh Kumar, ASI. After investigation was completed by Sri Mithilesh Kumar Mishra, I.O. (P.W.6), a chage-sheet was submitted in the court of learned C.J.M. Bettiah. Vide order dated 22.07.1998, learned C.J.M. took cognizance of the offence under Section 307 I.P.C. Later on the charges were farmed vide order dated 15.04.1998. Accused Awadh Bihari



Yadav (appellant no. 1) and Ram Nivas Yadav (P.W.3) were charged under section 148 & 307 of the Indian Penal Code, whereas accused Ram Chayan Yadav, Prabhas Yadav and Yugal Kishor Yadav were charged under Section 147 & 323 of the Indian Penal Code. It further appears that after commitment of the case the records were transferred to the court of sessions and the trial was conducted which ultimately resulted in the impugned judgment.

8. It is a matter of record that on behalf of the prosecution altogether six witnesses were examined. P.W.1, Uday Chand Prasad is a neighbour and claims to be an eye witness. P.W.2, Pramod Prasad is nephew of the informant who has supported the case of the prosecution. P.W.3, Quamuruddin is a co-villager who has also supported the case of the prosecution. P.W.5 is Rajdeo Mahto (informant) who had sustained injuries. The injury report (Ext. 1) has been proved by P.W.4, Dr. Md. Nazir who has stated that injury no. 1 and 2 on the head were simple in nature but were caused by sharp cutting weapon. All the injuries have been found to be simple by P.W.4 who at the relevant time was said to be posted as Medical Officer, Sikta. P.W. 6, Mithilesh Kumar



Mishra (Investigating Officer) who has proved blood-stained cloths of P.W.5 (Ext.2), Fardbeyan (Ext.3) and formal F.I.R. (Ext.4).

9. On behalf of the defence one Nawal Kishore Yadav has been examined as D.W.1 who has proved the defence documents such as the certified copy of the judgment passed in Partition Suit No. 4/80/81 (Babulal Shah Vs. Chandreshwar Prasad Yagnik) (Exhibit-A), certified copy of written report submitted by Awadh Bihari Yadav (appellant no. 1) to the Officer-in-Charge, Balthar P.S. on 20.11.1992 and the formal F.I.R. lodged by Awadh Bihari Yadav giving rise to Balthar P.S. Case No. 143/1992 under Sections 323/324/341/379 I.P.C. These are marked as Exhibits – B & C respectively in the present trial. This witness has also proved certified copy of the charge-sheet bearing no. 105/92 dated 30.11.1992 in Sikta (Balthar) P.S. Case No. 143/92 dated 20.11.1992. This has been marked as Exhibit – D. The Charge-sheet (Exhibit- D) shows that in course of investigation of case no. 143/92 the allegations made by the appellant no. 1 of this case that while his son was going to perform the Bidaigiri of his sister (daughter of appellant no. 1), the accused persons of



the said case (which includes the informant of this case and his son) had surrounded him and had beaten also, were found prima-facie true and sufficient materials were there to proceed with the case. The another document which was brought on record on behalf of the defence is the certified copy of the deposition of Dr. Md. Nazir in Sessions Trial No. 138/99 arising out of Sikta P.S. Case No. 143/92. It appears that Dr. Md. Nazir who has deposed as P.W.4 in the present case had occasion to depose as P.W.5 in the counter case being Sikta P.S. Case No. 143/92 and he had proved the injury report of Awadh Bihari Yadav (appellant no. 1) and Yugal Kishor Yadav (appellant No. 2) of this case.

10. As stated above, the trial court in its ultimate analysis held that the defence has not been able to extract any contradiction in the statement of the prosecution witnesses and the prosecution case was proved without there being any reasonable doubt. Thereupon the conviction and sentence orders were passed.

11. Learned Amicus Curiae has assailed the trial court's judgment on various ground. The first ground canvassed for the purpose of the appeal is that in the present



case there is an apparent conflict in the statement of the prosecution witnesses as regards the place and manner of occurrence. Learned counsel submits that in course of his cross examination the informant P.W. 5 has in fact admitted though with some demurer that one day before the alleged date of occurrence when his son was plucking flower on the door of the accused Awadh Bihari Yadav, his son had objected to that whereupon there had been some quarrel. The alleged date of occurrence in the present case is 20.11.1992, therefore on 19.11.1992 there had been a quarrel over plucking of flower and this fact has been accepted by the informant, therefore, learned counsel submits that it looks highly improbably that after such a quarrel only one day before, the informant (P.W.5) would go to the door of the accused Awadh Bihari Yadav for collecting water. Learned counsel submits that it is not the case of the informant that he had gone lashed with any arms or along with any other person to the door of the accused Awadh Bihari Yadav, therefore, if a fight broke out there as alleged by the informant, the informant was not in a position to assault Awadh Bihari Yadav and his son Yugal Kishor Yadav, if it was



so, then, the injuries found on the body of Awadh Bihar Yadav and Yugal Kishor Yadav who were examined by Dr. Md. Nazir and their injury reports have been duly proved by the doctor speaks of something else.

12. The informant in his fardbeyan is said to have stated on 21.11.1992 that after getting Farsa blow on his head from Awadh Bihari Yadav he fell down and became unconscious, if it was so, then, who had beaten or assaulted Awadh Bihari Yadav (appellant no. 1) and his son causing as many as five injuries on the body of Awadh Bihari Yadav (appellant no. 1) and as many as three injuries on the body of Yugal Kishor Yadav (appellant no. 2) which were all caused by hard and blunt substance. This shows, according to the learned counsel that belatedly the very manner of occurrence has been falsely stated and narrated by P.W.5 to police one day after the alleged date (20.11.1992) and it was only by way of an afterthought to take a defence when P.W.5 came to know that Awadh Bihari Yadav (appellant no. 1) had already lodged a police case giving rise to Sikta P.S. Case No. 143/92 in which Rajdeo Mahto (P.W.5) was an accused.

13. Learned counsel further submitted that the



appellant no. 1 had lodged an F.I.R. giving the details of the occurrence which had taken place on 20.11.1992 in which he had also received injuries. Appellant no. 1 had alleged that one day before the said occurrence, on 19.11.1992 there was a quarrel on the plucking of flower. Thereafter, the dispute was resolved with the intervention of P.Ws. but on the next day when his son Rajdeo Mahto was going for Bidaigiri of his daughter, he was surrounded by the Dinesh Mahto, Vaidnath Mahto and Rajdeo Mahto, Rajdeo Mahto was lashed with lathi who had assaulted him on his head which resulted in bleeding, Basudeo assaulted on his left Panjra and his son was also assaulted on the right hand. It was further alleged that the Dinesh Mahto had snatched away the wrist watch from the hand of his son. The I.O. found that save and except the allegation of snatching away of the wrist watch, there were sufficient materials to proceed against the accused persons and the case was found true, according to learned counsel if the case of Awadh Bihari Yadav was found prima facie true, the trial court was not justified in discarding this valuable piece of evidence while considering the case of the prosecution. According to him, the prosecution had not been



able to prove the place and manner of occurrence beyond reasonable doubt in the present case.

14. Learned counsel further points out that there is another aspect of the matter which would be very important to appreciate and i.e. that this informant (P.W.5) has stated that he had fallen unconscious after receiving the Farsa blow on his head but there is no evidence at all to show that he was taken to the hospital in a unconscious condition. The I.O. has not proved any entry in the case diary showing that he had visited any hospital on 20.11.1992 to record the statement of the informant (P.W.5) but could not record his statement because the informant was lying in an unconscious condition. If the I.O. would have gone to the hospital where allegedly the informant was lying unconscious he would have certainly recorded such fact in his diary but nothing sort of that has been proved in course of evidence.

15. The brother of informant namely Basudeo Mahto who claims that he had taken the informant to hospital on his tyre gari has not been examined in course of trial, moreover learned counsel has heavily relied upon deposition of Dr. Nazir (P.W.4) in this case who has proved



the injury report. It has been shown there Exhibit-1. The said injury report has been prepared on the back side of a letter which was written by the I.O. to the Medical Officer, Government Hospital only on 21.11.1992. In his request made to the Medical Officer he has described Rajdeo Mahto as an injured and has requested the Medical Officer to examine his injuries and submit a report. The I.O. has noted the injuries as (1) a bleeding wound on the head (2) a bleeding wound on the left hand and (3) swelling on the back. It is on this request that the doctor prepared an injury report on 21.11.1992 addressed to the Officer Incharge. The doctor opined that injury no. 1 is simple but dangerous to life due to excessive loss of blood, injury nos. 1 and 2 caused by sharp cutting weapon and rests by hard and blunt substance.

16. Learned counsel submits that apparently the informant was not lying unconscious in any hospital as claimed by him rather he was sent to the Medical Officer only on 21.11.1992 and police has prepared even the seizure list of blood stained clothes only on 21.11.1992. It is further submitted that the blood stained cloths were not sent for any scientific examination and forensic science laboratory report



was not obtained. Therefore, it was only a belated attempt on the part of the informant (P.W.5) to lodge this F.I.R. giving a different story and while doing so he has shifted the place of occurrence to the door of Awadh Bihari Yadav (appellant no.1) and made an allegation that Awadh Bihari Yadav and his son had assaulted him.

17. It is the submission of learned counsel that the manner in which both sides have got injuries only suggest that the place of occurrence and manner of occurrence were totally different which have been concealed by the prosecution.

18. As regards the evidence of P.W.1, P.W.2 and P.W.3, learned counsel submits that they are not credible witnesses, because they have not come forward to make their statement before police on the date of occurrence dated 20.11.1992.

19. On the other hand, learned Additional Public Prosecutor representing the State has supported the impugned order and submitted that there is no inconsistency in the statement of the prosecution witnesses and the prosecution is not required to prove or explain the injuries



which were found on the body of the appellant nos. 1 and 2 by the doctor (P.W.4).

20. Learned counsel further submits that so far as the origin of dispute is concerned, it seems that the quarrel which had taken place on 19.11.1992 had been in the mind of the parties and that was the motive behind the alleged occurrence which had taken place on 20.11.1992. Learned A.P.P. has further fairly submits that on record at least there is no evidence coming to explain that why there was a delay of one day in lodging of the F.I.R. by P.W.5. He accepts to this extent that the statement made by informant that he was lying unconscious has not been fully explained either by him or by the I.O. Mithlesh Kumar Mishra in course of his deposition. There is no certificate of hospital treatment showing that informant was admitted in the government hospital on 20.11.1992 or that he was lying there till 21.11.1992 when his fardbeyan was recorded by the I.O. (P.W.6), who is also silent on this aspect of the matter and there is no trustworthy evidence to show that the informant was actually lying unconscious from 20.11.1992 to 21.11.1992.



21. I have heard learned counsel who has assisted the court as Amicus Curiae on behalf of the appellant and Sri Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

22. To me, it appears on perusal of the record that P.W.5 who is informant in this case has got recorded his statement for the first time only on 21.11.1992, his fardbeyan has been recorded by the I.O. Mithilesh Kumar Mishra (P.W.6) whereupon the F.I.R. giving rise to Sikta P.S. Case No. 145/1992 was lodged only on 21.11.1992.

23. A perusal of the Exhibit 1 which has been proved by P.W.4 who was the doctor posted at the relevant time at the Primary Health Centre, Sikta would show that on 21.11.1992 P.W.5 was sent to him for examination of his injuries/wounds. The letter written by the I.O. of Sikta P.S. Case No. 143/1992 and the injury reported in back side of that letter dated 21.11.1992 clearly demonstrates that in fact the said Braj Mohan Pandey, the Sub-Inspector of Police who was I.O. of Sikta P.S. Case No. 143/92 had in connection with the investigation in the said case met Informant (P.W.5) and on the basis of statement of P.W. 5, he recorded a separate



F.I.R. on the next date i.e. on 21.11.1992 giving rise to Sikta P.S. Case No. 145/92, thereafter, investigation of the Sikta P.S. Case No. 145/92 was handed over to Mithilesh Kumar Mishra, Sub-Inspector of Police (P.W.6) who started investigation only on 21.11.1992 and prepared the seizure list (Ext.2) showing certain blood stained cloths of P.W.5. In these circumstances the question which remains unanswered is that when Sikta P.S. Case No. 145/92 was already registered on 20.11.1992 and Braj Mohan Pandey, Sub-Inspector of Police was investigating the said case and in connection with the same when he met the informant (P.W.5) and forwarded him to the Doctor (P.W.4) for examination of his injuries, then, the statement made by the informant would have been a part of investigation under Section 161 Cr.P.C. The informant (P.W.5) was an accused in Sikta P.S. Case No. 143/92, and therefore, in course of investigation police could not have got signature of a witness on the statement made by him in course of investigation.

24. The informant in this case had not gone to police station for lodging the F.I.R. His fardbeyan has been recorded at the State Dispensary on 21.11.1992 at 8.30 hours



in presence of Basudeo Mahto and Lalbabu Prasad as have been shown on the fardbeyan, but, neither Basudeo Mahto nor Lalbabu Prasad have been examined in this case.

25. Braj Mohan Pandey, Sub-Inspector of Police who had recorded the fardbeyan of Rajdeo was also not examined. Since learned counsel for the appellants has argued that the entire manner of occurrence and the place of occurrence are highly doubtful, it was incumbent upon the prosecution to prove the place of occurrence and manner of occurrence by bringing cogent and consistent evidences which has not been done in this case.

26. Non examination of Braj Mohan Pandey, A.S.I. and the witnesses who have put their signature on the fardbeyan have caused prejudice to the appellants.

27. A perusal of the deposition of P.W.5 would show that in paragraph 12 of his cross examination, he has stated that Pramod Prasad had brought him to the hospital, and with Pramod Prasad, wife of the informant and Ram Shankar were also present. Sk. Quamuruddin was driving the tyre vehicle, therefore this witness has not stated about presence of basudeo Mahto and Lalbabu Prasad at the State



dispensary where he was getting treatment. If the A.S.I. had recorded his fardbeyan at State Dispensary then the persons who had been accompanying the informant would have put their signature on the fardbeyan but that was not done. This witness has stated that he was in hospital for 27 days but was unable to say that how many rooms are there in hospital. No certificate of hospital treatment showing him admitted for 27 days in the hospital has been exhibited in the present case.

28. In paragraph 27 of his cross examination, he has stated that he was assaulted only once on his head. According to him, he was not protesting to such assault and was receiving the blows silently. He has further stated in his cross examination that he did not remember that he had become unconscious and that who had lifted him from there.

29. P.W.1, who is said to be a neighbour and has supported the case of the prosecution stated that on 20.11.1992 at about 8.00 A.M. the occurrence had taken place which he is said to have seen with Sk. Quamuruddin and Bira Giri. He has not stated that who had taken Rajdeo Mahto to hospital. In his cross examination he has stated that he had not rescued Rajdeo Mahto. He has further stated that the



people from Rajdeo party were not there, they came later, Awadhesh, Basudeo Mahto and Jainath were full brothers. In paragraph 10 he has stated that these accused persons had lodged a case against the family members of this witness. This witness has thus clearly accepted his relationship with the informant and his grievance with the accused because the accused persons had lodged an F.I.R. against the family of this witness.

30. P.W.2 Pramod Prasad is also the nephew of the informant who has supported the prosecution case. In paragraph 19 of his cross examination this witness has accepted that no treatment was given to the informant at the house and he was taken to the dispensary after 1 ½ hours. He has accepted that his uncle (informant) was in conscious condition. He has also accepted that while moving to Sikta blood had stopped coming out. Again P.W.3, Sk. Quamuruddin, who is co-villager has supported the prosecution. In paragraph 6 of his cross examination he has stated that three years back he had a Bataidari case with the father of the accused Prabhas Yadav. He has stated that he was the first person to reach at the place of occurrence. He



has accepted that house of Prabhas Yadav, Rajendra Shah and Singhashan Shah is between the house of Babulal Shah and the hand-pump but they are not the witness in this case. In paragraph 14 of his cross examination he has stated that he had not gone to the hospital. He had also not given any first aid to the informant.

31. On close scrutiny of the deposition of P.Ws. 1, 2 and 3, I would come to a conclusion that these witnesses are the partisan witnesses and there are strong contradictions in the statement of P.W. 5 on the one hand and P.Ws. 1, 2 and 4 on the other. While P.W.5 has stated that it was Sk. Quamuruddin who was driving the tyre vehicle by which he was brought to the hospital, Sk. Quamuruddin has specifically stated that he had not gone to the hospital.

32. Statement of P.W.1 that Awadhesh, Basudeo Mahto and Jainath also came later on where Rajdeo Mahto was present gives an impression that there was a free fight between the prosecution and the defence parties and both the parties assaulted each other. Who was aggressor in the occurrence is not clear from the statement of the witnesses, because in my opinion, the place of occurrence seems to have



been changed and shifted from actual place of occurrence where the alleged occurrence took place. The manner of occurrence is also highly doubtful in the light of the fact that after complete one day fardbeyan of P.W.5 was recorded and P.W.2 has clearly stated that the informant was taken to Sikta after 1 ½ hours, he was in conscious condition and the bleeding had stopped coming out from his head, if it was so, then, there was no reason why his fardbeyan was not recorded on 20.11.1992 itself. Delay of 24 hours in recording of his fardbeyan and then lodging of the F.I.R. in the present case seems to have given enough time to prosecution to come out with a different story.

33. It further appears that the learned trial court has not even complied with mandatory provision of Section 313 Cr.P.C. inasmuch from the form of recording examination of accused it appears that only a formal two line questions were asked. The attention of the accused were not drawn towards the materials which were brought against them by the prosecution in course of trial and, therefore, they had no opportunity to explain those materials.

34. The trial court has also missed out on the



valuable piece of evidences brought on the record by the defence particularly that the case of appellant no. 1 being Sikta P.S. Case No. 143/92 was found true as regards the assault which had taken place on his son on 20.11.1992. If the version of appellant no. 1 was found prima facie true, the same was required to be looked into.

35. The Doctor, P.W.4, had been examined in the trial in connection with Sikta P.S. Case No. 143/92 as P.W.5 and he had proved the injury reports of appellant no. 1 and appellant no. 2. These injuries coupled with aforementioned facts only demonstrate that the parties had fight against each other but who were the aggressor of the alleged occurrence is not proved. The trial court has disbelieved the case under Section 147 and 148 of the I.P.C. which further strengthen the opinion of this court that there was no planned attack, in such a circumstance the prosecution was required to prove the assault by individual accused by good and cogent evidences beyond all reasonable doubts.

36. In the present case, the witnesses, as stated above are not consistent, they are partisan witnesses and



cannot be said to be independent one. Braj Mohan Pandey, A.S.I. who had recorded fardbeyan of informant was also not examined which caused prejudice to the accused. The I.O. P.W.6 who shows that he had gone to the place of occurrence and was shown the place of occurrence by Sk. Quamuruddin (P.W.3) has not been able to collect any material/soil containing blood. S.K. Quamuruddin had Bataidari case with father of accused Prabhas. The A.S.I., Braj Mohan Pandey, who had the first occasion to visit the village has also not proved the place of occurrence despite the fact that he had recorded the fardbeyan of this informant. Delay in lodging of the F.I.R. and non-compliance with the provisions of Section 313 Cr.P.C. are the other reasons for this Court to reach on a conclusion that the prosecution has not been able to prove the place of occurrence and manner of occurrence as also individual assault by cogent and reliable evidences beyond all reasonable doubts. In such circumstances benefit of doubt will go to the accused.

37. The judgment of the trial court under appeal is set aside and the appellants are acquitted of the charges giving them benefit of doubt.



38. This appeal is allowed and the accused are discharged from their respective bail bond.

39. Learned Amicus Curiae may be provided the copy of first and last page of the judgment.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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