IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.133 of 2003

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

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1. Bhivishan Singh, Son of Late Ram Nandan Singh
2. Raj Kumari @ Raj Kumari Devi, wife of Jagarnath Singh
3. Kaviraj Singh, Son of Late Ram Nandan Singh
4. Dharmraj Singh, Son of Late Ram Nandan Singh
5. Sukuna Kuer, Wife of Late Ram Nandan Singh
6. Jagarnath Singh, Son of Late Ram Nandan Singh.

All are residents of Vill – Bhulukawan, P.S. – Piro, Dist – Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satya Deo Kumar, Adv.
Mr. Braj Kishore Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-02-2018

Challenge in this appeal is of judgment of conviction and order of sentence dated 21.02.2003, passed by Shri Amlendu Kumar Sinha, the then Additional Sessions Judge cum P.O, F.T.C. –IVth, Ara, Bhojpur, in Sessions Trial No. 41/91, by which the appellants stood convicted under Sections 324/149 of the Indian Penal Code (hereinafter referred to as the "IPC") and appellants – Bhivishan Singh, Kaviraj Singh, Dharmraj Singh and Jagarnath Singh were sentenced to undergo R.I. for two years, whereas appellants – Raj Kumari @ Raj Kumari Devi and Sukuna Kuer were released on probation for a period of one year on

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furnishing bond of Rs. 2,000/-.

2. Prosecution case as per the written report of Informant – Sheo Pujan Singh, in short is that on the alleged date of occurrence, in the morning, he saw his potato field was filled with water and came back at his darwaza and started abusing the persons responsible for the said act, on which appellant – Kaviraj Singh armed with *fasuli* along with other appellants came there and they all surrounded him and appellant – Kaviraj Singh assaulted him with *fasuli* causing injuries to informant on his right shoulder, elbow of left hand and finger of left hand. In the meantime, his son – Jai Bhagwan Singh and son – in – law were returning after attending the call of nature and saw the occurrence and when they came for the rescue of informant, appellant – Kaviraj Singh attacked his son Jai Bhagwan Singh, causing injury on his left elbow and palm and when his wife Ashapati came to intervene she was also assaulted by the appellants by brick bats. On the basis of the above written statement, Piro P.S. Case No. 189/88 was registered against the appellants.

3. Police after investigation submitted charge-sheet against the appellants. Cognizance of the offence was taken and the case was committed to the court of Sessions, which

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ultimately came to the file of Amlendu Kumar Sinha, Additional Sessions Judge cum P.O, F.T.C. –IVth, Ara, Bhojpur for trial and disposal. During trial charges were framed against the appellants under Sections 307/149 and 337 against the appellants.

4. To prove its case, prosecution has examined altogether 6 witnesses. They are:-P.W. 1 – Ashapati Devi(wife of informant), P.W. 2- Jai Bhagwan Singh (son of the informant), P.W. 3- Jaggarnath Prasad (son-in-law of the informant), P.W. 4- Sheo Pujan Singh (informant and injured), P.W. 5 – Tarkeshwar Prasad and P.W. 6 - Murat Ram, formal witnesses, who proved some documents.

5. Apart from that following documents have been brought on record and marked as Ext. 1 – Signature on complaint petition, Ext. 2 – F.I.R. and Ext. 3 – 164 Statement of Indu Devi.

6. On behalf of defence neither any oral nor documentary evidence has been brought on record and from the statement under Section 313 Cr.P.C and as per the trend of cross-examination, the defence of the appellants is of complete denial of occurrence and of innocence.

7. Learned Trial Court after conclusion of trial convicted

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all the appellants and sentenced appellants - Bhivishan Singh, Kaviraj Singh, Dharmraj Singh and Jagarnath Singh in the manner aforesaid and released other appellants on probation.

8. Contention of learned counsel for the appellants is that in this case neither I.O. nor Doctor has been examined and in non examination of I.O. has caused serious prejudice to the defence. Further the trial court has also not found allegation true under Section 307/149 of the IPC but has convicted them under Section 324/149 of the IPC. It has also been submitted that learned Trial Court has failed to consider that no offence under Section 149 of the IPC is made out against the appellants as the occurrence took place between the parties on a trifle issue of irrigation of land of informant and allegation of assault is only against appellant – Kaviraj Singh and none else, however, to implicate all the other appellants, allegation has been made that they caught hold the informant, while appellant – Kaviraj Singh assaulted him, which does not appear to be probable. It has also been submitted that place of occurrence has not been proved as one of the witnesses has stated that occurrence took place in the *rehat,* whereas this witness stated that occurrence took place on *darwaza*

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of the informant and in such a situation, non examination of I.O. has proved to be fatal for the defence. Further submission of learned counsel for the appellants is that in this no independent witness has been examined to support the case of prosecution and one F.I.R named witness, namely, Rajbansh Singh has not been examined and remaining witnesses are the members of one family and as such their evidence is not free from reasonable doubts, and the trial Court without considering all these facts has convicted the appellants, which is out and out perverse and not sustainable in the eye of law.

9. On the other hand, learned counsel for the respondent – State defended the judgment of trial court and submitted that all the witnesses are consistent on the point of allegation of assault to Kaviraj Singh, causing injuries to him and, therefore, there is no infirmity in the impugned judgment of trial court and conviction of appellants is just and proper.

10. Heard the rival contentions of the parties.

11. It appears that in this case six witnesses has been examined from the side of prosecution, out of which, P.W. 5 and P.W. 6 are formal witnesses. P.W. 4 is the informant and alleged injured of this case and he has stated in his

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evidence that on the date of occurrence, he went to see his potato field and found the same was filled with water on which he came back to his darwaza and started abusing, on which appellant – Kaviraj Singh armed with *fasuli* along with other appellants came there and appellant – Kaviraj Singh assaulted him by means of *fasuli* on his right shoulder and left elbow and he had shown some of the injuries also. This witness has further stated that appellant – Kaviraj Singh also assaulted his son Jai Bhagwan Singh by means of *fasuli* and after the occurrence, they went to the Piro police station, where his *fardbeyan* was recorded. In cross – examination, this witness stated that since the occurrence is of the morning hour, no villager was present there. His evidence further disclosed that the field of accused person is next *Aar* of his field and further disclosed in para -7 that where he was assaulted, north there is well, where previously, there was a *rehat* and in south house of Chavvinath, east '*gali'* and west '*gali'.* His evidence further disclosed that he has stated about assault on him and his brother Jai Bhagwan Singh by appellant Kaviraj and had not stated that other appellants had also caught hold of him.

12. P.W. 1 – Ashapati Devi (wife of informant) claimed herself to be eye-witness of the occurrence and has

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supported the occurrence and stated that on hearing the sound of *hulla,* she came out from her house, she saw the appellants assaulting her husband and stated that appellant – Kaviraj Singh assaulted five times by *fasuli* and she was also assaulted by Jagarnath Singh and his son was also assaulted by appellant – Kaviraj Singh by *fasuli*. Her evidence also disclosed that due to partition, both the parties were at inimical terms and no other witness was present at the place of occurrence as the occurrence is of morning hour.

13. It appears from perusal of evidence of P.W. 1 that she had stated that she was also assaulted by one of the appellants, however, evidence of P.W. 4 (informant) did not disclose that she was assaulted.

14. P.W. 2 is Jai Bhagwan Sing, son of informant and he has supported the prosecution case and has stated that his father was assaulted by appellant – Kaviraj Singh and other appellants had caught hold of his father and when he came to save his father, he was also assaulted by appellant – Kaviraj Singh, thereafter, they had gone to the police station. His evidence further discloses in cross – examination that the appellants are his *pattidar* and both of them had equal share in the plot.

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15. P.W. 3 is Jagarnath Prasad (son in law of the informant) and he has supported the case of prosecution with regard to assault on informant by appellant – Kaviraj Singh and also to assault on Jai Bhagwan Singh by the appellant – Kaviraj Singh by *fasuli*.

16. On consideration of above evidence of witnesses, there appears to be some discrepancies with regard to place of occurrence, however, so far manner of occurrence, concerned, all the appellants have stated about assault to informant (P.W. 4) and his son Jai Bhagwan Singh (P.W. 2) by appellant – Kaviraj Singh by *fasuli*. So far the allegation that other witnesses had caught hold of the informant is concerned, evidence of P.W. 1 and P.W. 3 negates the said allegation. Similarly, so far the evidence of P.W. 1 that she was also assaulted by appellant – Jagarnath Singh is concerned, evidence of other prosecution witnesses does not support the said allegation.

17. The learned Trial Court had convicted the appellants under Section 324 and 149 of the IPC but he has failed to consider this aspect that other appellants were not armed with any weapon and as per the evidence of P.W. 2 and P.W. 3 and P.W. 4, no overt act has been attributed to them and overt act of catching hold of the informant also

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does not look probable and evidence of P.W. 1 that she was also assaulted by appellant Jagarnath Singh is also contrary to the prosecution case as well as contrary to the evidence of other witnesses including informant.

17. Considering the entire discussions made above, so far appellant, namely, Kaviraj Singh is concerned, there appears to be consistent evidence that he, on the alleged date of occurrence, assaulted the informant and his son by means of *fasuli*. However, so far other appellants are concerned, considering the facts and circumstances as discussed above, they are at least entitled for the benefit of doubt.

18. Hence, conviction and sentence with regard to appellants, namely, Bhivishan Singh, Dharmraj Singh and Jagarnath Singh, Raj Kumari @ Raj Kumari Devi and Sukuna Kuer, passed, in Sessions Trial No. 41/91, is set aside.

19. Conviction of the appellant – Kaviraj Singh is upheld. However, it appears that the occurrence is of the year 1988 and 29 long years have elapsed since then and at the time of conviction appellant was aged about 35 years and he has also suffered the mental agony for trial during the above period and further there is nothing available on record that

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he was previously convicted in connection with any other case and has ever misused the privilege of bail and it has been informed that he has already remained in custody for a period of 50 days and hence no fruitful purpose will be served to send him behind the bars for serving remaining sentence. As such, his sentence to undergo R.I. for two years is reduced to the period already undergone by him in judicial custody.

20. With the above modification in conviction and sentence, this appeal is partly allowed.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	09.02.2018
Transmission Date	09.02.2018

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