

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.151 of 2003

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

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1. Kapildeo Singh, Son of Late Bhagwan Singh
 2. Ravindra Singh, Son of Late Bhagwan Singh
 3. Yogendra Singh, Son of Late Bhagwan Singh
All residents of village – Ghoranpura, P.S. – Fatuham, District – Patna.
 4. Surendra Singh, Son of Late Muratlal Singh, Resident of Village –
Amarpura, P.S. – Paliganj, District – Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prafull Chandra Jha, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 16-03-2018

Earlier a report was called for from the Senior Superintendent of Police, Patna, with regard to death/alive status of all the appellants, from which it appears that appellant no. 1, namely, Kapildeo Singh and appellant no. 4, namely, Surendra Singh has died during pendency of the appeal, as such, this appeal with regard to appellant no. 1 and 4 stands abated.

2. This appeal is directed against the judgment of conviction and order of sentence dated 20.02.2003, passed by Shri Chandra Shekhar Sharma, the then Presiding Officer Additional Court No. 1, Patna, in Sessions Trial No. 659 of 1986 / 349 of 2001, by which the appellants, above named, stood convicted under Section 324/34 and



148 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo R.I. for 02 years under Section 324/34 and R.I. for 02 years under Section 148 of the IPC. Both the sentences were directed to run concurrently.

3. Prosecution case as per the fardbeyan of Bramdeo Singh recorded by S.I. N. Khan of Pirabahore Police Station on 25.03.81 at Patna, in short is that on 21.03.81, while the informant along with his brother Inder Singh sleeping in the verandah of his house, they woke up on hearing the sound of bell and chain worn by the cattle and saw appellant Bhagwan Singh, his sons, namely, Devendra Singh, Kapildeo Singh, Ravindra Singh and Yogendra Singh and his son-in-law Surendra Singh were standing variously armed with *dab*, *churra*, *farsa* and *lathi*. On alarm being raised by the informant, Ravindra Singh gave *churra* blow to his right shoulder and back, Devendra Singh assaulted him with *dab*, which caused injury on the left side of his head and ear and Sri Bhagwan assaulted him with *lathi*. His brother Inder Singh was also assaulted by Kapildeo Singh, Yogendra Singh and Surendra Singh by means of *dab*, *churra* and *farsa* respectively as a result of which, Inder Singh received injuries on his right side of back, rib area and stomach as well as on two fingers of his left hand. Thereafter, villagers assembled and accused persons fled away.



4. Though, in this case fardbeyan was recorded at P.M.C.H. by the Pirbahore police, Patna but since the matter relates to jurisdiction of Fatuha police station, the same was transferred to Fatuha police station and on the basis of which, Fatuha P.S. Case No. 47/81 was registered against the accused persons. 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 Shri Chandra Shekhar Sharma, the then Presiding Officer Additional Court No. 1, Patna for trial and disposal.

5. Charges were framed under Sections 307/34 and 148 of the IPC.

6. In order to substantiate the charges, prosecution has examined altogether seven witnesses, they are; P.W. 1 – Subhas Singh (claimed to be eye witness of the case) P.W. 2 – Lakhandeo Singh (claimed to be eye witness of the case), P.W. 3 – Basudeo Singh (claimed to be eye witness of the case), P.W. 4 – Fakira Manjhi (claimed to be eye witness of the case), P.W. 5 – Inder Singh (injured), P.W. 6 – Brahmdeo Singh (informant and injured) and P.W. 7 – Suraj Narayan, an Advocate clerk, who proved Ext. 1 and 2. Doctor and I.O. has not been examined.

7. On behalf of the defence two documents have been brought on record i.e. Ext. A – certified copy of F.I.R of Daniyama P.S. Case No.



238/86 and Ext. A/1 – certified copy of formal F.I.R of Fatuha P.S. Case No. 326/88, but it appears that both these cases has no relevance to the facts of the present case as they had been lodged much after the date of occurrence of the present case. Defence of the accused persons as per the trend of cross examination as well as from the statement recorded under Section 313 Cr.P.C. is of innocence and false implication due to land dispute.

8. Post trial, learned Trial Court, though not found a case under Section 307/34 IPC, however, convicted the appellants under Section 324/34 and 148 of the IPC and sentenced them in the manner as stated above.

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

10. Contention of learned counsel for the appellants is that in this case, there are several contradictions in between the evidences of witnesses. Furthermore, in this case neither doctor nor I.O. has been examined and the nature of injury and the weapon used in the occurrence as well as the place of occurrence has remained to be proved. It has also been submitted that there is delay of four days in lodging the F.I.R. and the same has not been explained properly and though the occurrence was of Fatuha police station but no information was given to the Fatuha police station but in spite of that the trial court has convicted the appellants under Section 324/34 and 148 of



the IPC, which is not sustainable in the eye of law.

11. On the other hand, learned counsel for the respondent- State supported the finding of guilt recorded by the Trial Court and submitted that in this case P.W. 6 (informant) and P.W. 5 is brother of informant and there are consistent evidence of these witnesses that they were assaulted by the appellants, which has also been corroborated by the evidence of other witnesses and there is nothing in the evidence of the witnesses to doubt the credibility of their testimonies.

12. In the background of the contentions of the parties, on perusal of prosecution evidence, it appears that P.W. 6 is the informant in this case and his evidence in court disclosed that on the day of occurrence, while he was sleeping with his brother at the door of his house, he woke up on the sound of bell and chain of his cattle and saw the accused persons standing variously armed and on alarm being raised by him, appellant Ravindra Singh gave *churra* blow to his right shoulder and back, appellant Devendra Singh assaulted him with *dab*, which caused injury on the left side of his head and ear and accused Sri Bhagwan assaulted him with *lathi*. His brother Inder Singh was also assaulted by Kapildeo Singh, appellant Yogendra Singh and Surendra Singh by means of *dab*, *churra* and *farsa* respectively as a result of which, Inder Singh received injuries on his right side of back,



rib area and stomach as well as on two fingers of his left hand. This witness has been cross examined at length but there is nothing in his cross – examination to doubt the credibility of testimony of this witness. This witness was also cross-examined on the point that Fatuha Hospital was the nearest Hospital but he has not gone there rather he went to P.M.C.H. for treatment, on which this witness replied that after assault he and his brother had become unconscious and villagers brought them to P.M.C.H.. as such, he does not know as to why the informant was not taken to Fatuha Hospital. P.W. 5 is other injured witness in this case and he has also supported the manner of occurrence. Other witnesses viz. P.W. 1 to P.W. 3 have also supported the prosecution story so far manner as well as the genesis of occurrence is concerned.

13. From scrutiny of evidence of all witnesses, it appears that they are consistent so far time, place and manner of occurrence is concerned and since the doctor has not been examined in this case, the trial court has rightly not convicted the appellants under Section 307 of the IPC. So far non – examination of I.O. is concerned, as the place of occurrence is well established from the evidence of witnesses as such non examination of I.O is not fatal in this case.

14. So far submission of learned counsel for the petitioner that Fatuha was the nearest police station but no information was given to



the Fatuha police with regard to the occurrence, the same has properly been explained as both the injured persons were in unconscious condition and they were brought by villagers to P.M.C.H. for treatment and as such, the fardbeyan was recorded by Pirabaore police station at P.M.C.H., Patna. Further submission of learned counsel for the appellant that in this doctor has not been examined and defence has been prejudiced to cross examine the doctor to prove the nature of injury and weapon used to cause those injuries. There is consistent evidence of assault by appellant and P.W. 5 and P.W. 6 had received injuries. No doubt, in absence of examination of Doctor, nature of injuries and weapon used cannot be established.

15. Considering the discussions made above, in my view, the appellants could more appropriately been convicted under Section 323/34 and 148 of the IPC as in this case I.O. and doctor has not been examined and as such the conviction of the appellants is modified to the conviction under Section 323/34 and 148 of the IPC. So far sentence is concerned, it has been submitted by learned counsel for the appellant that appellant Ravindra Singh has remained in custody for one month and though appellant Yogendra Singh has not remained in custody but the occurrence is of the year 1981 and 36 long years have passed since then and, therefore, a lenient view may be taken.

16. Accordingly, considering the age of the appellant as well as the



fact that occurrence is of year 1981 and the appellants suffered ignominy and trauma of trial and appeal for so may years, no fruitful purpose will be served to send them behind the bars to serve the sentences, as such, the sentenced of the appellant Ravindra Singh is modified to a sentence already undergone by him in judicial custody. So far appellant Yogendra Singh is concerned, instead of sentence, he is directed to pay a fine of Rs. 1,000/- and in default of payment of fine, he has to suffer simple imprisonment of one month.

17. With the aforesaid modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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