

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.10 of 2009

Arising Out of PS.Case No. -56 Year- 1993 Thana -Muffasil District- BEGUSARAI

Against the judgment or conviction and order of sentenced dated 04-12-2008 passed in Sessions Trial No. 327 of 1997 arising out of Muffasil P.S. Case No. 56 of 1993 by learned Sessions Judge, Begusarai.

1. Yogendra Singh S/o Late Ram Awatar Singh
2. Shailendra Singh, S/o Late Ram Awatar Singh
3. Mahendra Singh S/o Late Ram Awatar Singh
4. Raj Kumar @ Nilesh Singh, S/o Upendra Pd. Singh &
5. Upendra Prasad Singh S/o Late Ram Awatar Singh

All resident of village-Bhairwar, P.S. Muffasil, District-Begusarai

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Prakash Chandra Jha, Advocate.

For the State : Mr. Bal Mukund Prasad Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 04-01-2018

This Cr. Appeal has been filed against the judgment of conviction dated 04-12-2008 and order of sentence dated 04-12-2008 passed in Sessions Trial No. 327 of 1997 by learned Sessions Judge, Begusarai whereby and whereunder the learned Sessions Judge has held the Appellants guilty under Section 323 of the Indian Penal Code and sentenced the appellants to undergo rigorous imprisonment for one year.

Learned counsel for the appellants has submitted that in the instant case, both the injured namely, Rajnandan Singh and Janardan Singh have not been examined. Counsel for the appellants has further submitted that the I.O. of this case has also not appeared for evidence which has prejudiced the defence. Only one witness namely, Ramashish Singh has been examined as P.W. 1, who



claimed himself to be eye witness but in fact, he was not eye witness rather he was a chance witness. He has stated in the evidence that on the date of occurrence at about 8.00 a.m. in the morning, he had gone to purchase fertilizer and on hearing alarm, when reached at the place of occurrence, he found that Rajnandan and Janardan Singh were constructing their hut in front of their house and Yogendra Singh, Upendra Singh, Mahendra Singh, Shailendra Singh and Nilesch Singh all the five arrived armed with Lathi and rod and started assaulting Raj Nandan Singh and Janardan Singh.

Learned APP has submitted that evidence of P.W. 1 finds support from the evidence of the doctor (P.W. 2) who has found injuries on person of both the injured. The injury reports have been exhibited and marked as Exbt. 1 and 1/1.

From perusal of the LCR, it appears that the written report was filed by the informant Janardan Singh alleging that he along with his brother Raj Nandan and some other villagers were constructing Phush Chhappar and Kharatti for putting on the Bhuskar situated in the eastern side of the house. In the meantime, all these appellants and other accused persons arrived armed with Lathi, rod, pistol and assaulted the informant with Lathi and iron rod on his head, back and left side of waist and Ram Nandan Singh was assaulted with Lathi and iron rod on his head, left knee by accused Mahendra Singh and Ramawtar Singh. All the accused persons damaged the house and other accused namely, Usha Devi, Nandini Devi lifted one briefcase containing ornaments.

The court below after trial has convicted all these appellants for the offence under Section-323 of the Indian Penal Code and also sentenced them to undergo R.I. for one year for the offence under Section-323 of the Indian Penal Code.



From the impugned judgment itself, it appears that during trial only three witnesses have been produced by the prosecution. P.W. 1 Ramashish Singh has been examined as an eye witness by the prosecution. He has stated in evidence that he arrived at the place of occurrence on hearing hulla and found Rajnandan Singh and Janardan Singh were constructing their hut in front of their house and these appellants with other accused persons came armed with Lathi, iron rod and started assaulting Rajnandan Singh and others. Janardan Singh and Rajnandan Singh sustained bleeding injury on the head.

Both the injured persons namely, Rajnandan Singh and Janardan Singh have not been produced for their evidence in court. It has come in evidence of P.W. 1 that both the injured have died prior to their evidence.

P.W. 1 has stated in his cross examination that other villagers were also present at the time of occurrence but no examination of other witnesses have been made by the prosecution. P.W. 2 is the doctor who has proved the injury on the person of the injured which has been marked as Exhibit 1 and 1/1.

The I.O. has not appeared in the case to prove the place of occurrence as well as manner of occurrence committed by the accused persons.

P.W. 3 Suresh Poddar has proved the signature of S.I. Dasrath Paswan on Fardbyan marked as Ext-2 and the endorsement and signature of S.I. on Muffasil P.S. Case No. 56 of 1993 marked as Ext-3 and formal F.I.R. as Ext.-4. He has also stated in his evidence that he has not worked with Dasrath Paswan. As such, even the fardbyan, formal FIR was not proved by the I.O. in this case rather the same has been proved by one Suresh Poddar (P.W. 3) who has stated in his evidence that he has never worked with Dasrath Paswan.

Therefore, this court is of the view that there is no sufficient and cogent evidence available in the record to prove the prosecution case beyond all



reasonable doubt against these appellants.

Accordingly, the judgment of conviction and order of sentence dated 04-12-2008 passed in Sessions Trial No. 327 of 1997 by the court below is, hereby, set aside.

All the appellants are acquitted of the charge levelled against them. They are discharged from the liabilities of their respective bail bonds.

Accordingly, this Cr. Appeal is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10-01-2018
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