

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.225 of 2009

1. Shankar Singh.
2. Lalan Singh.
Both sons of late Yugal Singh, resident of village-Pawal, P.S.-
Surajgarha, District-Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arun Kumar Tripathi, Amicus Curiae
For the Respondent/s	:	Mr. Gopal Sharan Singh, Adv.
For the State	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 11-12-2018

1. As the learned counsel for the appellants failed to appear on account thereof, Sri Arun Kumar Tripathi, learned advocate has been requested to assist the court as an Amicus Curiae.

2. Appellants, Shankar Singh and Lalan Singh have been found guilty for an offence punishable under Section 307/34 of the IPC and each one has been sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for one year additionally, under Section 323 of the IPC and each one has been sentenced to undergo R.I. for one year with a further direction to run the sentences concurrently vide judgment of conviction dated 19.03.2009 and order of sentence dated 21.03.2009 passed by



Additional Sessions Judge, FTC-V, Lakhisarai in Sessions Trial No.14/1997.

3. On 07-07-1995, Naresh Singh (PW.4) gave his fardbeyan in an injured condition while was admitted at Sadar Hospital alleging *inter-alia* that on the same day at about 05:00 AM while he has gone towards '*Chaukunha Bandh*' to meet nature's call, he has seen Yugal singh, Lalan Singh, Shankar Singh engaged in dismantling the ridge by spade as well as Khanti whereupon, he has gone there and resisted their activity. Yugal Singh and Lalan Singh began to assault him with *Khanti* while Shankar Singh assaulted him with spade causing severe injury upon his person. Kamleshwari Singh, Rameshwari Singh, Ramanugrah Singh and others came on an alarm seeing whom, accused persons escaped therefrom. Seeing the blood, he became unconscious. He regained sense at Lakhisarai Hospital after having been treated.

4. Surajgarha P.S. Case no.164/1995 was registered thereupon proceeded with the investigation as well as submission of the charge sheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal. It is further evident that during midst of trial one of the accused Yugal Singh died whereupon, proceeding against him was dropped.



5. 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 further been stated that Late Lakhan Singh, Kishori Singh and Siya Singh were three brothers. Accused happens to be descendants of Siya Singh while prosecution happens to be descendants of Lakhan Singh. Kishori Singh died intestate. The prosecution party, after death of Kishori Singh prepared forged and fabricated document and, on the basis thereof, illegally advanced claim, tried to dispossess the accused persons and for that, this case has purposely been instituted levelling false and frivolous allegation. It has also been pleaded that for cancellation of the aforesaid document Title Suit No.1/1997 has been instituted at their end. While prosecution have also instituted Title Suit No.21/1997, an admitted one and to substantiate the same, though no documentary evidence has been adduced but, one DW Ramashish Singh has been examined at their end.

6. Altogether seven Pws have been examined on behalf of prosecution who are PW.1-Pappu Singh, PW.2-Suresh Singh, PW.3-Bijay Singh @ Bam Singh, PW.4-Naresh Singh, PW.5-Ram Chandra Prasad, PW.6-Ram Naresh Yadav and PW.7-Ramanand Prasad Singh. Prosecution has also exhibited Ext.1-



Signature on fardbeyan, Ext.2-Injury Report, Ext.3-Fardbeyan, Ext.4-Endorsement, Ext.5-Formal FIR, Ext.6-Order of Case No.187M/95, Ext.7-Deposition of Case No.187M/95, Ext.8-Judgment of G.R. No.380/2002, Ext.9-Inquiry Report. As stated above, no documentary evidence has been adduced on behalf of appellant although DW.1-Ramashish Singh has been examined.

7. The learned Amicus Curiae has urged that the finding having been recorded at the end of the learned lower court is not at all justifiable in the facts and circumstances of the case. In order to buttress such plea, it has been submitted that the property happens to be ancestral one. Genealogical table is not under controversy. The property for which both the parties are fighting relates with share of Kishori, their uncle who died issue-less. Appellants plead that no document was ever executed by Kishori Singh in favour of wife of informant PW.4 as well as his brother PW.2 contrary to it, they asserted that Kishori Singh had executed gift in favour of their respective wife. However, no document has been exhibited in order to substantiate that Kishori Singh had executed gift deed in favour of wife of PW.2 as well as PW.4. Having failed on that very score, being Hindu family there would be presumption of jointness. That is so, being a co-sharer appellants have got right, title, possession as possession of one co-



sharer would be deemed to be possession of other co-sharer whereupon the activity having at the end of prosecution party was not acknowledgeable in the eye of law.

8. Apart from this, it has also been submitted that it happens to be unfortunate for the appellant that I.O. PW.5 was not at all cross-examined at their end due to misconduct at the end of the learned counsel who refused to cross-examine but, when the examination-in-chief of the PW.5 is properly appreciated then in that circumstance, his objective finding relating thereto speaks a lot and to substantiate the same, it has been submitted that I.O. had not deposed that when he visited the place of occurrence he had found ridge in between the field of prosecution party as well as accused having been dug or dismantled up to 15 feet, rather he had simply incorporated the prosecution case on that very score. So, the genesis of occurrence as flashed on behalf of prosecution is found completely gutted down. That being so, informant has no occasion left for to go over the plot.

9. It has further been submitted that I.O. had rightly shown absence thereof because of the fact that when he visited the place of occurrence, he had not found blood at the spot though, PW.1, PW.2 and PW.4 categorically stated that there was copious blood at the place of occurrence. Then, it has been submitted that



in the fardbeyan PW.4 had not spoken with regard to presence of PW.1 as well as PW.4 to be an eyewitness to occurrence and that has got relevance. It has also been submitted that the same has got impact upon the prosecution version because of the fact that PW.2 himself stood as one of the FIR attesting witness. Had there been presence of PW.2 as a witness of occurrence, then in that circumstance, his presence certainly would have been in the fardbeyan. His presence has subsequently been introduced although, is not at all found supported by the objective finding of the I.O. that maize field of PW.2 was lying in the eastern boundary of the P.O. land. The learned Amicus Curiae also submitted that whoever been named in the fardbeyan, Kamleshwari Singh, Rameshwari Singh, Ramanugrah Singh, they did not turn up to support the case of the prosecution. That being so, the case of the prosecution could not be relied upon in the background of aforesaid deficiency and so, mere presence of injury over the person of PW.4 would not be sufficient to identify the appellants to be the author of the same.

10. Counter-meeting with the submission having made on behalf of learned Amicus Curiae, the learned Additional Public Prosecutor assisted by learned counsel for the informant has submitted that even brushing aside evidence of PW.1, PW.2, PW.3



under the guise of submission having been made on behalf of learned Amicus Curiae, the sole testimony of PW.4 an injured is sufficient to justify the finding having been recorded by the learned lower court. Strengthening the submission, it has been submitted that Section 134 of the Evidence Act allows evidence of single testimony, if reliable, be the basis for attracting conviction and sentence, moreover, the status of PW.4 happens to be that of an injured, whereupon, his testimony could not be brushed aside on flimsy ground. When the evidence of PW.4 is taken together with the evidence of the doctor PW.6 along with the evidence of the I.O. PW.5, it is abundantly clear that PW.4 was assaulted on the alleged date and time of occurrence at the place of occurrence so pointed out by the prosecution and further, prosecution succeeded in substantiating the place of occurrence, genesis of occurrence, manner of occurrence, whereupon the judgment of conviction and sentence is fit to be confirmed.

11. PW.6 is the doctor who, on 08.07.1995 was posted at PMCH and on that day, he examined Naresh Singh having been referred from the Sadar Hospital, Lakhisarai and found the following:-

- (i) Stitched wound 1” length on left fronto parietal region.



- (ii) Stitched wound 1" on right fronto parietal region.
- (iii) Stitched wound 1/2" on occipital region.
- (iv) Stitched wound on left thigh lateral aspect length.
- (v) Stitched wound on right upper back obligatory over right scapula 6" in length.
- (vi) Stitched wound on left lower back obligatory placed 3" in length.
- (vii) Stitched wound on lower back transversely placed 4" in length.
- (viii) Stitched wound over left shoulder 1" in length.
- (ix) Swelling in right lower gum with loose first premolar.

Nature of injury and the weapon used and opinion should be taken from the M.O. who had firstly seen the case. (Exhibited the injury report) Irrespective of presence of nine injuries as indicated herein above, the PW.6 was not at all in a position to decipher the same and further, on account of non-examination of the doctor who firstly attended the PW.4, that remained unexplained.

12. PW.4 is an injured as well as informant of this case. During his examination-in-chief he has stated that on the alleged date and time of occurrence, he was at his field where he had gone to ease himself. He saw Lalan Singh, Shankar Singh and



Yugal Singh engaged in cutting his ridge. He forbidden them over which, they all besieged him and then began to assault. Lalan Singh assaulted with *Khanti* over his forehead as well as over finger of his right hand. Yougal Singh also assaulted with *Khanti* over his forehead. Shankar singh gave spade blow over his neck. On account of *marpit* he sustained injury over his forehead (At three places) back, thigh. Then had said that Shankar Singh had assaulted over his back. At the time of occurrence Suresh Singh, Pappu Singh, Uday Singh, Gangotri Singh, Vinay singh, Kamleshwari Singh, Rameshwari Singh and others were present. He sat down after being assaulted. Then, thereafter, Lalan Singh gave another blow over his head as a result of which, he laid down on the ground. On an intervention of witnesses he was rescued. After regaining sense found himself admitted at Sadar Hospital, Lakhisarai where, police came and recorded his fardbeyan. Identified the accused. During cross-examiantion at para-11 he has shown boundary of the P.O. land as North-Lalan Singh and he himself, South-Bandh, East-he himself, West-Lalan Singh. In para-17 he has stated that mutation has been effected in name of his wife Karuna Devi relating to the P.O. land. The aforesaid land has been donated by his uncle Kishori Singh in favour of his wife. He has admitted Yugal to be nephew of Kishori Singh. Then has also



admitted that the witnesses, he along with accused persons are descendant from common ancestor. He has further admitted presence of Title Suit amongst the parties relating to land under dispute. Then has denied the suggestion that on the basis of forged and fabricated document they advanced illegal claim over the property. At para-18 he has stated that for the first time he had witnessed the activity of the accused from a distance of five hands. In para-20 he has stated that first of all Lalan had given Khanti blow over his forehead which he ward off by his hand resulting fracture of his finger. Lalan had inflicted the blow from front side. Followed by another blow by Yugal Singh with Khanti over his forehead. In para-21 he has stated that occurrence took place for two minutes. In para-22 he had stated that after falling. Shankar gave spade blow over his back, thigh and shoulder. In para-25 he has stated that blood had fallen down at the place of occurrence. But he is unable to disclose the survey plot thereof. He had not given blood stain cloth to the I.O. In para-26, he has stated that at the time of occurrence his elder brother Suresh (PW.2) was at a distance of ten hands from his field. At para-29 he has again stated that first of all Lalan Singh had assaulted him. At para-31 there happens to be contradiction. In para-32 he has stated that total area of the P.O. land happens to be 2.5 Bigha. Occurrence took place at



extremely southern part of the plot. South to the P.O. lies canal. In para-33 he has stated that accused persons are forcibly try to grab the land. No document has been executed by the Kishori Singh deceased in favour of the accused persons rather, Kishori Singh had executed deed in his favour. Then has denied the suggestion that the land happens to be in under exclusive possession of the accused. He also denied the suggestion that after preparing forged and fabricated document advanced their claim in order to grab the property.

13. PW.3 is the stranger of different village. He has stated that on the alleged date and time of occurrence he was engaged in grazing his she-buffalo near about the place of occurrence. He had seen Yugal Singh, Lalan Singh, Shankar Singh engaged in cutting ridge of his plot. Field of Naresh Singh lies by the side of aforesaid field. Naresh Singh protested whereupon all of them began to assault Naresh Singh. Lalan Singh and Yugal Singh assaulted with Khanti while Shankar assaulted with spade. Shankar Singh gave spade blow over neck of Naresh, it caused injury over his shoulder. Yugal Singh assaulted over forehead of Naresh Singh. Lalan had also assaulted with Khanti as a result of which, Naresh became injured. Gangotri Singh, Udai Singh have also witnessed the occurrence. Identified the accused. During



cross-examination, at para-6, he has shown the boundary North-Yugal Singh, South-Bandh, East-Yugal Singh and West-Naresh Singh. He has further admitted that his village lies at long distance. He was there for the purpose of grazing his she-buffalo. In para-10 he has stated that Naresh was present since before at the place of occurrence. He has further stated that on cutting of ridge, the occurrence took place. First of all, Yugal Singh began to cut the ridge by Khanti followed by Lalan with spade. In para-18 he has stated that first of all Naresh Singh was assaulted by Yugal with Khnati. He had given single blow over back side of Naresh Singh. Lalan Singh was standing left to Naresh Singh and he assaulted in likewise manner. Then again corrected Lalan Singh assaulted with Khanti while Shankar assaulted with spade from back. Shankar Singh hurled the blow 5-6 times causing injury over different parts of body. He had not gone to rescue Naresh Singh. In para-22 he has stated that all the witnesses were present since before the occurrence.

14. PW.2 is Suresh Singh, elder brother of the injured/informant PW.4. He has stated that on the alleged date and time of occurrence he was present in his maize field as he was watching the same. The aforesaid land happens to be at Choknahi Bandh. He had seen Yugal Singh, Lalan Singh and Shankar Singh



engaged in cutting ridge of Naresh Singh. Naresh Singh protested whereupon, Yugal Singh and Lalan Singh began to assault by means of Khanti. Lalan Singh repeatedly hurled khanti blow as a result of which, causing injury over his finger, head. Yugal Singh also caused injury over head of Naresh Singh with Khanti and then, Shankar Singh gave spade blow causing injury. Apart from this, Naresh also sustained injury over different parts of body, on account of assault having been made by the accused persons. After sustaining injury Naresh Singh firstly sat down. Whereupon, Lalan Singh gave a blow. Thereafter, he was taken to Lakhisarai over cot where he was treated and then, was referred to PMCH and during course thereof, he accompanied. Police came at the Lakhisarai. Recorded fardbeyan of Naresh Singh in his presence over he has put his signature. He has further stated that Uday Singh, Vijay Singh, Gangotri Singh, Pappu Singh, Ramaugrah Singh, Kamleshwari Singh and others including he himself had witnessed the occurrence. Also stated that accused Yugal Singh is dead. Identified the remaining. In para-4 there happens to be cross-examination with regard to genealogical table and further, institution of title suit no.1/1997 relating to the land under dispute at the end of the accused while title suit no.21/1997 at their end. In para-5 he has stated that he is not remembering the khata, khesra



number of the land under dispute. He has further stated that P.O. land is not an ancestral land rather it happens to be self acquired property. Then has stated that on 31.10.1988. Kishori had gifted the property to his wife. He has also stated that total area of the P.O. land happens to be sixty decimal. Mutation had already been done in name of his wife. In para-6 he has stated that when he reached at the place of occurrence, till then, the ridge up to fifteen feet in length was already cut away. The land of Yugal Singh lies west to the aforesaid ridge while land of Naresh Singh lies east to the aforesaid ridge. His land lies east to the land of Naresh Singh where he was present and was keeping vizil over his maize crop. In para-7 he has shown the boundary of the P.O. North-Naresh Singh, South-Bandh, East-Naresh Singh, West-Accused Yugal Singh. In para-8 he had stated that there was copious blood present at the place of occurrence. Blood had changed the colour of soil to red. In para-9 he has stated that Naresh became unconscious after the assault. Naresh Singh sustained injuries over nine places. He was present there. Occurrence took place for one and half minutes. His maize crop lies three and half lagga from the P.O. land. At para-10 he has stated that when he reached at the place of occurrence mar-pit had already began. He had not gone out of fear. He had not tried to pacify the situation nor had tired to catch hold



Lalan Singh, Shankar Singh and Yugal Singh. He had instructed Naresh Singh to flee but he could not. At that very time, Naresh was standing having western front while accused persons have encircled them from all side. Yugal had given only khnati blow over his head as a result of which Naresh Singh sustained injury over his head. Then Lalan Singh had assaulted. Lalan Singh gave Khanti blow over his forehead, second blow over his forehead (right side). Then has stated that after sustaining second blow, Naresh Singh sat down. Then, witnesses have intervened whereupon, all the accused persons left the scene. In para-11 he has stated that Naresh Singh became unconscious out of injuries having sustained by him whereupon, was lifted to hospital on a cot. Blood had oozen out from the injuries. Then has denied the suggestion that on account of land dispute this false case has been instituted. It has also been suggested that informant was not at all admitted to the Sadar Hospital raither he was impersonated.

15. PW.1 has stated that on the alleged date and time of occurrence he was going towards Bahiar to meet natures call and during midst thereof, he had seen Shankar Singh, Lalan Singh and Yugal Singh jointly engaged in cutting ridge whereupon, Naresh Singh protested. Then thereafter, Lalan Singh, Yugal Singh began to assault Naresh Singh with khanti over his head followed



with spade blow by Shankar Singh as a result of which, Naresh Singh became injured. Suresh Singh, Ramanand Singh, Gangotri Singh have witnessed the occurrence. Thereafter, Naresh Singh was taken to hospital. During cross-examination at para-3 he has shown boundary of the P.O. North-Informant, South-Bandh, East-Informant, West-Accused. Then at para-4 there happens to be disclosure with regard to inter-se relationship. In para-5 he has stated that the field wherefrom ridge was being cut belongs to Naresh Singh. Land of accused also lies contiguous west to the ridge. He is not knowing whether any kind of dispute was with regard thereto. Informant was present at the place of occurrence since before. In para-6 he has stated that accused persons have got no dispute with the informant since before. Accused persons were cutting ridge since before. When he reached at the place of occurrence he had seen Shankar Singh. Giving spade blow over neck of Naresh Singh, caused injury over his shoulder as he tried to escape. Indiscriminate spade blow was given by Shankar Singh. In para-7 he has stated that Yugal Singh and Lagan Singh were armed with khanti. First of all Lalan had given khanti blow. Yugal Singh gave one khanti blow causing injury over back of Naresh Singh. Lalan Singh had hurled khanti four times. All the accused persons assaulted Naresh repeatedly. At the time of occurrence



Shankar Singh was standing two hands away from the informant. At para-8 he has stated that first of all Lalan had assaulted. While accused persons were assaulting the Naresh Singh, he was raising alarm *Bachao-Bachao*. In para-9 he has stated that Naresh Singh had sustained injury over his person at nine places. He was standing ten feet away from the P.O. Witnesses have already arrived before the occurrence. He was raising alarm in order to save his uncle but he had not gone near him. Then had shown ignorance with regard to pendency of title suit. In para-12 he has stated that when he reached at the place of occurrence, accused persons have already cut away ridge up to 15 feet. The total length of ridge was approximately 50 yards. Ridge was being cut from southern side. By khanti as well as spade. After dismantling the ridge, accused persons were throwing soil to both sides. Before occurrence, they have indulged in an altercation. At the time of occurrence, injured was at the southern flank of his land. Then has denied the suggestion that they were illegally trying to grab the land and on account thereof, hatched up a false story and got this case filed.

16. PW.5 is the I.O. He has stated that on 08.07.1995 he was posted at Suryagarha P.S. as ASI. He was entrusted with the investigation of this case. First of all he had gone to Sadar hospital



where he had seen the informant/injured who was being carried to PMCH as was referred. Then thereafter, he had gone to the P.O. village. He met with brother of informant namely Ramanugrah Singh. Whose statement has also been recorded. Then thereafter, he had inspected the place of occurrence as shown by him which happens to be a piece of land lying west to the Pawai village at a distance of 250 yards belonging to the informant as well as accused intervened by a ridge. The other disclosure having at his end happens to be inadmissible. Then has stated that the ridge lies north to south. East to the aforesaid ridge is the land of informant while west to the ridge is the land of accused. He recorded statement of the witnesses, recorded further statement of the informant, procured injury report and then, after concluding investigation, submitted charge sheet against the accused persons. This witness was not at all cross-examined at the end of the accused and so, was discharged.

17. After giving anxious consideration to the materials as referred herein above, it is apparent that the witnesses whoever been named in the fardbeyan has not been examined. Irrespective of presence of PW.2 over the fardbeyan his name as well as name of his son PW.1, along with PW.3 is found absent in the fardbeyan. Fardbeyan could not be an encyclopedia but, in the



facts and circumstances of the case wherein both the parties are own family members, they have logged their heads on account of property having left by one of their ancestor being issue-less and for that, the accused persons pleaded that he died intestate while prosecution party asserted that the deceased had gifted the property to their wives. No document has been brought up on record at the end of the prosecution to justify such plea. Not only this, when the evidence of the I.O. is considered, it is evident that his objective finding to the P.O. is found deficient one more particularly, with regard to presence of dismantled/cut ridge that too at the length of 15 feet and in likewise manner, presence of maize of crop of PW.2 at a distance of three and half *lagga* from the P.O. Apart from this, from the evidence of PW.1 and PW.4, it is abundantly clear that they have asserted that PW.4 had sustained injury, extremely southern flank of his field but, I.O. failed to locate the same. He had not found blood over the place of occurrence and for that, the prosecution had not challenged his finding at least by way of his incompetency, or improperly investigation or, being careless or in collusion. Be that as it may there happens to be consistency amongst the witness so far manner of assault is concerned. The other aspect, as is evident even after examination of PW.6, the prosecution could not succeed in gaining any way, because neither



the nature of injury has come up, nor the weapon by which it might have been committed for want of examination of the doctor who first attended the PW.4. In the aforesaid background, as stated above, the prosecution has succeeded in proving his case so far manner of assault is concerned but, did not justify the finding relating to Section 307/34 of the IPC and that being so, the conviction and sentence recorded therefor is hereby set aside. Confirming the finding recorded by the learned lower court relating to Section 323 IPC. In likewise manner, considering the date of occurrence of the year 1995 as well as, considering the time consumed since then which the appellants faced rigor of trial, the sentence is modified as period having undergone. In terms thereof, instant appeal is partly allowed. Appellants are on bail hence are discharged from their liabilities. First and last page of judgment be handed over to the learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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