IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.152 of 2003

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

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1. Sarjug Rai
2. Lakhan Rai, both sons of late Mani Rai (since abated)
3. Rajendra Rai, son of Mangal Rai (since abated)
4. Surendra Rai, son of Sarbi Rai

All are residents of village Janki Tola, P.S. Fatuha, District Patna

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :
For the Appellants : Mr. Nand Kishore Prasad-2
For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 16-03-2018

Hearth the parties.

2. Appellant no.1 Sarjug Rai, appellant no.3 Rajendra Rai and appellant no.4 Surendra Rai stand convicted under Sections 323/34 of the Indian Penal Code and appellant no.2 Lakhn Rai stands convicted under Section 323 of the Indian Penal Code and sentenced to undergo R.I. for nine months, vide judgment dated 24.2.2003 passed in Sessions Trial No.Case No.108 of 1995/518 of 2001 by Sri Nirmalesh Chandra Lala, Adhoc Sessions Judge, Presiding Officer, Additional Court-II, Patna.

3. During the pendency of the Appeal, it has been reported that some of the accused persons have died, as such a report was called for from the Sr. S.P., Patna and the report has been received,

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from which it appears that appellant no.2 Lakhan Rai and appellant no.3 Rajendra Rai died, hence, the appeal against them stands abated.

4. The prosecution case as appears from the Fardbeyan of P.W. 4 Ramji Singh that the informant along with his wife was harvesting wheat in his field adjacent south of village Janki Tola and his brother Samundra Singh and labourer Jai Singh were carrying bundles of the wheat, in the meantime appellant Surendra Rai came in his filed and started altercation with his wife, asking her as to why she has brought goat in her field for grazing in his field and after altercation, the appellant left the place giving threat to his wife. Further prosecution case is that Samundra Singh and Jai Singh were returning after keeping the bundles of wheat, accused Sarjug Rai, Lakhan Rai , Rajendra Rai and Surendra Rai exhorted to assault them and accused Surendra Rai, Lakhan Rai, Rajendra Rai started assaulting Samundra Rai with lathi and his head was fractured and accused Sarjug Rai assaulted Samundra Rai with lathi on his mouth and his teeth became loose and accused Lakhan Rai also assaulted Jai Singh and his head was fractured. It is also shown that when the informant went to save the injured, he was also assaulted by the accused persons. The aforesaid fardbeyan led to registration of Fatuha P.S.Case No.691 of 1994 and after investigation, the police has submitted charge-sheet against the accused persons and Section 307

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of the IPC was also involved, as such the case was committed to the court of Sessions for trial and disposal, which ultimately came to the file of Sri Nirmalesh Chandra Lala, Adhoc Sessions Judge, Presiding Officer, Additional Court-II, Patna.

5. The appellants stand charged under Section 307/34 of the IPC for attempting to commit murder of Samundra Singh.

6. The prosecution in order to substantiate its case has examined altogether five witnesses and they are P.W.1. Samundra Singh injured, P.W.2 Jai Singh injured, P.W.3 Shakuntala Devi wife of the informant , P.W.4 Ramji Singh informant and injured and P.W.5 Anup Kumar S.I., Investigating Officer.

7. Neither any ocular or documentary evidence has been adduced on behalf of the appellants in defence and their evidence as per the cross examination and the statement under Section 313 of the Cr.P.C. is of innocence and false implication and also that there was a land dispute and they have been falsely implicated in this case as they claim themselves to be *bataidar* of the land.

8. The learned trial court has also not found the accused persons guilty under Section 307/34 of the IPC. Further he has convicted the appellants under Section 323/34 of the IPC and causing injury to Ramji Singh.

9. The appellant preferred this appeal assailing the

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judgment on the ground that the learned trial court has failed to consider that the appellants are *Bataidar* of the land and prosecution has failed to establish the place of occurrence. So far injuries are concerned, the Doctor has not been examined in this case as such there is no medical evidence to support the ocular evidence adduced on behalf of the appellants, as such conviction of the appellants is not sustainable in the eye of law.

10. Contention of the learned counsel for the State is that the prosecution witness Nos. 1 to 4 have supported the prosecution case and said about the assault by the accused persons to Ramji Singh, Sarjug Singh and Jai Singh and the Doctor has not been examined in this case as such conviction under Section 307/34 of the IPC was not established but the learned trial court has convicted the appellants under Section 323/34 of the IPC, which does not suffer from any infirmities.

11. In the background of the above evidence and from perusal of the evidence, it appears that P.W.4 is the informant in this case and he has also received injuries and his evidence in court also discloses that while he along with his wife and P.W.3 Shakuntala Devi and P.W.1 Samundra Singh were carrying bundles of wheat in the meantime, Srurendra Rai came to his field and started abusing his wife and asked as to why she has brought got there as it will damage

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the crops. His evidence also discloses that the altercation took place thereafter Surendra Rai came along with the accused persons armed with *lathi* and on the order of Sarjug Rai, Sarjug Rai, Surendra Rai , Lakhan Rai and Rajendra Rai assaulted Samundra Singh by lathi causing fracture injury on his head, Sarjug assaulted Samundra Singh with an end of lathi on his mouth and his two teeth were shaken Lakhan Rai assaulted Jai Singh with lathi on his head causing fracture and when he went there to interfere in the matter, he was also assaulted by all the accused persons. Thereafter all the injured were brought to Fatuha Primary Health Centre, where the statement was recorded. This witness has been cross examined at length and in his cross examination, he claims having ownership over the land but he could not produce any paper in support of it but there is nothing in his evidence to doubt his testimony about time, place and manner occurrence. P.W.1 and 2 are the injured witness and they have also supported the prosecution case and also stated that they have received injuries and their evidence found support by earliest version of the prosecution.

12. P.W.3 is the wife of the informant and in the FIR itself she has been named and said to be present at the place of occurrence and she has also supported the prosecution case about manner of assault and also stated that P.Ws. 1, 2 and 3 have received injuries and

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P.W.5 is the I.O. and he has stated that he has recorded statement of Ramji Singh at Fatuha Primary Health Centre, Fatuha and thereafter he examined other two injured and also issued requisition to the Doctor for issuing injury report.

13. The learned trial court has acquitted the appellant from the charges under Section 307/34 of the IPC. The Doctor has not been examined and the injury report has also not been brought on record and, the learned trial court has rightly convicted the appellants under Section 323/34 of the IPC, which appears to be free from any infirmities and prosecution evidence are consistent about the manner of assault. Hence, I find no infirmities in the impugned judgment of conviction.

14. Submission of the learned counsel for the appellants on the point of sentence is that the case is of 22 years prior and they have remained in custody for initial period of the trial for six days and the judgment clearly shows that both the accused persons were aged about 75 and 70 years respectively at the time of judgment as stated, as such lenient view may be taken and their sentence be reduced to period already undergone in custody by them.

15. Considering the age of the appellant no.1 and 4 and also considering that this is the case of the year, 1994 and further considering the fact that the appellants were in custody for six days,

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the sentences is modified to the extent to the period already undergone by them in custody.

16. With the aforesaid modification, in order of sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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