

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.62 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- SEKHPURA

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1. Shiv Ram Singh
2. Pintu Kumar
Both s/o Mundrika Singh, r/v Gagaur, P.S. Korma, District-Sheikhpura
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. (Dr.) Anjani Pd. Singh
For the Respondent/s : Mr. Binod Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 24-08-2018

It is mentioned in the impugned judgment that these appellants were not charge-sheeted by police whereas five accused persons were charge-sheeted. During trial of all the five accused persons in S.T. No. 548/2002, five witnesses were examined on behalf of prosecution and on the basis of evidence of prosecution witnesses in S.T. No. 548/2002, both these appellants were summoned under Section 319 of the Cr.P.C. to face trial. Accordingly, separate trial bearing S.T. No. 548A/2002 had proceeded with regard to both these appellants.

2. The court below after holding trial of these two appellants separately vide S.T. No. 548A/2002, arising out of Sheikhpura (Korma) P.S. Case No. 35/2001, convicted and sentenced them for offences under Sections 147, 323 and 427 of the Indian Penal Code by judgment and order dated 16.01.2009 passed by learned



Additional Sessions Judge, Fast Track Court IVth, Sheikhpura. They have been sentenced to undergo R.I. for six months for each offence, i.e. Sections 323, 147 and 427 of the Indian Penal Code. The sentences have been ordered to run concurrently.

3. The prosecution case, in brief, is that informant Brihaspat Kewat gave his written report before the S.I. of Sheikhpura P.S. in Sheikhpura Hospital alleging that in the night of 10.02.2001 at about 9:00 P.M. he along with his son Dukhi Kewat went to see their land in which Khesari and Masoor crops were standing. They saw that the villagers, namely, Shiva Ram Singh, Pintu Kumar, Hari Kumar and younger son of Kedar Singh along with three unknown persons were uprooting his Khesari crop standing in his field. He identified them in the moon light. It is further alleged that they fled away from there after seeing the informant and his son. It is further alleged that informant and his son returned from the field at about 11:00 P.M. and when they reached near the Middle School in village Gagaur, accused persons came out from a community hall and started assaulting them. The accused persons badly assaulted his son Dukhi Kewat on head and whole body. The doctor referred his son to P.M.C.H. for treatment in unconscious stage.

4. Sheikhpura (Korma) P.S. Case No. 35/2001 was registered under Sections 323, 341, 325, 427, 307 and 34 of the Indian Penal Code, on the basis of aforesaid *fardbeyan*.



5. In this case altogether five witnesses have been examined on behalf of the prosecution.

6. The informant Brihaspat Kewat has been examined as P.W. 3 in this case. He has stated in his evidence that on the date of occurrence, he along with his son had gone to his field and saw that the accused persons were uprooting his Khesari crop. He identified the accused persons in the moon light. He further stated that after some time he and his son came at the School of the village. The accused persons arrived there and started assaulting them with *lathi*. His son Dukhi Kewat sustained injury on head and whole part of the body. This witness also sustained injury on the right hand. This witness along with his son were brought to Sheikhpura Hospital from where his son was referred to P.M.C.H., Patna. Statement of this witness was recorded in Sheikhpura Hospital by the police. He has admitted in his cross-examination that he has no enmity with the accused persons.

7. Son of the informant, namely, Dukhi Kewat has been examined as P.W. 2. He has stated in his evidence that on the date of occurrence he along with his father had gone to see his field. He saw that Khesari and Masoor crops were being uprooted by the accused persons. He identified the accused persons in the moon light. He has stated that he and his father stayed in the field for two hours. Thereafter, when they went near Middle School, accused persons came out from the Community Hall near the Middle School armed with *lathi* and started



assaulting him and his father. Shiv Ram Singh (appellant no. 1), Pintu Kumar (appellant no. 2), Hari Singh and Tullu Singh assaulted him, due to which he sustained head injury and also sustained injuries on his whole body. He became senseless. He was brought to Lal Nursing Home, Patna. This witness has stated in his cross-examination that he has no enmity with the accused persons. He has further stated in his cross-examination that first he was assaulted but he could not count as to how many *lathi* blows were given to him. He became senseless due to assault. He regained sense at Lal Nursing Home, Patna on 18/19.02.2001.

8. P.W. 1, Kameshwar Kewat is nephew of the informant. He has stated that he had gone for latrine with Arbind Kewat near the Middle School of his village. He heard sound of “Chor-Chor” and went at the place of occurrence. He saw that accused persons were assaulting Dukhi Kewat and Brihaspat Kewat with *Lathi*. Dukhi Kewat was assaulted on his head and whole body due to which he sustained head injury and became senseless. Right hand of Brihaspat Kewat was also fractured. In his cross-examination, he has stated that he heard sound of “Chor-Chor” and went at the place of occurrence. He stated that he saw the head injury on Dukhi Kewat and also sign of assault on the body of Brihaspat Kewat. He further stated that he had also gone to Sheikhpura Hospital along with injured persons where the doctor examined them. The doctor referred Dukhi Kewat to Patna.



9. P.W. 5 is Dr. Mirgendra Prasad Singh. He has stated that he was posted at Sub divisional Hospital, Sheikhpura on 11.02.2001 and on the same day he had examined Brihaspat Kewat (informant) and found two injuries on his person:

(I) Swelling and pain over right fore arm 2”X1”. X-ray shows fracture of lower end of radius and ulna.

(II) An echomosis over right side of waist 2”x1”

Nature of injury no. I was grievous and injury no. II was simple caused by hard blunt substance. Photo copy of injury report has been marked as ‘X’ for identification in S.T. No. 548/2002. He further stated that he referred the injured Dukhi Kewat to P.M.C.H. for treatment. Reference slip was identified by him in his hand writing and signature, which has been marked as Ext. 3. In his cross-examination, he has stated that before referring Dukhi Kewat to P.M.C.H., he had examined him and had prepared injury report but that injury report was not produced before the court. In para 5 he has stated that informant was treated in Sub divisional hospital, Sheikhpura. He has further stated that injury report does not show that X-ray was advised but his injury report is based on X-ray report and X-ray plate which are kept in the hospital.

10. P.W. 4 is I.O. of this case. He has proved the Formal F.I.R. (Ext. 1), which is attached with original S.T. No. 548/2002. He had inspected the place of occurrence and recorded the statement of witnesses. He has described two place of occurrence. First place of



occurrence is the field of the informant and second place of occurrence is Community Hall. He has given full description of both place of occurrence. He had also found blood stain at the second place of occurrence and recorded statement of Dukhi Kewat, when he returned from Patna Hospital. He received injury report and after completion of investigation submitted charge-sheet against the accused persons.

11. From perusal of evidence of witnesses, it appears that the informant Brihaspat Kewat has not specifically alleged against these appellants that they assaulted his son Dukhi Kewat. There is general and omnibus allegation against all the accused persons. Informant (P.W. 3) has stated that his son sustained injury on his head and he sustained injury on his right hand. His son was referred to P.M.C.H., Patna for treatment. P.W. 2, Son of the informant has stated that these appellants had assaulted on his head with *lathi*. He sustained injury on his head and he became unconscious. He was referred to P.M.C.H. He has stated that he was assaulted by the accused persons. He was treated in Lal Nursing Home, Patna and regained sense on 18/19.02.2001. P.W. 1 is nephew of the informant. He has stated that he had gone for latrine. He heard sound of “Chor-Chor” and went to the place of occurrence. He saw that accused persons were assaulting Brihaspat Kewat and Dukhi Kewat. He has stated that Dukhi Kewat had sustained injury on his head and other part of body and had become unconscious. Brihaspat Kewat sustained fracture on right hand, but there is no injury of Dukhi Kewat on the



record during trial. Photo copy of injury report of Brihaspat Kewat was produced by the prosecution, which was marked as 'X' for identification. The I.O. has stated that he has recorded the statement of Dukhi Kewat after his returning from Patna after treatment. No injury report has been produced by the prosecution regarding Dukhi Kewat during entire trial. The informant has stated that his son Dukhi Kewat had become unconscious, but there is no any medical evidence in support of his evidence.

12. This Court has earlier passed judgment in Cr. Appeal No. 57/2009 dated 10.08.2018 in which other accused persons have been acquitted, who have faced trial in S.T. No. 548/2002. In the instant case also, it appears that P.W. 3 has stated that his son Dukhi Kewat was referred to P.M.C.H. but injury report was not produced during trial in the court. Dukhi Kewat himself was examined as P.W. 2 and has stated that he had sustained head injury and had become unconscious, but there is no injury report in support of his evidence. He has stated in his evidence that he was examined at Lal Nursing Home, Patna.

13. In such circumstances, this Court finds that prosecution has failed to substantiate the charge for offences under Sections 147, 323 and 427 of the Indian Penal Code against the appellants beyond all reasonable doubt.

14. Accordingly, the impugned judgment of conviction and order of sentence dated 16.01.2009 passed by learned Additional



Sessions Judge, Fast Track Court IVth, Sheikhpura in S.T. No. 548A of 2002/ T.R. No. 18/2009 is hereby set aside.

15. The appellants are on bail. They are discharged from liability of their bail bonds.

16. This Criminal Appeal is accordingly allowed.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	07.09.2018
Transmission Date	07.09.2018

