

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.122 of 2009**

Arising Out of Barh (Athmalgola) P. S. Case No.146 of 2000, District-Patna.

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1. Satyendra Singh, son of Sita Ram Singh
 2. Suli @ Surendra Singh, son of Late Talika Singh
 3. Neeraj Kumar Singh @ Neeraj Singh, son of Satyendra Singh
 4. Manoj Singh @ Malhu Singh, son of Surendra Singh
 5. Nevi Sao, son of Ram Uchit Sao, all resident of village-Rupas Tola, Babu Foudar Singh Laheria, Tola, Police Station-Athmalgola, District-Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ranbir Singh-Amicus Curiae

For the Respondent/s : Mr. Parmeshwar Mehta-A.P.P.

Mr. Arun Kumar-Advocate

Mr. Bipin Kumar-Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 06-11-2018**

None appears on repeated calls on behalf of appellants, whereupon Sri Ranbir Singh, learned counsel has been requested to assist the Court as an Amicus Curiae.

2. Appellants Satyendra Singh, Suli @ Surendra Singh, Neeraj Kumar Singh @ Neeraj Singh, Manoj Singh @ Malhu Singh and Nevi Sao have been found guilty for an offence punishable under Section 325 of the I.P.C. and sentenced to undergo R.I. for three years, under Section 341 of the I.P.C. and sentenced to undergo S.I. for one month while appellant Neeraj Kumar Singh @ Neeraj Singh has independently been found guilty for an offence punishable under Section 379 of the I.P.C. and sentenced to undergo R.I. for one month



with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 24.01.2009 passed by the Additional Sessions Judge-1st, Barh, Patna in Sessions Trial No.306 of 2002.

3. Umesh Singh (PW-7) filed written report on 05.05.2000, disclosing therein that his nephew Chandra Mauleshwar Singh and Bablu Singh were playing cricket South to the Bathan of Gariban Rai lying at Southern flank of the village. At that very time, Satyendra Singh, Neeraj Singh, Surendra Singh @ Suli Singh, Manoj Singh @ Malhu Singh came and began to abuse. Then further said that blocking of the road passing through their land were protested by them and so, you are to be given a lesson. At that very time, Satyendra Singh was armed with rifle while rests were armed with lathi and iron road. Satyendra Singh gave rifle butt blow over Chandra Mauleshwar Singh, joined by Surendra Singh, Manoj Singh, who assaulted brutally by means of lathi. They were also joined by Neeraj Singh, who gave iron rod blow. Seeing this, Bablu Singh rushed to house and disclosed the event, whereupon they along with co-villagers came at the P.O. seeing whom, the accused persons fled away. Bablu Singh has also disclosed that Nevi Sao was also actively associated with them and has also assaulted Chandra Mauleshwar Singh. Neeraj Singh snatched away wrist watch. It has also been asserted that on account of assault,



hands and legs of Chandra Mauleshwar Singh sustained fracture.

4. After registration of Barh (Athmalgola) P. S. Case No.146 of 2000, investigation was taken up and concluding the same, chargesheet was submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

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 also been pleaded that alleged victim Chandra Mauleshwar Singh had sustained injury during course of fall while was playing cricket, which has been considered as golden opportunity to implicate the appellants falsely in the background of persisting land dispute, which is itself evident from the prosecution version. However, neither oral nor documentary evidence has been adduced on that very score.

6. Prosecution, in order to substantiate its case has examined altogether ten PWs, who are PW-1, Raj Kant Singh, PW-2, Gariban Rai, PW-3, Ram Jee Rai, PW-4, Babloo Singh, PW-5, Chandra Mauleshwar Singh, PW-6, Rana Arun Kumar Singh, PW-7, Umesh Singh, PW-8, Dr. Ranjeet Kumar Singh, PW-9, Samrath Kumar and PW-10, Dr. Shailendra Kumar Verma. Side by side, had also exhibited, written report as Exhibit-1, injury report as Exhibit-2, photo copy of injury report prepared by PW-10 as Exhibit-2/1, written



report as Exhibit-3, endorsement over written report as Exhibit-4 and Exhibit-5 formal F.I.R. As stated above, neither oral nor documentary evidence has been adduced on behalf of defence.

7. It has been submitted on behalf of appellants that the prosecution has been launched in ante-dated manner after taking the police in their collusion by the prosecution in order to falsely implicate the appellants with whom, the prosecution has got a grudge. In order to justify the same, the learned Amicus Curiae has submitted that the written report was filed on 05.05.2000 while case has been registered on 06.05.2000, F.I.R. was transmitted to the Court concerned on 07.05.2000, which reached at the Court on 10.05.2000 without any explanation in utter violation of Section 157 of the Cr.P.C. This happens to be the sole ground, whereupon the prosecution case is fit to be disbelieved.

8. Apart from this, it has also been submitted that all the material witnesses happens to be own family members. Whoever been examined as an independent witnesses have not supported the case of the prosecution and so, their testimony in the background of interestedness as well as inimical did not inspire confidence. Moreover, the evidence of the I.O. (PW-9) relating to the objective finding of the P.O. happens too be an additional ground. That being so, irrespective of the fact that victim (PW-5) has sustained



injuries, did not justify the finding having been recorded by the learned lower Court. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court happens to be cryptic, perverse as well as on account of non-consideration of flaws persisting on the record.

9. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that enmity is a double edged sword as the same may be a cause for false implication. Simultaneously, may be a cause for commission of the occurrence and these things is to be perceived in the background of materials having on the record. Now, coming to facts of the case, it has been submitted that the oral evidence including that of an injured (PW-5) consistently and conclusively substantiated the appellants to be the author of the injuries, whereupon they have rightly been convicted and sentenced for. Furthermore, it has been submitted that whatever been argued at the end of the learned Amicus Curiae with regard to receipt of the F.I.R. at the Office of the Magistrate on 10.05.2000, the same has not been confronted with the PW-9, I.O. during course of cross-examination and on account thereof, he was not at all in a position to explain the same and so, the appellants could not take advantage of their own lapses. Had there been cross-examination on that very score, the I.O. would have an



opportunity to explain the circumstances whereunder the delay was caused and if not, would have given an opportunity to the learned lower Court in order to appreciate the conduct of the prosecution. Consequent thereupon, it has been submitted that the judgment impugned attracts no interference.

10. From the evidence, it is apparent that first of all, PW-5, injured Chandra Mauleshwar Singh, was taken to Barh hospital where he was treated and then thereafter, he was referred to P.M.C.H. for proper medication. PW-10 is the doctor, who had examined the injured Chandra Mauleshwar Singh at the Barh Sadar Hospital on 05.05.2000 and found the following injuries over his person:-

- i) Swelling with tenderness on right upper arm lower region 2" x 2" with bruises 1 ½" x 1/6".*
- ii) Two bruises on left forearm 1 ½" x 1/6".*
- iii) Swelling with tenderness on mid part of left forearm 1" x 1" with two bruises 1 ½" x 1/6".*
- iv) Swelling with tenderness on lower lumber region 2" x 2" with one abrasion ½" x ½".*
- v) Swelling with tenderness on left elbow 2" x 2" with two bruises ½" x ½".*
- vi) Tenderness on left knee with tenderness and swelling on dorsum left foot 4" x 4".*
- vii) Tenderness and swelling on left mid thigh 1" x 1".*

During cross-examination, nothing substantial is found.



11. PW-8 is the another doctor, who had examined the victim Chandra Mauleshwar Singh (PW-5) on 05.05.2000 at 11.50 p.m. at P.M.C.H. and found the following:-

i) Injury on left leg with pain and swelling on upper calf.

ii) Pain and swelling on left forearm.

iii) Pain and swelling on right elbow and forearm.

iv) Pain dorso lumber spine.

In Para-2 of his evidence, he has stated that he had also examined the X-ray plate of the injured, wherefrom it appears that X-ray plate no.3326 had shown T-Y-fracture of lower end of right humerus and lower end of left radius. X-ray plate no.3330 did show fracture of Tibia upper third. Mark of identification was a black on the left side of nose. Age of injury was within 12 hours. Nature of injury No.I, II & III are grievous and injury no.iv was simple in nature. All the above injuries may be caused by hard blunt substance such as iron rod, but of rifle, lathi etc. Even the defence could not be able to gain substantial from him during course of cross-examination.

12. The only infirmity what has been found persisting on the record is that the injury report having been exhibited at the end of the PW-10 as Exhibit-2/1 is a photo copy without any certification at the end of Competent Authority. That being so, it could not be treated as secondary evidence, whereupon the finding so recorded therein, goes out of consideration. Be that as it may, in spite of lapses at the



end of the prosecution on that very score, it is apparent that victim was examined by the PW-10 and on 05.05.2000 at about 6.00 p.m. and then, the victim was referred to P.M.C.H. for proper treatment, accordingly, was examined by the PW-8. From the evidence of PW-8, it is evident that victim had sustained fracture of hand as well as leg and so, the injuries have been found to be grievous in nature.

13. Before coming to deal with the evidence of material witnesses, first of all, the suggestion whatever been given to the informant at Para-7 is to be taken into consideration *“It is not a fact that during course of playing cricket over a road lying by the side of Bathan of Gariban Rai Chandra Mauleshwar Singh became injured.”* That means to say, injury over the person of Chandra Mauleshwar Singh has not been denied that too, by the side of Bathan of Gariban Rai, so P.O. has also been admitted. That means to say, it happens to be an admission by suggestion. In the aforesaid background, first of all, evidence of injured (PW-5) is to be considered.

14. PW-5, the injured, has deposed that on 05.05.2000 at about 4.00 p.m., he along with his younger brother Babloo Singh (PW-4) was playing cricket in a field South to the Bathan of Gariban Rai. At that very moment, Satyendra Singh armed with rifle, Manoj Singh armed with lathi, Surendra Singh @ Suli armed with rod, Neeraj Kumar Singh and Nevi Sao armed with lathi came and Sato



Singh saying that today, he will not be spared, tried to fire rifle, but it did not materialize, whereupon gave butt blow over his chest followed by lathi, iron rod blow given by Suli Singh as a result of which, he sustained injury over his head, hand. The other accused persons repeatedly gave lathi blow causing severe injury over his person. Neeraj Singh snatched away wrist watch. Occurrence was witnessed by his uncle Umesh Singh, brother Babloo Singh, father Rana Arun Singh, Gariban Rai, Ramji Rai, Rajkant and others. His injuries were treated at Barh and then, at P.M.C.H. and then, at the Private Clinic of Dr. H. N. Sinha. He had sustained fracture of both the hands, left leg. Identified the accused. During cross-examination at Para-2, there happens to be cross-examination with regard to his presence at Barh Hospital, P.M.C.H. and further, the reason for shifting himself from P.M.C.H. to private clinic for proper treatment. He has further stated that his statement was recorded by the Athmalgola Police Station, whereupon, he had not put his signature or L.T.I. Then thereafter, police had not enquired from him. In Para-3, there happens to be contradiction on the score that he had not made statement that firstly an attempt was made to fire from the rifle, when the shot could not be fired, he was assaulted by butt of rifle over his chest. He had further stated that Suli Singh assaulted him with iron rod over his head, which was prevented by him with both the hands as a result of which, he



sustained fracture. From the evidence of PW-9, the I.O., it is evident that the same has not been confronted to him on account thereof, the same has loosen its legal identity. In Para-4, he has stated that first of all, he was assaulted while he was standing position. After sustaining blow, firstly he sat down and then, lied over the ground. He had sustained indiscriminate lathi as well as rod blow. Even after lying over the ground, he was assaulted by the lathi, iron rod as well as butt of the rifle. During course thereof, some of the witnesses have arrived. Then thereafter, he became unconscious, so he is unable to disclose the subsequent event. In Para-6, he has stated that there was an altercation with Satyendra Singh about two days ago relating to passage. In Para-8, he has stated that apart from disclosure to the police regarding the occurrence, he has also narrated the same to his friend. Then has denied the suggestion that whatever been deposed by him happens to be false. Further, he denied the suggestion that no such type of occurrence as alleged, has ever taken place.

15. PW-4 is Babloo Singh, younger brother of PW-5, injured. He was playing cricket along with PW-5 on the fateful day at the relevant hour. During his examination-in-chief, he has stated that on the alleged date and time of occurrence, he was playing cricket with his brother Chandra Mauleshwar Singh south to bathan of Gariban Rai. At that very moment, Satyendra Singh armed with rifle,



Neeraj Singh, Manoj Singh, Nevi Sao armed with lathi, Surendra Singh armed with iron rod came and began to assault his brother. Satyendra Singh gave butt blow while rest have assaulted lathi as well as iron rod. After sustaining injuries, his brother fell down, whereupon he began to raise alarm attracting presence of his uncle, Umesh Singh, Ramji Rai, Gariban Rai, Rajkant Singh and others. Neeraj Singh took away wrist watch from his brother. Then thereafter, Chandra Mauleshwar Singh was taken to Athmalgola Police Station, identified the accused. During course of cross-examination at Para-3, he has stated that though twenty two players are required to play cricket, but at that very time, they have arrived earlier and on account thereof, both two brothers were practicing. He has further stated that the P.O. land belongs to his uncle. They were playing at the Northern flank of the field. From that place, the N.H. lies at a distance of 200 yards while Athmalgola Police Station at a distance of half kilometer. In Para-5, he has stated that his father as well as his uncle have got no strained relationship with the accused persons relating to a passage. His father resides along with his other brothers in a common house. In Para-6, he had stated that rifle was used to kill Chandra Mauleshwar Singh, but no injury was caused over his head, chest or at any delicate part of the body. He is unable to say how many injuries have been sustained by Chandra Mauleshwar Singh while he was in standing



condition and in likewise manner, after lying down over the ground, but he was assaulted for 5-6 minutes with the rifle, lathi, rod indiscriminately. He has further stated that Nevi Sao had assaulted him also. At that very time, Umesh Singh and Ramji Rai were raising alarm. In Para-7, there happens to be cross-examination relating to shifting of the victim to Barh hospital and then to P.M.C.H. In Para-8, there happens to be contradiction, but the same happens to be worthless as no attention was drawn up by the appellants to the I.O. relating thereto. At Para-9, he has stated that he had not gone to his house shouting. Occurrence took place by side of the field near the bathan of Gariban Rai. It did not take place over the ridge. Then has denied the suggestion that no such type of occurrence have ever taken place.

16. PW-3 is Ramji Rai, during course of examination-in-chief, has reiterated the prosecution. During cross-examination at Para-2, he has stated that he had not heard shouting rather he had witnessed the occurrence. He had not shouted at the time of occurrence. At that very time, Umesh Singh was not present there. In Para-3, he has stated that when he reached at the P.O., he had seen Chunnu Singh lying and was being assaulted by the accused persons, severe blow was given over the head of Chunnu Singh. He was also given 8-10 rifle butt blows, indiscriminately. Lathi blow was also



given. In Para-4, he has stated that during course thereof, Gariban and Rajkant Singh reached. In Para-5, he has stated that they have lifted Chunnu Singh (Chandra Mauleshwar Singh) to the police station in an unconscious state where Umesh Singh gave his fard-bayan. Father of Chunnu Singh gave statement later on at the police station. In Para-6, he has stated that from the police station, Chunnu Singh was taken to Barh Sadar Hospital where he was not treated rather referred to P.M.C.H. Then attention has been drawn towards earlier cases, which he shown ignorance. However, nothing has been adduced to discredit the same.

17. PW-6 is the father of the injured as well as PW-5, who during course of examination-in-chief, has reiterated the prosecution version. During cross-examination at Para-2, he has stated that the P.O. land belongs to his cousin brother Dinesh Singh. Occurrence took place at the western side of the aforesaid land. At Para-4, he has stated that when he along with his brother reached at the P.O. till then, Chandra Mauleshwar Singh had fallen down over the ground after sustaining injuries. He had seen injuries over his person. Then thereafter, he was taken to police station by Gariban Rai, Umesh Singh and others. He had not gone to the police station. Again he stated at Para-6 that he had reached at the police station at about 4.30 p.m. His statement was recorded on the same day. In his



presence statement of none was recorded. In Para-8, he has stated that his statement was recorded on the following day of the occurrence at about 6.00 p.m. He had accompanied the injured to Barh hospital, but had not gone to P.M.C.H. In Para-9, he has further stated that his son Chandra Mauleshwar Singh had quarrelled with Satyendra Singh relating to passage about two days prior to the occurrence. Then has denied the suggestion that no such type of occurrence had ever taken place. Though his attention has been drawn up towards his previous statement as is evident from Para-9, but as the same has not been confronted to the I.O., gone worthless.

18. PW-7 is the informant. He has stated that on the alleged date and time of occurrence, he was at his house. After hearing sound of uproar, he rushed to the place of occurrence and had seen Satyendra Singh assaulting with the butt of rifle. Surendra Singh assaulted with iron rod, Neeraj Singh, Manoj Singh and Nevi Sao assaulted with lathi to Chandra Mauleshwar Singh (PW-5). During midst thereof, Neeraj Singh snatched away wrist watch. The motive of the occurrence has been shown as dispute over passage. Then thereafter, they lifted Chandra Mauleshwar Singh to Athmalgola P.S. in an injured condition where he had filed written report (exhibited). Identified the accused. During cross-examination at Para-2, he has stated that at the relevant time, he along with his mother were present



at their house. He has further disclosed that none came after the occurrence. At the time of occurrence, Sabdal Chaudhary, Gariban Mahto, Ram Das Rai, Suli Rai, Ram Dev Sao and others arrived at the P.O. Chandra Mauleshwar Singh was given indiscriminate rifle butt blow and in likewise manner, by lathi, iron rod, but he is unable to disclose the exact location of body where assault was made. He has further admitted in Para-3 that he had incorporated the fact in the written report that his nephew Babloo Singh, out of fear rushed there from raising alarm to the house where disclosed the event. In Para-8, he had stated that occurrence took place over the land belonging to Dinesh Singh, which was parti land at the time of occurrence, crop was already harvested. In Para-9, he has further admitted that in written report, he had scribed Surendra singh had assaulted with lathi while Neeraj Singh had assaulted Chandra Mauleshwar Singh with iron rod. He has further admitted at Para-11, Satyendra, Neeraj to be their Gotia. Then has denied the suggestion that no such type of occurrence had ever taken place.

19. PW-1 and PW-2 were declared hostile. PW-9, I.O. has been confronted with the statement of Raj Kant Singh (PW-1) under Section 161 Cr.P.C., but no previous statement of Gariban Rai (PW-2) has been confronted to him. PW-9, I.O. during course of his evidence has deposed that he after receiving written report of Umesh



Singh, sent it to Barh P.S. for registration (exhibited relevant endorsement). He took up investigation, recorded further statement of informant, recorded statement of injured, sent the injured to Barh hospital for treatment, wherefrom sent to P.M.C.H. Inspected place of occurrence which happens to be Bathan of Gariban Rai on passage passed through North to South lying East to the Bathan where occurrence took place. Shown the boundary of the P.O. Then shown previous statement of Raj Kant, Ramji Rai, recorded statement of other witnesses. Procured injury report after completing investigation, submitted chargesheet. During course of examination at Para-8, has said that he has not mentioned time of recording further statement, inspection of the P.O. In Para-10, he has stated that he has not mentioned that P.O. was shown by the informant. He had not found Bat, Stump, Ball at the P.O., nor had found sign of playing cricket. He had not mentioned with regard to presence of any sign with regard to playing of cricket. He had not found blood stain at the P.O. He had not received injury report from Barh Hospital. In Para-15, he has stated that he has not mentioned the reason for receiving of F.I.R. at C.J.M. Office after five days.

20. From the evidence available on the record, it is manifest that doctor has found injuries, some of which grievous in nature on account of fracture over the person of the Chandra



Mauleshwar Singh caused by hard and blunt substance and. Nothing substantial has been gained at the end of the appellants during cross-examination of PW-8, PW-10. From the evidence of the witnesses even in worst case the presence of PW-6 and Pw-7 could be perceived not as even eye witness to occurrence in spite of the same, they corroborated the evidence and more particularly, as disclosed hereinabove, the suggestion having been at the end of the appellants to PW-7 admitting presence of injuries over the person of PW-5, injured goes out of controversy. Furthermore, from the evidence of PW-3, PW-6 and PW-7, it is apparent that presence of PW-4 and PW-5 at the place of occurrence is found properly substantiated. Furthermore, from the evidence of PW-5, injured, it is apparent that he had completely supported the prosecution case as well as manner of occurrence, whereunder he was assaulted, which is found duly corroborated by PW-4, his brother without any embellishment, exaggeration. That being so, considering their evidence in consonance with admission at the end of the appellants coupled with the objective finding of the PW-9, I.O. with regard to the place of occurrence, the manner of occurrence is found duly substantiated. In likewise manner, the genesis of occurrence also goes out of controversy.

21. After having minute observation of the evidence as discussed hereinabove, it is evident that one of the appellants namely



Nevi Sao is found entitled for at least benefit of doubt and to that extent, the judgment of conviction and sentence recorded by the learned lower Court is hereby set aside. To his interest, the instant appeal is allowed. He is on bail, hence is discharged from its liability.

22. So far remaining appellants namely Satyendra Singh, Suli @ Surendra Singh, Neeraj Kumar Singh @ Neeraj Singh, Manoj Singh @ Malhu Singh are concerned, this appeal sans merit and is accordingly, dismissed. They are on bail, hence their bail bonds are hereby cancelled directing them to surrender before the learned lower Court within a fortnight to serve out remaining part of sentence, failing which, the learned lower Court will be at liberty to proceed against them in accordance with law. The first and last page of the judgment be handed over to the learned Amicus Curiae for needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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