

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.477 of 2003

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

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1. Lila Yadav, Son of Jitan Yadav
2. Satish Yadav, Son of Surendra Yadav
3. Surendra Yadav, Son of Lila Yadav
4. Ratani Devi, Wife of Lila Yadav
All are residents of village – Gafakala, P.S. – Bodh Gaya, District – Gaya.
..... Appellant/s

Versus

State of Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dharendra Kumar Sinha, Adv.
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 30-03-2018

This appeal is directed against the judgment of conviction and order of sentence dated 31-07-2003, passed by Sri Prakash Chandra Jaiswal, the then 5th Additional Sessions Judge, Gaya, in Sessions Trial No. 41/97, 475/94(SJ), by which the appellants, above named, Lal Babu Chowdhary @ Lal Babu Sahni stood convicted under Sections 324/34 and 341 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo R.I. for two years under Section 324/34 of the IPC and S.I. for one month for the offence punishable under Section 341 of the IPC. Appellants Surendra Yadav and Satish Yadav were further convicted under Section 323 of the IPC and were sentenced to undergo R.I. for six months.

2. Earlier a report, vide order dated 07.03.2018 was called for



from the S.S.P. Gaya with regard to with regard death/alive status of all the appellants. The report has been received, from which, it appears that appellant no. 1, namely, Lila Yadav had died during pendency of the appeal. As such, this appeal with regard to appellant no. 1, Lila Yadav stands abated.

3. Prosecution case as per the statement of informant Nago Yadav in short is that on 23.08.93 at around 11-12 O' Clock, informant went to plough his share of land. As soon as, tried to plough the land, Lila Yadav, step brother of the informant came at the ridge of the field armed with *khanti* and informant kept ploughing the land. In the meantime, sons of Leela Yadav, namely, Satish Yadav and Surendra Yadav armed with *lathi* came at the field along with their mother. Lila Yadav instigated to assault the informant, on which, appellant Satish Yadav assaulted on the right thigh of the informant by means of *lathi* and appellant Surendra Yadav assaulted him on the left thigh by means of *lathi*. Lila Yadav assaulted the informant on his head by means of *khanti*. After receiving the injuries, informant fell down on the ground and, thereafter, appellant Ratani Devi assaulted him by means of brick bats. Seeing the occurrence, the son and brother of informant rushed to save him, thereafter accused persons fled away. By that time several villagers also assembled at the place of occurrence and witnessed the occurrence.



4. On the basis of the aforesaid statement of informant, Bodh Gaya P.S. Case No. 85/93 has been instituted under Sections 323, 341, 307 and 341 of the IPC.

5. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Sri Prakash Chandra Jaiswal, the then 5th Additional Sessions Judge, Gaya, for trial and disposal.

6. To prove its case, prosecution examined altogether six witnesses. They are: P.W. 1 Gopal Yadav, P.W. 2 Sidheswar Yadav, , P.W. 3 – Chandeshwar Yadav, P.W. 4 – Nago Yadav (informant) P.W. 5 - Doctor Vinod Kumar Verma, and P.W. 6- Uma Shankar Prasad, a formal witness, who proved the formal F.I.R.

7. Apart from that, following documents have been brought on record and marked as Ext. 1 – Signature of witness Gopal Yadav on the statement, Ext. 2 – Injury report of informant Nago Yadav, Ext. 3 – Formal F.I.R.

8. Neither ocular nor any documentary evidence has been brought on record by the defence and their defence is of denial of occurrence and false implication and also of innocence.

9. On conclusion of trial, the Trial Court though has not found the appellant guilty under Section 307 of the IPC, however, convicted all



the appellants under Section 324/34 and 341 of the IPC and further convicted the appellants Surendra Yadav and Satish Yadav under Section 323 of the IPC and sentenced them in the manner aforesaid.

10. Contention of learned counsel for the appellants is that there is delay of seventeen hours in lodging the F.I.R. as the occurrence took place on 23.08.93 at about 11-12 O'clock, whereas the F.I.R was registered on next date on 24.08.93 at 4.30 P.M and no explanation for the delay has been offered, as such, chance of manipulation cannot be ruled out. It has also been submitted by learned counsel for the appellants that in this case Investigating Officer has not been examined and non examination of the Investigating Officer has caused serious prejudice to the defence. Further submission of learned counsel for the appellants is that the evidence disclosed that the informant and Lila Yadav were the step brothers and the occurrence took place with regard to piece of land, which the informant was alleged to be ploughing on the date of occurrence, as such, informant is aggressor and appellants have falsely been made accused in this case. Further the allegation against the Lila Yadav is of assault to the informant by means of *Khanti* on his head but the doctor, who treated and examined the injured has found incised injury over the head of the informant, which is not possible by *khanti*, which is a pointed weapon. It has also been submitted that the F.I.R. shows that appellant



Satish Yadav and Surendra Yadav assaulted on right and left thigh of the informant but doctor has not found any injury on thigh of the informant rather the injury was found on the hand and back and as such medical report does not support the manner of occurrence as narrated by the witnesses but the trial court without considering all these infirmities in the prosecution case, has convicted the appellants

11. On the other hand, learned counsel for the respondent – State has defended the judgment of trial court and submitted that there are consistent evidence of witnesses that on the date of occurrence, Lila Yadav came armed with *khanti*, whereas appellants, Satish Yadav and Surendra Yadav came armed with *lathi* and assaulted the informant and when the informant fell down after sustaining injuries, appellant Ratani Devi assaulted him by brick bats, as such, there is no infirmity in the impugned judgment of trial court and conviction of the appellants are just and proper.

12. In the background of rival contentions of the parties, on perusal of the evidence of witnesses, it appears that P.W. 4 is the informant in this case and he has stated in his evidence that while he was ploughing the field, Lila Yadav and appellants Satish Yadav and Surendra Yadav along with their mother came there and on the order of Lila Yadav, Satish Yadav and Surendra assaulted the informant (P.W. 4) by means of *lathi* and Lila Yadav assaulted him by means of *khanti* and



when the informant (P.W. 4) fell down on the ground, appellant Ratani Devi assaulted him by brick bats. His evidence also disclosed that he became unconscious and when the witnesses assemble accused persons fled away. In his cross-examination, he has stated that his father after second marriage partitioned the land and the land on which the occurrence took place was also partitioned but the dispute arose after the death of his father with respect to the land, where the occurrence took place. His evidence further disclosed that there was dispute with respect to the land where the occurrence took place between the parties from before.

13. Other witnesses have also supported the case of prosecution. However it appears from the prosecution evidence, that there was a dispute between the parties with respect to the land, where the occurrence took place and it appears that informant has gone to plough the said land. A submission has been made by learned counsel for the appellants as there was land dispute between the parties, possibility of false implication of appellants cannot be ruled out especially when the manner of occurrence has not been supported by the medical evidence.

14. It further appears from perusal of evidence of P.W. 5, the doctor, who examined the P.W. 4 that he has found one incised cut wound on right parietal region of skull, measuring 2" x 1/8", one



abrasion on right forearm measuring $\frac{1}{2}$ " x $\frac{1}{2}$ ", complain of pain in both knee joint, no apparent injury was seen. All the injuries have been opined by the doctor as simple in nature. Injury no. 1, is opined to have been caused by sharp cutting weapon, while injury no. 2 and 3 were caused by hard and blunt substance. It also appears that the injury found on the head of informant (P.W. 4) appears to be caused by sharp cutting weapon, whereas allegation is of assault by *khanti* which is a pointed weapon and not by sharp cutting weapon, which casts a reasonable doubt about the manner of occurrence. Evidence of P.W. 4 also shows that he was assaulted by lathi by appellant Satish Yadav and Surendra Yadav but he has not stated in the evidence in court that as to on which part he was assaulted but F.I.R shows that he was assaulted on left and right thigh but the doctor has not found any injury on thigh of the informant, as such, there is contradiction between the medical evidence and ocular evidence of witnesses. Further it is also a fact that in this case I.O. has not been examined and there is delay of lodging in F.I.R. and had I.O. been examined, the defence might have cross-examined him on the point of delay in lodging the F.I.R. However, the trial court has not considered these infirmities in the prosecution evidence, while convicting the appellants. Further the allegation against the appellants, namely, Satish Yadav, Surendra Yadav and Ratani Yadav is of assault by the



lathi on thigh and by brick bats respectively but in the medical evidence no such injury was found on the person of P.W. 4. Considering the discussions made above, medical evidence does not support the ocular evidence so far manner of occurrence is concerned, as such, the appellants deserve at least benefit of doubt.

15. Accordingly, this appeal is allowed. Judgment of conviction and order of sentence dated 31-07-2003, passed by Sri Prakash Chandra Jaiswal, the then 5th Additional Sessions Judge, Gaya, in Sessions Trial No. 41/97, 475/94(SJ) are set aside.

16. As the appellants are on bail, they are discharged from liability of bail bond.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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