

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.231 of 2009

1. DEVI RAI son of Sukar Rai,
2. Birendra Rai son of late Bangur Rai,
3. Amardeo Rai son of Ramasish Rai,
4. Ravi Rai @ Ravindra Rai son of Sukan Rai,
5. Shankar Rai @ Sheo Shankar Rai son of Ramashish Rai, all are residents
of village-Rajua Bakhari, PS-Mehsi, Diss-East Champaran,

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sunil Kumar 3, Adv

For the Respondent/s : Mr.Bipin Kumar,(APP)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

20-12-2018

Appellants, Devi Rai, Birendra Rai, Amardeo Rai,

Ravi Rai @ Ravindra Rai and Shankar Rai @ Sheo Shankar

have been found guilty for an offence punishable

under Section 323 of the IPC and each one has been

sentenced to undergo R.I for six months vide judgment

of conviction and order of sentence dated 07.02.2009

passed by Additional Sessions Judge, FTC No.IV,

Motihari in Sessions Trial No. 414/1995/206/2006.

2. PW-5, Shiv Rai while was admitted at
Government Hospital, Mehshi gave his Fardbeyan on
10.09.1994 at 4.30 PM disclosing therein that there is
a piece of land over which he was a Bataidar,
subsequently, been purchased by him about a month



ago from its owner Indrawati Devi wherein he has planted paddy crop. Today at about 2:00 PM, wives of Sukan Rai and Bangur Rai were engaged in stealthily cutting of standing paddy crop whereupon, he has gone over the plot and scolded them. During midst thereof, Devi Rai came from his house and put a grievance why he has purchased this land as he was to purchase and on that very score, an altercation took place. During course thereof, Devi Rai armed with Farsa, Amardeo Rai, Shankar Rai, Bangur Rai, Ravi Rai armed with Lathi and Birendra Rai armed with axe came. Devi Rai gave Farsa blow over his head causing injury thereupon. Then thereafter, others assaulted him with Lathi. Hearing hue and cry, Basdeo Rai came to rescue who was assaulted by the accused persons including by Birendra Rai with axe. Even female members of the family who came in rescue were also assaulted by the accused persons by Lathi. After hearing hue and cry, villagers came and rescued them. Then thereafter, his son along with villagers lifted them to hospital where treatment was being done.

3. After registration of Mehshi PS Case No.



55/1994 investigation commenced and concluded by way of submitting charge-sheet, facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that land in question has been purchased by him, happens to be under their possession. On the alleged date and time of occurrence, prosecution party after forming an unlawful assembly, raided over the same land, assaulted and for that, wife of Bangur Rai, namely, Nagina has instituted a case. Apart from this, it has also been pleaded that the land under dispute happens to be the subject matter of a civil suit instituted at the behest of Urmila Devi. Apart from having been admitted at the end of prosecution, large number of documents have been exhibited.

5. In order to substantiate its case, prosecution has examined altogether 5 PWs out of whom PW-1, Mahesh Rai, PW-2, Basdeo Rai, PW-3,



Gena Devi, PW-4, Champa Devi and PW-5, Shiv Rai as well as had also exhibited Ext-1 series, respective injury reports but without signature of the learned PO and in likewise manner without examination of even a formal witness. It bear date as 06.10.2003, but no such date is found as per sheet. Contrary to this, Para-13 of the judgment divulges that on account of non-examination of doctor, injury report is not exhibit of the record. That being so, the matter would have been properly seen by the learned PO during course of writing of judgment. It is also evident from the record that presence of counter case has been admitted at the end of the prosecution and in likewise manner, the case having been instituted at the end of the Urmila. Defence on its own has exhibited Ext-A, C.C of Sale-deed No. 17099 dated 07.10.1994, Ext-A/1, C.C of Sale-deed No. 17100 dated 07.10.1994.

6. As is evident from lower court record, PW-1, PW-5 have admitted presence of counter case having at the end of wife of Bangur Rai, namely, Nagina. They have also admitted presence of Civil Suit having at the end of Urmila. PW-5, informant (para 7) has



also admitted that the land under dispute has also been purchased by the accused. That means to say, there happens to be claim and counter claim along with theme of possession, counter possession. In the aforesaid background, as the obligation lies upon the prosecution to substantiate its case and further. So far motive so assigned by the prosecution is on account of stealthily cutting of standing paddy crop by the wives of Sukan Rai and Bangur Rai, the occurrence took place, at least it was expected as a natural conduct or corollary in the background of aforesaid event having at the end of the prosecution, a clear-cut disclosure that (a) they have purchased the land from the original owner, (b) accused have purchased land from his vendor who was not associated therewith, (C) accused has purchased the land from his vendor after the sale deed having been in their favour and in likewise manner, exclusive assertion with regard to possession. The aforesaid theme was essentially on account of non examination of the I.O. Had there been examination of I.O., the objective finding relating thereto, at least, with regard to physical possession



over the land under dispute would have properly been exposed.

7. The initial prosecution version has been that while wives of Sukan and Bangur were engaged in stealthily cutting standing paddy crop, Shiv Rai (PW-5) scolded whereupon Devi Rai intervened, who along with others came, armed variously, and during course thereof, Devi Rai assaulted Shiv Rai with Farsa (PW-5), Birendra assaulted Basdeo with axe and remaining persons who were armed with Lathi had assaulted, Shiv, Basdeo, Champa and Gena. All the witnesses save and except PW-1, according to prosecution are injured. PWs-2, 3 and 4 remained static but, when turn of PW-5 came, he has contradicted his own version as well as version of Pws- 2, 3 and 4 which has got relevance in the background of factual aspect that land has been purchased by both the parties, case and counter case was there and further, there happens to be non examination of the I.O.. During examination-in-chief, PW-5/informant/injured stood over his earlier version whatever been stated in the Fardbeyan. However, during cross-examination at para-8, he has



stated that police had seen the hut, chair, table having over land under dispute (PO land). He has categorically stated that he had not gone over the land on the alleged date of occurrence for erecting hut. Then he explained that his hut was in front of that land. At para-9, he denied the suggestion that on the alleged date and time of occurrence, they had gone to erect hut over land under dispute. None of the witnesses have disclosed the boundary of the PO land nor any of them had stated presence of hut at their end in the front side of land under dispute since before. Going over the land for the erection of hut is the counter version.

8. Now the second aspect which also has adverse impact upon the authenticity of the prosecution version comes out from para-10 of the cross-examination of PW-5 who has stated that first of all, there was pelting of stones, then thereafter Lathi and Farsa were hurled. He has not sustained injury on account of pelting stones rather, he has sustained injury from Lathi and Farsa. In para-11, he has stated that accused persons have pelted stones for about 10-



15 minutes. At the time of pelting stones, all the family members were over the land under dispute. Pelting of stones at the end of the accused were done at the distance of 3-4 Laggi. Even after pelting of stones, they have not escaped therefrom. After pelting of stones, all of them hid inside the hut and began to raise alarm. Villagers came and then thereafter, accused persons left the scene. The aforesaid activity has not been disclosed either in the written report nor at the end of PWs-1, 2, 3 and 4.

9. That means to say, the genesis of occurrence as well as manner of occurrence has been twisted unsuccessfully trying to wrap up the real story. That is to say, the prosecution has not come with the clean hand. Non examination of I.O. has not properly been taken into account much less in the background of admission at the end of the informant, Para-7, that the land has also been purchased by the accused persons and on that score, Exhibit-A, A/1 are there. In this regard, on account of non exhibit of document at the end of prosecution was necessary at any cost to show that he purchased the land prior to Ext-A, A/1,



but having failed, speaks a lot over claim of the prosecution.

10. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court, is hereby, set aside. The appeal is allowed.

11. Since appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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

