

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.138 of 2009

RAJENDRA YADAV son of late Mehi Yadav R/O Village-Sahsol, PS-
Barhara, Distt-Purnia. Appellant/s

Versus

STATE OF BIHAR Respondent/s

Appearance :

For the Appellant/s : Mr. Animesh Kumar Mishra, Amicus Curiae
For the Respondent/s : Mr. Prameshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

14-12-2018

None appears on behalf of appellant on repeated calls, on account thereof, learned Advocate Sri Animesh Kumar Mishra has been requested to assist the court as an Amicus Curiae.

2. Vide judgment of conviction dated 16.01.2009 and order of sentence dated 19.01.2009 passed by Additional Sessions Judge, FTC-III, Purnia in Sessions Trial No. 313 of 1992/116 of 2006 while other co-accused have already been acquitted, appellant, Rajendra Yadav has been found guilty for an offence punishable under Section 326 of the IPC and sentenced to undergo RI for 5 years.

3. On 14.09.1987 at about 5:30 PM, Bhuneshwari Yadav (since deceased) recorded first information report alleging inter alia that his son, Brahmdeo Yadav while was engaged in harvesting of jute crop with the help of labourers, all of a sudden, Rajendra Yadav, Amrica Yadav, Jarmani Yadav,



Dilip Yadav, Bindeshwari Yadav, Deonandan Yadav, Lutan Yadav, Kapil Yadav, Tanuklal Yadav and others armed variously raided the plot, abused and then, Tarni Yadav shot at his son but, his son has a narrow escape as he sat at the relevant moment. Thereafter, Rajendra Yadav who was armed with axe gave a blow over head of the son with an intention to kill causing injury thereupon. His son lied down. Thereafter, others also assaulted him with Lathi. He rushed in rescue and during course thereof, Tarni Yadav again fired aiming him but anyhow, he also escaped therefrom. On hue and cry as well as hearing sound of firing, villagers began to assemble seeing whom, accused persons fled away. Then thereafter, the victim has been lifted to police station in an unconscious condition. The motive for occurrence has been shown as being frustrated in having the land under dispute, having been purchased by him from Bindeshwari Das, firstly, accused persons filed Bataidari Case and having lost, thereafter, committed the crime in order to dispossess.

4. After registration of Barhara PS Case No. 140/1987, investigation commenced and after concluding the same, charge-sheet has been submitted against the accused persons keeping investigation pending against Pulkit Yadav and



Md. Kuddus whereupon, trial commenced and culminated in a manner as indicated above, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that some portion of the land under dispute had already been purchased by Dilip Yadav since before the execution of the sale-deed having in favour of the prosecution party and on account thereof, were over the land since before. When the prosecution party tried to put hurdle in their possession, they resisted and only to coerce and compel the accused persons to give up their claim over the land under dispute, this false case has been instituted. Furthermore, the document dated 04.08.1984 along with rent receipt has been made an exhibit of the record.

6. In order to substantiate its case, the prosecution has examined altogether seven PWs who are PW-1, Yogendra Paswan, PW-2, Laloo Paswan, PW-3, Kamleshwari Yadav, PW-4, Brahmdeo Yadav, PW-5, Dr. Bipin Yadav, PW-6, Maheshwari Yadav and PW-7, Bindeshwari Das. Side by side has also exhibited Ext-1, injury report, Ext-2, 3 and 4, Kewala dated 05.08.1986, Ext-5, C.C. of order dated 05.11.1986 passed in case no. 29/86-87 under Section 48E of the B.T. Act and Ext-6,



FIR. Defence has also exhibited Ext-A, sale deed dated 04.08.1984 and Ext-B, rent receipt.

7. From the record, it is evident that PW-1, 2 and 3 have not supported the case of the prosecution, on account thereof, they all were declared hostile. PW-6 who happens to be uncle of the injured. PW-4, simply stated that there was quarrel amongst Rajendra and Brahamdeo but nothing has been disclosed at his end with regard to subsequent event. PW-7 is the vendor of prosecution party as well as that of Dilip relating to Survey Plot No. 313. Apart from this, it is also evident that I.O. has not been examined. From the perusal of evidence of PW-4, it is evident that informant is dead. That means to say, the fate of the prosecution case depends upon acceptability, reliability and creditworthiness of the evidence of PW-4 so alleged injured along with the evidence of PW-5, B.K. Singh who had examined the injured.

8. Before coming to discuss these evidences, from the evidence of PW-5, it is evident that PW-4 was referred from Barhara Kothi, State Dispensary on 16.09.1987. That means to say, the doctor who attended over PW-4 at Barhara Kothi, State Dispensary neither has been examined nor, the injury report, if any, issued therefrom has been exhibited. In likewise manner,



PW-5 has not referred the finding recorded by the doctor of Barhara Kothi State Dispensary with regard to the injury, if any, over the person of PW-4. Its repercussion is to be seen subsequently. At the present moment, the finding of PW-5 is to be seen who has examined PW-4 on 16.09.1987 and found the following:-

1. Patient had head injuries in left mastoid region causing concussion of brain with the result, the patient was in the state of semi conscious for 72 hours.

2. Patient had rupture of tympanic membrane of left ear nerve deafness of left ear. Dislocation of right knee joint causing effusion of knee joint.

3. Grievous in nature.

9. Though the doctor has found nature of injury to be grievous in nature but, he had not opined whether the injury has been caused by sharp cutting weapon or hard and blunt substance although the learned lower court while dealing with the same, has incorporated in para-10 of the judgment impugned, caused by sharp weapon which has not been found traceable from the evidence of PW-5, the doctor. The aforesaid recording by the learned lower court is found controverted from the cross-examination of PW-5 who had stated during course



thereof, that these injuries may be caused due to fall on hard object such as stone, brick and may be by Lathi. That being so, the weapon by which the injuries having over person of the PW-4 as observed by the learned lower court, is found very much inconsistent with the record.

10. PW-4 had stated that on the alleged date and time of occurrence while he was engaged in cutting jute plant and his father was engaged in getting the same dumped in a ditch nearby, the accused persons (so named) armed variously along with some unknown persons who were armed with bow and arrow raided the plot and Tarni Yadav, after abusing, shot at, from which he anyhow, escaped and during course thereof, he was besieged by other accused out of whom Rajendra Yadav gave an axe blow over his head, upper portion of the left ear causing severe injury as a result of which, he fell down on the ground. Blood oozen out. Others also assaulted him with Lathi. He became unconscious. After regaining sense, he found himself admitted at Sadar Hospital, Purnia. After 26-27 days, he was discharged therefrom and then thereafter, his statement was recorded by the police. He has stated that the accused persons assaulted him with an intention to grab the aforesaid plot. In para-6, he has admitted that the land of Tarni Yadav is in the



boundary of the disputed land while the land of Rajendra Yadav lies at the distance of 1-2 plots. Land of Deonandan Yadav also lies after 1-2 plots. Deonandan, Rajendra are full brothers. The RSP number of disputed plot is 313 which he had purchased. After purchase, the accused persons filed case under Section 48E of the B.T. Act wherein they lost. At para-8, he has stated that while he was engaged in cutting jute plant after engaging the labourers, accused persons came and brutally assaulted. As he became unconscious so, he is unable to disclose the subsequent event. In para-9, he had stated that after regaining sense he came to know that his father had also fired. His father is dead. In para-10, he has stated that he had not handed over blood stained clothe to the I.O. In para-11, he has stated that for the last one year since the date of occurrence dispute was going on. Then had denied the suggestion that as they tried to remove the accused persons from being a Bataidar, this false case has been instituted.

11. Ext-2, 3, 4 are sale-deeds which substantiated the claim of the prosecution to be the purchaser with regard to Survey Plot No. 313. Ext-5 is the order passed by competent authority relating to case no. 29/86-87 under Section 48E of the B.T. Act nullifying the claim of the appellant.



Side by side, defense has also exhibited the sale deed executed by PW-7 relating to the same piece of land but none has come at his end to explain the boundary and in likewise manner, nothing has been divulged at the end of the prosecution in consonance with the discloser having at the end of PW-4, that after regaining sense, he came to know that firing was made at the end of his father.

12. In *Chandrasekar and another vs. State of Tamil Nadu reported in 2017(4) P.L.J.R. 220 (SC)*, it has been held:-

*“10. Criminal jurisprudence attaches great weightage to the evidence of a person injured in the same occurrence as it presumes that he was speaking the truth unless shown otherwise. Though the law is well settled and precedents abound, reference may usefully be made to **Brahm Swaroop v. State of U.P., (2011) 6 SCC 288** observing as follows: “28. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable,*



as he is a witness that comes with an in-built guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone.”

13. That means to say, evidence of the injured has got primacy and unless and until there happens to be cogent reason to discard their testimony, in ordinary course of nature, it should be accepted. From the evidence of PW-5, it is apparent that PW-4 who was in injured condition was referred from State dispensary, Barhara Kothi on 16.09.1987. That means to say, there should have been a connecting link in order to justify that the injuries whatever been detected by the PW-5, was present since before on account of assault having over person of PW-4 at the end of appellant and others on 14.09.87. The inconsistency having at the end of PW-5, who failed to divulge the nature of weapon responsible for causing the aforesaid injury and further accepting during course of cross-examination that the aforesaid injuries might be caused by fall over hard object, speaks a lot, more particularly, in the background of absence at the end of the prosecution in drawing attention of PW-5 that these injuries could have been caused by the sharp



edged of axe or, would have got it explained that these injuries were caused from the backside by the axe and further, the PW-4 would have spoken, in the same manner. From the evidence of PW-4, it is apparent that he had straightway stated that Ranjendra Yadav gave axe blow over his head left side above the left ear, so it must be from edge side, otherwise, he would have spoken that from backside of axe, he was assaulted. That means to say, there happens to be inconsistency in between. Because of the fact that no other Pws have supported the case of the prosecution, in the aforesaid background, finding of the learned lower court against the appellant holding him guilty punishable under Section 326 IPC is not at all found justifiable. Now coming to proper identification of I.O., it is manifest that I.O. has not been examined. It is further apparent that both the parties have purchased same area of same plot. PW-4 has admitted presence of appellant contiguous to his plot. In the background of aforesaid factual aspect, when the evidence of PW-4 has been minutely gone through to trace out the actual P.O. is found duned. Consequent thereupon, the same is set aside. Appeal is allowed.

14. Since appellant is on bail, he is discharged from the liability of bail bond.



15. The first and last pages of the instant judgment be
handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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