

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.804 of 2016

Arising Out of PS.Case No. -134 Year- 2014 Thana -RIVILGANJ District- SARAN

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1. Sanjay Mahto Son of Raj Narayan Mahto Resident of Village- Semariya, P.S.-
Revilganj, District- Saran at Chapra (Bihar).

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 701 of 2016

Arising Out of PS.Case No. -134 Year- 2014 Thana -RIVILGANJ District- SARAN

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1. Shankar Mahto Son of Raj Narayan Mahto
2. Ram Kumar Mahto Son of Late Jairam Mahto
3. Ram Chandra Mahto Son of Raj Narayan Mahto
4. Triloki Mahto Son of Mohan Mahto All residents of Village - Semariya, P.S. -
Revilganj, District - Saran at Chapra (Bihar).

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.804 of 2016)

For the Appellant/s : Mr. Manoj Kumar, Adv.

For the Respondent/s : Mr. Zeyaul Hoda, APP

(In CR. APP (SJ) No.701 of 2016)

For the Appellant/s : Mr. Manoj Kumar, Adv.

For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 15-01-2018

Heard the learned counsel for the parties.

2. Both the appeals are taken up together and are being
disposed off by this common judgment.

3. The appellants, viz. Sanjay Mahto, Shankar Mahto,



Ram Kumar Mahto, Ram Chandra Mahto and Triloki Mahto, have been convicted under Sections 341, 307 and 34 of the Indian Penal Code vide judgment dated 09.08.2016 passed by the learned Additional District & Sessions Judge IXth, Saran, Chapra in connection with S. Tr. No. 270/2017 (New 832/2015), arising out of Rivilganj P.S. Case No. 134/2014 and by the order dated 12.08.2016, the appellants have been sentenced to undergo simple imprisonment for one month for the offences under Section 341/34 of the Indian Penal Code and R.I. for five years, to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer S.I. for two months for the offences under Section 307/34 of the Indian Penal Code. The sentences have been directed to run concurrently.

4. The prosecution case is based on the F.I.R. lodged by Dharmendra Kumar Singh (P.W.4) on 01.11.2014 alleging that while he along with one Chandan Kumar Singh (P.W.5) was coming back home from Semariyachatti Bazaar, he found appellants Sanjay Mahto and Ram Kumar Mahto fighting and abusing each other in front of their houses. P.W. 4 is thereafter said to have accosted the aforesaid appellants and told them that because of their fight on a regular basis, it had become difficult for him and the other members of his family to even sleep peacefully in their houses. On this, appellant Sanjay Mahto is said to have started abusing Dharmendra Kumar Singh (P.W. 4). When he was asked not to abuse, he took out a knife from his pocket and



assaulted P.W. 4, which hit him in and around his face and near his eyes. Seeing him injured, his nephew Chandan Kumar Singh (P.W. 5) raised alarm and ran towards his house. In the meantime, appellant Ram Kumar Mahto caught hold of P.W. 4 and thereafter appellants Triloki Mahto, Ram Chandra Mahto and Ram Kumar Mahto assaulted him by means of *lathi* and iron rod. As a result of the aforesaid assault by the appellants, the informant became injured and unconscious. On regaining his consciousness, he found himself to be under treatment in New Central Hospital, Patna on 01.11.2014.

5. On the basis of the aforesaid fardbeyan/statement, Rivilganj P.S. Case No. 134/2014 dated 21.11.2014 under Sections 341, 323, 324, 307 and 504/34 of the Indian Penal Code was registered for investigation.

6. The police after investigation submitted charge-sheet against the appellants, whereupon cognizance was taken and the case was committed to the court of Sessions for trial.

7. The trial court, after examining 8 witnesses on behalf of the prosecution and 4 witnesses on behalf of the defence, convicted the appellants as aforesaid.

8. Hareram Singh (P.W.1), who is the cousin of P.W. 4, has stated that on 31.10.2014 at about 6:30 PM while he was in his house, he heard a sound of alarm. On such sound, he claims to have gone to the house of appellant Sanjay Mahto and found that appellant Sanjay



Mahto was fighting with appellant Ram Kumar Mahto, who happened to be the nephew and uncle amongst themselves respectively. In the meantime, Dharmendra Kumar Singh (P.W. 4) and Chandan Kumar Singh (P.W. 5) also arrived. When P.W. 4 told the appellants that because of their fight, it had become difficult for the members of the family of P.W. 4 and other witnesses to even sleep, appellant Sanjay Mahto started abusing P.W. 4. Thereafter, P.W. 1 has deposed that appellant Sanjay Mahto assaulted P.W. 4 by means of knife. P.W. 4 is also thereafter said to have been confined at the instance of appellant Ram Kumar Mahto and the other appellants are said to have assaulted him by means of *lathi* and iron rod. P.W. 4 was thereafter taken to Rivilganj Government Hospital, from where he was referred to Chapra. From Chapra Sadar Hospital, he was again referred to P.M.C.H., Patna. However, considering the precarious condition of P.W. 4, he was afforded treatment in New Central Hospital, Patna, privately. At New Central Hospital only, P.W. 4 is said to have given his statement.

9. Similar statements have been made by Sanjeet Kumar Singh (P.W.2) and Bachacha Singh (P.W.3), who also claim to have seen the occurrence, after coming to the house of the appellant Sanjay Mahto.

10. Dharmendra Kumar Singh (P.W.4), the informant and the injured of this case, has fully supported the version given by him in the F.I.R. He has stated that because of his being treated in hospital,



there was a delay in lodging the F.I.R.

11. From the records, it appears that Chandan Kumar Singh (P.W.5) was examined in-chief, but no advocate on behalf of the defence came for his cross-examination. The trial court appears to have passed an order of recall of the aforesaid Chandan Kumar Singh (P.W.5) for cross-examination on deposit of cost of Rs. 200/- by the defence, but that also was not paid. Hence, P.W.5 could not be cross-examined. He, too, has supported the prosecution version.

12. P.W. 4 is said to have received six injuries on his person. The injuries suffered by P.W. 4 are as hereunder:

- 1. Incised wound of 3" in the middle of forehead*
- 2. Incised wound of 1" below the lateral end of right lower eye lid.*
- 3. Incised wound about 1.5 to 2 C.M. on the lateral end of Rt. Eye.*
- 4. Incised wound 1 C.M. over right nostrils.*
- 5. Right black eye pecialbital oedema.*
- 6. Clots present both nostrils with disfigured nasal bridge.*

13. The aforesaid injury report has been supported by Dr. Abhishek Harshvardhan, who has been examined as P.W. 7 in this case and has stated that on 31.10.2014 he was posted at Rivilganj Primary Health Centre and had, after examination of P.W. 4, found the aforementioned injuries.

14. P.W. 7 has opined that injuries no. 1, 2, 3 and 4 were caused by sharp cutting weapon, whereas injuries no. 5 and 6 were caused by hard and blunt substance. He had reserved his opinion



regarding the nature of injury. However, later a supplementary injury report dated 13.02.2014 was prepared and injuries no. 5 and 6 were also found to be grievous in nature. He has also stated that he did not mention the depth or the diameter of the injuries no. 1, 2 and 3. The reason assigned for this by P.W. 7 is that the sharp cut wounds on the person of an injured is located so closely that it is difficult to assess the actual measurement of the injuries.

15. Ramakant Yadav (P.W. 8) is the I.O. of this case, who has testified to the fact that on registration of the F.I.R., he had examined the witnesses. He has proved the formal F.I.R. and has submitted charge-sheet against the appellants. However, he has stated that at the place of occurrence, he did not find anything worth mentioning in the investigation report.

16. On behalf of the defence, four witnesses were examined in an attempt to impress upon the trial court that at the time of the occurrence, some of the appellants not only were not present at the P.O., but were employed gainfully at Delhi.

17. Mr. Manoj Kumar, learned Advocate for the appellants, has argued that the appellants have falsely been implicated in this case, which fact would be evident from the late registration of the F.I.R. He has submitted that the occurrence admittedly took place on 31.10.2014 at about 6:30 PM, but report regarding the same was given on 01.11.2014 at Patrakarnagar Police Station. From there, the fardbeyan



was transmitted only on 21.11.2014 without there being any explanation for the same. It has also been submitted that from the injury report of P.W. 4, it appears that P.W. 4 was examined at the police station on 31.10.2014 and thereafter, he was sent for treatment to Primary Health Centre, Revilganj. This makes it very clear that after the occurrence, the injured was brought to the police station along with others, whereafter he was sent for treatment. If that be so, no explanation has come forward as to why the F.I.R. was not instituted on 31.10.2014 only as the criminal law could have been set in motion by anyone of the witnesses, who had seen the occurrence and was present at the time when the occurrence is said to have taken place. The further ground of challenge by the learned counsel for the appellants is that P.W.s 1, 2, 3 and 6 are the cousins of the injured/P.W.4 and P.W. 5 is the nephew of the aforesaid witnesses, including the injured. Since all the aforesaid witnesses are related to each other, their deposition ought to have been examined and scrutinized with greater care and circumspection. It has been submitted that only because of the appellant Sanjay Mahto and Ram Kumar Mahto not acting as good neighbours, they have been made accused in this case. Mr. Manoj Kumar has also submitted that the deposition of the witnesses offered on behalf of the defence have not been considered by the trial court in correct/legal perspective. It was brought to the notice of the trial court that some of the appellants were gainfully employed at Delhi and were not present at the time when the assault is said to have taken place.



Not taking into account their (witnesses for the defence) depositions who stand on similar footing as the prosecution witnesses, the judgment and order of conviction and sentence is seriously flawed. The non cross-examination of P.W. 5, who was present at the place of occurrence along with P.W. 4 (informant), has also prejudiced the case of the appellants.

18. Lastly, it has been argued that injuries no. 1, 2 and 3 are said to have been caused by sharp cutting weapon, but the injuries no. 5 and 6 appear to have been caused because of the impact of the aforesaid three injuries caused by sharp cutting weapon. He has submitted that the allegation of P.W. 4 that the assault on his head by *lathi* led to injuries on his head also gets belied by the injury report which has been proved by P.W. 7.

19. On perusal of the evidence on record, this Court is of the view that the delay in lodging the F.I.R. is properly explained. Times without number, this Court as well as the Apex Court has held that the first effort of the family members of the injured is to afford treatment to him, rather than to report about the occurrence in the police.

20. In any view of the matter, the case was reported on 01.11.2014 and the delay of one day could not prejudice the case of the prosecution. The consistency in the statements of the witnesses cannot discredit the witnesses; rather, it only makes it certain that all the witnesses had seen the occurrence and therefore, have stated before the trial court in similar manner. No fault can be found with the aforesaid



similarity in the statements of the witnesses.

21. The records further reveal that deliberately P.W. 5 was not cross-examined and even on the order of the court for recall of P.W. 5 for further cross-examination, subject to the deposit of Rs. 200/-, no effort was made by the defence to deposit the aforesaid cost and cross-examine P.W. 5. That apart, the non cross-examination of P.W. 5 cannot be said to have prejudiced the case of defence as P.W. 5 is only one of the witnesses claiming to be the eye-witnesses of the occurrence.

22. However, the arguments on behalf of the appellants that injuries no. 5 and 6, *prima facie* appear to be because of the impact of the injuries no. 1, 2 and 3 is worth taking into account. Injuries no. 5 and 6 are in the nature of right black eye oedema and clots near both the nostrils with disfigurement of nasal bridge. No injury by hard and blunt substance has been found on the person of P.W. 4, which makes the allegation as against the other appellants highly doubtful. The presence of the other appellants at the place of occurrence also appears to be doubtful for the fact that the evidence has come on record suggesting that some of the appellants were gainfully employed at Delhi.

23. For the reasons stated above, the conviction of appellant Sanjay Mahto is sustained and upheld, whereas the conviction and sentence of the other appellants, viz. Shankar Mahto, Ram Kumar Mahto, Ram Chandra Mahto and Triloki Mahto are set aside.

24. Cr. Appeal (SJ) No. 701 of 2016 is allowed and the



appellants, viz. Shankar Mahto, Ram Kumar Mahto, Ram Chandra Mahto and Triloki Mahto are acquitted of all the charges.

25. This Court has been informed that the appellants aforementioned are in custody. They are directed to be released forthwith from jail, in case, they are not wanted in any other case.

26. So far as the appellant Sanjay Mahto is concerned, from the nature of accusation and the circumstances under which the occurrence is said to have taken place, sentence of five years for the offence under Section 307 of the Indian Penal Code appears to be rather harsh. While saying so, this Court has taken note of the fact that there was no pre-meditation in the attack and only when the appellant Sanjay Mahto was asked not to fight with his uncle, that the present case has been lodged. There is no other enmity suggested by the prosecution as against the appellant Sanjay Mahto.

27. Thus, this Court is of the view that the interest of justice would be met, if the sentence imposed upon the appellant Sanjay Mahto is reduced to the period of custody, which he has already undergone.

28. This Court has been informed that the appellant Sanjay Mahto has remained in custody since 13.01.2015, i.e. for more than three years. In that event, appellant Sanjay Mahto is also directed to be released forthwith from jail, if not wanted in any other case.



29. Cr. Appeal (SJ) No. 804/2016 is partially allowed, whereby the conviction against the appellant Sanjay Mahto is sustained, but the sentence is modified to the extent indicated above, i.e. to the period which he has already undergone in custody.

30. A copy of the judgment be sent to the Superintendent of the concerned jail for information, compliance and needful.

(Ashutosh Kumar, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	18.01.2018
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