

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.414 of 2015**

Arising Out of PS.Case No. -30 Year- 2008 Thana -SIKRAUL District- BUXAR

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1. Sarjan Singh @ Ramakant Singh  
2. Nand Ji Singh  
3. Ramsagar Singh All are S/o Late Vishwanath Singh Resident of Village Haroja,  
P.S. Sikraul, District Buxar. .... Appellant/s

Versus

1. The State of Bihar .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Rajani Ranjan, Adv.

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

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 26-04-2018**

Appellant, Sarjan Singh @ Ramakant Singh, Nand Ji

Singh and Ramsagar Singh have been found guilty for an offence punishable under Section 323 IPC and each one has been sentenced to undergo SI for 1 year, under Section 3(1) (x) of the SC/ST (POA) Act and sentenced to undergo SI for 6 months as well as to pay fine of Rs. 500/-, in default thereof, to undergo SI for 1 month, additionally, with a further direction to run the sentences concurrently, vide judgment of conviction and order of sentence dated 25.05.2015 passed by Additional Sessions Judge-1<sup>st</sup>-cum-Special Judge, Buxar in Sessions Trial No. 73//2010 arising out of Sikraul PS Case No.30/2008.

2. PW-7, Naw lakh Ram filed a written report on 08.11.2008 alleging inter alia that yesterday i.e. on 07.11.2008 at about 7.00 AM, while he was irrigating his field, at that very time, his co-villager, Sarjan Singh @ Ramakant Singh came and began to irrigate his field whereupon he objected to and said that first of all, he



be allowed to irrigate his field and then thereafter, he would, over which, they both indulged in an altercation and during course thereof, he abused by calling his caste name, i.e. Chamar, Siyar. He protested over which, he began to assault with Lathi. Hearing about Maar-peet, brothers of Sarjan Singh, namely, Nand Ji Singh and Ramsagar Singh came armed with Lathi and Danda and began to assault. During course thereof, Sarjan Singh caught hold of his hand and twisted, as a result of which, there was fracture over his shoulder. He also sustained injuries over other parts of body. On hue and cry, persons present in the surrounding assembled and saved him. Then thereafter, he had gone to Buxar for treatment and after returning therefrom, filed the written report.

3. After registration of Sikraul PS Case No.30/2008, investigation commenced and after concluding the same, charge-sheet was submitted whereupon trial commenced and concluded in a manner, subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has further been pleaded that on the alleged date and time of occurrence, prosecution party assaulted Sarjan Singh, on account thereof, case was instituted against them. This case has been filed after coming to know about institution of the aforesaid case. However, neither ocular nor documentary evidence has



been adduced in defence.

5. In order to substantiate its case prosecution had examined altogether 9 PWs, who are PW.-1, Vishwamitra Ram, PW.-2, Kapil Ram, PW.-3, Baban Ram, PW.4, Jokhan Ram, PW.-5, Kusmi Devi, PW-6, Devbrat Kumar Ram, PW-7, Nawlakh Ram, PW-8, Satyendra Narayan Singh, and PW-9, Dr. Parmanand Choudhary. Side by side had also exhibited Ext.-1 written report, Ext.-2 Injury report. As stated above neither ocular nor documentary evidence has been adduced in defence.

6. PW-7 is the informant. He had deposed that on 07.11.2008 at about 7.00 AM, he was engaged in irrigating his field lying eastern side of his village. While he was irrigating, Sarjan Singh came and cut the water channel whereupon he protested. Then Sarjan abused him by calling his caste name and began to assault with Lathi. During midst thereof, brother of Sarjan Singh namely, Nand Ji Singh and Ramsagar Singh came and began to assault with Lathi. They also abused him by caste name. They also abused by calling name of his sister and mother. They have assaulted over his right eye, back and shoulder. Then, Nand Ji pressed his neck in order to kill. Large number of persons assembled there who saved him. Then thereafter, he got himself examined by a private doctor at Nawanagar Primary Health Centre. On the following day, he had filed written report having in his pen and signature.



7. Because of the fact that there happens to be inconsistency amongst written report as well as his deposition (examination-in-chief), on account thereof, he was directly confronted with a question that which of two is correct. After keeping silence for a considerable time, lastly, the witness said that whatsoever stated by him in the court, happens to be correct. Demeanor of witness is admissible in accordance with Section 280 CrPC and the evidence is to be perceived in the aforesaid background. In para-2 itself, he had stated that his mother came after arrival of the witnesses. Then had stated that as he was being assaulted, on account thereof, he is unable to say as to who came first but witnesses came in chronological manner and then, he was lifted to his house. He was treated at Nawanagar Prime Health Centre and coming therefrom, he had handed over the written report to the police station. In para-5, he had stated that all the accused persons assaulted conjointly. At para-7, he had disclosed inter se relationship as witness Jokhan Ram (PW 4) happens to be his grand-father, while PW-6 is his brother, PW-1 is his cousin brother and PW-2 is uncle and PW-5 Kusmi Devi is his mother. He had disclosed in para-8 that there was trampling mark at the place of occurrence but he had not shown the same to the police. In para-9, he had stated that channel happens to be 200 Yards away from the P.O. land. In para-10, he had stated that the accused persons had also instituted a case against him which had already been decided.



8. PW-8 is the Investigating Officer who had deposed that after registration of the case, he had recorded further statement of the informant and then came at the place of occurrence where he had recorded the statement of Devwrat, Vishwamitra and then proceeded towards place of occurrence. It happens to be Badhar lying at eastern southern side of the village. The place of occurrence happens to be the land belonging to Dhurbigan Singh having paddy crop. Boundary has been shown as North-Channel and then said that the field of informant happens to be east to the aforesaid channel measuring an area of 5-7 Bigha. Then had shown the boundary as both sides of the channel, Nathuni Singh as well as informant, South- Dhurbigan Singh as well as informant's land, East-channel and then informant's land, West-Dhurbigan Singh. He had found the paddy crop trampled near the place of occurrence. Also recorded the statement of other witnesses, received injury report, supervision note and then thereafter, submitted charge-sheet. During cross-examination, he had stated in para-3 that he had found the place of occurrence field of Dhurbigan Singh. He had not recorded his statement. He had not recorded whether the aforesaid land was under possession of informant.

9. In the aforesaid background, the evidence of other witnesses have to be seen. So far PW-1 is concerned, he had identified only Sarjan Singh and Nand Ji Singh during course of occurrence. He had not named Ram Sagar Singh. He had stated that they both



assaulted Nawlakh as a result of which, his shoulder became fractured. In para-6, he had stated that when he reached at the field of Nawlakh, he was lying. Blood had fallen over his clothe. At para-8, he had stated that accused persons fled away therefrom after assault.

10. PW-2 had stated that on account of irrigating his field, Sarjan and Nawlakh indulged into an altercation and during course thereof, Sarjan began to assault. Nand Ji Singh and Ram Sagar Singh came, subsequently, who abused by caste name and then began to assault. Nand Ji pressed his neck. Sarjan Singh twisted his hand as a result of which, he sustained fracture over shoulder. During cross-examination at para-4, he had stated that out of fear he had not gone near the place of occurrence. He had seen the injury over his person. Shoulder was fractured.

11. PW-3 had stated that an altercation took place in between Nawlakh and Nand Ji Singh over irrigation over which Nand Ji abused by calling his caste name. After assemblage of people, he fled away. Then again said that Nand Ji, Ram Sagar and Sarjan assaulted with Danda as a result of which, there was fracture of right hand. During cross-examination at para-3, he had stated that he had not stated before the police that Nand Ji, Ram Sagar and Sarjan had assaulted with Danda as a result of which, his hand became fractured.

12. PW-4 had stated that an altercation took place in between Sarjan and Nawlakh who abused Nawlakh with his caste



name and assaulted him, on account of dispute arose over irrigation as a result of which, his right hand became fractured. During cross-examination at para-3, he had stated that Maar-peet took place over channel. He is unable to disclose boundary of the place of occurrence. He had further stated that in between channel and field of accused Ram Sagar, field of Kashi Nath and others lie. Then had stated at para-4, that he came 20 minutes after the occurrence at place of occurrence, hearing hue and cry. When he reached, he found Nawlakh in an injured condition having his hand fractured as well as injury over different parts of body. Other witnesses came after his arrival.

13. PW-5 had stated that on account of dispute over irrigation, Nand Ji, Ram Sagar and Sarjan abused her son, Nawlakh by calling his caste name and then they assaulted with Lathi and Danda as a result of which he sustained injuries over different parts of body including fracture of right hand. Nandji pressed his neck. During cross-examination at para-3, she had stated that when she reached at the place of occurrence, she had seen her son only. First of all, she reached at the place of occurrence and then thereafter, others came. Then had stated that her son was lying in channel outside the field. His leg was fractured. They lifted him to their house and then took him to Buxar. In para-6, she had admitted presence of counter case.

14. PW-6 had stated that while he had gone to meet nature's call, at that very time, Ram Sagar had forbidden his brother



from irrigating. Again said that it was Sarjan Singh whereupon, an altercation took place and during course thereof, his brother was abused by caste name, his brother was assaulted as a result of which, his hand became fractured. Ram Sagar had assaulted him. Nand Ji pressed his neck. Then his brother was taken to Buxar for treatment. In para-3 and 4, there happens to be contradiction. In para-5, he had stated that while he was going to meet nature's call, he came back to the place of occurrence after hearing hue and cry whereupon had seen his brother Nawlakh in an injured condition having injury over his hand and other parts of body. He had further stated that he has seen the accused persons indulged in assault. In para-10 he had stated that counter case has also been drawn up at the end of the accused.

15. After going through the evidence available on the record, it is evident that not only the witnesses are inconsistent, rather informant himself happens to inconsistent with his earlier version and with regard thereto, his answer appears to be ridiculous. Furthermore, it is also evident that from the evidence of witnesses that informant was found lying in a channel while informant himself (PW 7) had not been able to properly identify the place of occurrence and is found duly controverted by the evidence of Investigating Officer, PW-8 who had found the place of occurrence to be paddy field of Dhurbigan Singh. Prosecution had not been able to substantiate whether informant was dragged from his field to the field of Dhurbigan Singh



where he was assaulted.

16. In the background of aforesaid inconsistency and further, being the prosecution witnesses inconsistent over derogatory words being used by all the accused persons at the so alleged place of occurrence, did not justify the finding recorded by the learned lower court. Accordingly, judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.

17. Since appellants are on bail, they are discharged from the liabilities of bail bonds.

(Aditya Kumar Trivedi, J)

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