

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.564 of 2015

Arising Out of PS.Case No. -251 Year- 1996 Thana -BAHERA District- DARBHANGA

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1. Kari Mahto
 2. Surat Lal Mahto @ Surait Lal Mahto,
 3. Dhanik Lal Mahto @ Mantoon @ Mantoon Mahto All sons of Hiyalal Mahto,
resident of village- Kothbanna, P.S.- Bahera, District- Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madhsudan Kumar, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 13-08-2018

Appellants, Kari Mahto, Surat Lal Mahto @ Surait Lal Mahto and Dhanik Lal Mahto @ Mantoon @ Mantoon Mahto have been found guilty for an offence punishable under Section 147 IPC and sentenced to undergo SI for 2 years, under Section 148 IPC and sentenced to undergo SI for 2 years, under Section 323 IPC and sentenced to undergo SI for 1 year, under Section 447 IPC and sentenced to undergo SI for 3 months with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 20.05.2015 passed by Additional Sessions Judge-1st , Benipur, Darbhanga in Sessions Trial No. 77/1998.

2. Bachche Lal Mahto (PW 6) filed written report on 21.11.1996 disclosing therein that on 08.11.1996 at about 8:00 AM, Baldeo Mahto, Jiyalal Mahto, Surat Lal Mahto, Dhanik Lal Mahto



and Kari Mahto, his co-villagers, armed with Lathi, razor, pistol in a pre-planned manner in order to commit an offence raided his Darwaza out of whom, Baldeo directed him to return back the land which they have purchased from Shila Devi and Lila Devi whereupon, he refused as they have purchased after paying consideration amount. Baldeo became annoyed and provoked others to assault whereupon, Kari gave razor blow over chest of his son, Ram Chandra (PW 2). He was about to repeat the blow but, he caught hold whereupon, Surat Lal gave a Lathi blow over his left hand causing fracture. On hue and cry, his brother, nephew came, seeing whom Dhani Lal fired in air with his pistol as a result of which, they became terrorized. Then thereafter, Baldeo and Jiya Lal lied him down and then putting Lathi over his neck began to press in order to kill him.

3. However, due to timely intervention of his villagers, he was rescued. Furthermore, it has also been alleged that Surat Lal snatched away HMT wrist watch from his nephew, Dhani took away Philips radio and Baldeo took away Hero Cycle costing Rs. 1000/-. Then thereafter, they were lifted to Bahera Hospital where they were treated. Respected Panches intervened into the matter and said that case should not be instituted as they are to hold Panchayati and further fixed the date as 19.11.1996. On 19.11.1996 the accused persons refused to participate in Panchayati whereupon the Panches had



allowed him to institute case and accordingly written report was filed.

4. After registration of Bahera PS Case No. 251/1996, investigation commenced and concluding the same charge-sheet was submitted, facilitating the trial, meeting with ultimate result, subject matter of the instant appeal.

5. 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 one Nebu Mandal who was their brother died leaving behind daughter and that being so, family affairs were managed by them whereupon he was given due share in the property left by aforesaid Nebu Mandal. Subsequently thereof, after alluring his daughters Shila Devi and Lila Devi, got a forged and fabricated document relating to the land having in their possession and only to coerce them to give up their possession in favour of prosecution party, this case has purposely been instituted with false and frivolous allegations. In support thereof, one DW has also been examined.

6. Prosecution, in order to support its case, had examined altogether six PWs who are PW-1, Azad Alam, PW-2, Ram Chandra Mahto, PW-3, Akshay Lal Thakur, PW-4, Bhullar Das, PW-5, Dukhi Lal Mahto and PW-6, Bachche Lal Mahto. Side by side had also exhibited Ext-1, Formal FIR, Ext-2, Signature of the informant over



written report. As stated above one DW has also been examined on behalf of defence, namely, Sukan Das @ Toti.

7. It has been submitted on behalf of learned counsel for the appellants that irrespective of the fact that the learned lower court had perceived that prosecution had failed to examine the I.O. as well as doctor, failed to construe in its right perspective whether on account of non-examination of doctor and I.O. the right and interest of the appellants/accused has been prejudiced or not. Had there been proper appreciation at the end of the learned lower court, the judgment impugned would not have been rendered. Further elaborating the issues, it has been submitted that due to non-examination of the I.O. so many things remained unresolved. Had there been examination of the I.O., the concrete evidence would have come up on the record at least with regard to the dubious character of the prosecution who, in the background of land dispute got this case filed showing the date of occurrence at least, 11 days prior to the institution of the case having no positive evidence to explain the delay. Furthermore it is also evident that in the written report no name of the Punches have been disclosed though during course of evidence PWs.-2 and 6 both alleged injured and are father and son had properly identified the Punches and so on account of non-examination of the I.O., the defence could not be able to explicit from the mouth of the I.O. whether those Punches



were examined by him and further the remaining, on account of having their absence in chargesheet as prosecution witnesses. It has also been submitted that disclosure of date of occurrence 11 days prior to the institution of case has purposely been introduced so that investigating officer could not get any kind of concrete material regarding commission of occurrence. Had there been examination of I.O., the improbability on that very score would have been exposed. That being so, due to non-examination of the I.O. the interest of the appellants is found severely prejudiced whereupon the judgment impugned is liable to be set aside.

8. Now coming to status of the witnesses, it has been submitted that because of the fact that this case has been filed with an ulterior motive levelling false and frivolous allegation, that happens to be the reason that no independent witness has come up in support of prosecution, as PW-3 is brother while PW-5 is nephew of the informant. PW-6 and 2 are father and son and PW-3 is the only witness being outsider. When their evidences are to be properly considered, it is evident that motive for false implication is found duly exposed. That being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

9. On the other hand, learned APP while supporting the finding recorded by the learned lower court has submitted that from



the evidences of PWs-2 as well as PW-6, it is evident that they are consistent over manner of assault as well as over place of occurrence. Delay is there but, considering the consistency amongst the evidence of the witnesses, the delay would not eclipse the prosecution version. It has further been submitted that due to non-examination of the doctor although the learned lower court had an occasion to see the injury report divulging grievous injury sustained by the injured given benefit whereunder appellants have been found guilty for an offence punishable under Section 323 IPC. So non-examination of the doctor and in the facts and circumstances of the case would not be adverse to the interest of the appellants. In likewise manner, it has also been submitted that on account of absence of exaggeration, material development in the evidences of the witnesses as well as having consistency over place of occurrence and manner of occurrence, the non-examination of the I.O. is also found not causing prejudice to the appellants, whereupon, the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

10. PW 6 is the informant as well as one of the injured. During his examination-in-chief, he had stated that on the alleged date and time of occurrence while he was at his Darwaza, accused, Baldeo Mahto, Jiyalal Mahto, Surat Lal Mahto, Dhanik Lal Mahto, Ram Swaroop and Kari Mahto came armed variously and further disclosed



that the land having been purchased from Shila Devi and Lila Devi be returned back to them. He declined by stating that after payment of consideration amount he had purchased the land whereupon Baldeo directed to assault. Kari gave razor blow over his son Ram Chandra causing injury. He was to repeat the blow but was prevented by him as a result of which, Surat gave Lathi blow over his left hand causing fracture. Dhanik Lal fired whereupon people scattered. Then thereafter, Baldeo and Jiyalal thrown him on the ground and with an intention to kill putting Lathi over his neck and pressed from both the sides. However, due to timely intervention of the witnesses he was rescued. Then thereafter, they snatched away writs watch, radio and Hero bicycle. Villagers have directed him not to institute the case as, they will resolve the matter by Panchayati but, when the accused persons failed to oblige, then the case has been instituted. Identified the signature over written report.

11. During cross-examination at para-3, he had denied institution of so many cases against the accused persons by him as well as by his brother Khowelal Mahto. Then had denied the suggestion that as they wanted to grab the homestead land of the accused so, they were filing case after case. In para-4, he has stated that his father and father of Baldeo got separated by a registered document. Nebu was brother of Baldeo. *Mukhagani* was given by



Mantun after death of Nebu, *Shradha* was done by his daughter, Sita Devi. Then had denied the suggestion that Nebu had gifted his share to Baldeo and Mantun. Then had admitted that in lieu of *Mukhagni* Sita Devi had executed deed with respect to 4 Dhurs of homestead land to Mantun. At para-5, he had stated that Mantun was bailed out on an affidavit sworn by his brother, Baue Lal after death of Nebu. Then had denied the suggestion that they have got a forged document in their favour by impersonating Lila and Shila. Again at para-6, there happens to be cross-examination relating to institution of case at the end of his brother, Baue Lal Mahto. In para-7, he had stated that he was thrown over the ground at the place of occurrence itself. His left hand got fractured on account of Lathi blow. He had also sustained injury on account of throwing over the ground. First of all, he was lied down and then he was pressed by Lathi. When the villagers came, the accused persons fled away. Surat was armed with Lathi. In para-8, he had shown names of Punches as Quddus, Guna Nand Babu, Jhulan Sah, Sikandar Yadav, Raghuni Mahto. He had further stated that he was admitted at hospital for one day. Then had denied the suggestion that this case has falsely been filed to grab the land.

12. PW-2 is another injured who had stated that he happens to be son of the informant. He was assaulted. The occurrence is of dated 08.11.96. It was 8:00 AM. At that very time, he was at his



Darwaza and then named all the accused persons who came duly armed with Lathi, razor and pistol and then directed his father to return the land whereupon his father declined. Baldeo ordered whereupon, Kari Gave razor blow over his chest, right side. He was to give second blow over his stomach but his father caught hold of his hand whereupon Surat gave Lathi blow causing fracture of his left hand. Villagers came in rescue whereupon, Dhanik fired from his pistol in air in order to terrorize them. Then thereafter, Baldeo threw his father on the ground and then by putting Lathi over his neck began to press in order to kill. Ramdeo Mahto, Dukharadh Mahto, Baleshwar, Achchhe Lal, Mahavir, Bhullar and others came and rescued his father. Then thereafter, they have taken away Hero bicycle, Philips radio, HMT wrist watch. Then they were taken to Bahera hospital where they were treated.

13. During cross-examination at para-2, 3, 4 had stated relating to family affairs as well as cases being fought amongst them. In para-5, he had stated that Panchayati held whereunder Ex MLA, Harish Chandra Jha, Kari Jha, Abdul Quddus, Badri Jha were Punches. In para-7, he had stated that his treatment was privately done at the house of doctor. He is unable to say how much money doctor had realized. In para-9, he had stated that first of all, he was assaulted. He became unconscious. He was taken to hospital over cot. Father



was also taken over cot. He had seen injury over his father. His father was assaulted soon after assaulting him. He is unable to say whether his father became unconscious or not. In para-11, he had stated that razor was for cutting hair. He does not keep razor in his house. In para-12, he had stated that razor was not pierced rather blow was given. It was in 3-4" length but he is unable to say width and depth. There was also injury over his stomach but he is unable to say how it was caused. In para-13, he had disclosed the location as he was at north side while the assailant Kari was at southern side. They were in front to each other at the distance of one hand. In para-14, he had disclosed regarding feature of the razor. Then had disclosed that on assault over his father, his left hand became fractured. In para-15, there happens to be cross-examination regarding his neighbours. In para-17, he had stated that no paper was prepared regarding Panchayati. Then had admitted that both the parties are on disputed terms relating to the land. Then had denied the suggestion that no such type of occurrence had ever taken place.

14. PW-3 is brother of informant who had reiterated the allegation whatsoever deposed by PWs-6 and 2. During cross-examination at para-3, there happens to be a discloser with regard to Panchayati. At para-4, with regard to presence of neighbours. In para-5, he had admitted to have purchased land. In para-6, he had admitted



presence of litigation since before and further, the accused persons having been acquitted in some of the cases. In para-7, there happens to be cross-examination relating to Nebu. In para-9, he had stated that when he reached at the P.O. he had found Bhullar, Mahavir and others. He remained there for five minutes. During midst thereof, other villagers also came. He had not talked with them regarding the occurrence. Then had denied the suggestion that being brother of the informant, he had deposed falsely.

15. PW-4 is a chance witness, although, he had supported the case of the prosecution. During cross-examination at para-2, he had admitted presence of two groups in the village, one led by the prosecution and other by the accused. In para-3, he had admitted that in his presence no occurrence had taken place.

16. PW-5 is the nephew of the informant. During examination-in-chief, he had reiterated the version. During cross-examination at para-3, he had admitted that both the parties are on litigating terms since before the occurrence on account land dispute. Then there happens to be cross-examination regarding Nebu Mahto in para-4. In para-7, he had admitted that the P.O. was shown by him to the Investigating Officer having boundary North-Khowe Lal Mahto, South-house and Darwaza of Achchhe Lal Mahto, East- Baue Lal Mahto and others, West- Baldeo Mahto and Jiyalal Mahto. In para-8,



he had further disclosed that with regard to aforesaid land, this occurrence had taken place. Both the parties are claiming the land. In para-9, he had stated that there are 24-25 members in his family. They all are engaged in agricultural works. At para-13, he had admitted that Sessions Case was also going on amongst them but he had shown ignorance with regard to Title Suit No. 04/1995. Then had denied the suggestion that on account of land dispute they have falsely deposed. In para-19, he had stated that he had seen hand of his uncle fractured.

17. From the evidence available on the record, it is evident that though right from initial stage prosecution had tried to explain the delay by way of introducing a theme that respectable persons of his village had intervened and directed not to institute the case as, they are going to resolve the issued by Panchayati and for that 19.11.1996 was the date fixed but as it got frustrated on account thereof, the case has been instituted. None of the members of the Panchayati, though named, have come forward to support the contention. That means to say, admitted delay is not at all found properly explained. So far criminal case is concerned, delay plays an important role and unless and until there happens to be plausible explanation, it is bound to adversely affect. The delay has multi-dimensional effect. Due to delay, prosecution forbade proper investigation, proper identification of the P.O., accurate manner of



occurrence. So far this particular case is concerned, there happens to be consistent evidence at the end of the prosecution that Maar-peat took place at Darwaza where PWs-6 and 2 were sitting since before. When the evidence of PW-5 has been gone through, Para-7 whereunder he had shown boundary of the P.O. as North- Khove Lal Mahto, South-house and Darwaza of Bachchhe Lal Mahto, East- Baue Lal Mahto and others, West- Baldeo Mahto and Jiyalal Mahto, the land for which dispute was going on. That means to say, it happens to be away from the Darwaza of the prosecution. That means to say, the P.O. is found shifted from Darwaza. Although PW-6 was examined thereafter but he failed to explain the same, more particularly, whether the aforesaid place of occurrence as identified by the PW-5 was the actual P.O. and in likewise manner who was the owner of that land, and in whose possession the land happens to be.

18. Though on account of non-examination of the doctor, the appellants have been found guilty for an offence punishable under Section 323 IPC along with other allied sections but, considering the evidence of PW-5 (para-7) identifying the place of occurrence otherwise than Darwaza of the informant and further, deficiency at the end of the prosecution in getting the aforesaid place claimed by them coupled with delay which, for want of non examination of any of the Panches found unexplained coupled with non examination of



Investigating Officer did not match with the finding recorded by the learned lower court.

19. That being so, the judgment of conviction and sentence recorded by the learned lower court is hereby, set aside.
Appeal is allowed.

20. Since all the appellants are on bail, they are discharged from their bail bonds.

(Aditya Kumar Trivedi, J)

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