

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.658 of 2015**

Arising Out of PS.Case No. -135 Year- 1998 Thana -NAWINAGAR District- AURANGABAD

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1. **Ramraj Yadav**, son of Late Dhaneshwar Yadav
 2. **Kamdeo Yadav @ Karamdeo Yadav**, son of Late Dhaneshwar Yadav
 3. **Ramdeo Yadav**, son of Late Dhaneshwar Yadav
 4. **Tilleshwar Yadav**, son of Late Dhaneshwar Yadav
 5. **Rajendra Yadav**, son of Ramraj Yadav,
 6. **Vijay Yadav**, son of Ramraj Yadav
 7. **Ajay Yadav**, son of Karamdeo Yadav
 8. **Sanjay Yadav**, son of Ramdeo Yadav
 9. **Udaya Kumar**, son of Tilleshwar Yadav, All Resident of Village-Patharaghata, P.S.-Nabinagar, District-Aurangabad (Bihar).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi-Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 16-08-2018

On call, Dr. Smt. Leelawati Kumari appeared and submitted that client had already taken away file from her on account thereof, she is unable to argue. Accordingly, Mr. Arun Kumar Tripathi, learned counsel has been requested to assist the Court as an Amicus Curiae.

2. Against the judgment of conviction and order of sentence dated 07.09.2015 passed by the Additional Sessions Judge-VI, Aurangabad in Sessions Trial No.63 of 2001/ 389 of 2015, whereby and whereunder all the appellants namely Ramraj Yadav,



Kamdeo Yadav, Ramdeo Yadav, Tileshwar Yadav, Rajendra Yadav, Vijay Yadav, Ajay Yadav, Sanjay Yadav and Uday Yadav have been found guilty for an offence punishable under Section 147 of the I.P.C. and sentenced to undergo S.I. for one year, under Section 148 of the I.P.C. and sentenced to undergo S.I. for two years, under Section 341 of the I.P.C. and sentenced to undergo S.I. for one month, under Section 448 of the I.P.C. and sentenced to undergo S.I. for six months with a further direction to run the sentences concurrently, have preferred instant appeal.

3. Briefly stated the case of the prosecution as is evident from fard-bayan (Exhibit-1) of Awadhesh Yadav (PW-6) recorded on 31.12.1998 at about 9.00 P.M. at P.H.C. where he along with his father Nageshwar Yadav, brother Satyendra Yadav and wife Kunti Devi were admitted in an injured condition disclosing therein that on the same day at about 3.00 P.M. while his brother Satyendra Yadav was engaged in weeding chilly plant on that very moment, she-goat of Dhaneshwar Yadav came and began to graze, which was objected to. Satyendra Yadav also directed Dhaneshwar Yadav to remove his she-goat, whereupon an altercation took place. During midst thereof, he himself intervened. Dhaneshwar Yadav ordered to assault as a result of which, Ramraj Yadav, Karmdeo Yadav, Ramdeo Yadav and Tileshwar Yadav came along with lathi seeing whom, they both ran



there from towards house, chased by Dhaneshwar Yadav, Ramraj Yadav, Karmdeo Yadav, Ramdeo Yadav, Tileshtar Yadav, Rajendra Yadav, Vijay Yadav, Ajay Yadav, Sanjay Yadav, Uday Yadav and then, all of them made house trespass and then assaulted his brother Satyendra Yadav, father Nageshwar Yadav, he himself as well as his wife Kunti Devi. On account of assault, his father has sustained fracture of his left hand as well as injury over his head. His brother Satyendra Yadav and he himself has also sustained injuries over their heads.

4. On the basis of the aforesaid fard-bayan, Navinagar P. S. Case No.135 of 1998 was registered, whereupon investigation commenced and concluded by way of submission of chargesheet facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that on account of land dispute, this case has been falsely instituted. In order to support the defence's plea, one DW namely DW-1, Janeshwar Yadav has been examined.

6. In order to substantiate its case, prosecution had examined altogether six PWs, who are PW-1, Nageshwar Yadav, PW-



2, Kunti Devi, PW-3, Kesho Yadav, PW-4, Satyendra Yadav, PW-5, Raghuni Yadav and PW-6, Awadhesh Yadav. Side by side, had also exhibited fard-bayan as Exhibit-1. In likewise manner, one DW namely Janeshwar Yadav has also been examined on behalf of defence. However, no documentary evidence has been adduced.

7. The learned Amicus Curiae while challenging the finding recorded by the learned lower Court has urged that I.O. as well as doctor has not been examined. The aforesaid deficiencies have already been perceived by the learned lower Court, but the impact of non-examination of I.O. causing severe dent to the prosecution case as well as causing prejudice to the interest of the accused has not properly been considered. To justify the same, it has been submitted that had there been examination of the I.O. in that event, the defence would have an opportunity to test the veracity of the prosecution case. Moreover, presence of field having chilly plant, its ownership as the defence was very much clear since before that the aforesaid land happens to be in their possession having no chilly plant grown over the same. So, on account of non-examination of the I.O., the ownership, possession status of the land under dispute could not properly surfaced.

8. Furthermore, it has also been submitted that there was no occasion for the learned lower Court to record conviction for an



offence punishable under Section 148 of the I.P.C. in the background of the fact that none of the appellant have been alleged to carry with deadly weapon or erosive substance. Furthermore, it has also been submitted that P.O. is also found shifting as Satyendra Yadav and Nageshwar Yadav claimed to have sustained injuries outside the house while Kunti Devi and Awadhesh Yadav have deposed that they along with father Nageshwar Yadav were assaulted inside the house. Only Satyendra Yadav was assaulted outside the house. So, this conflicting evidence of the prosecution witnesses suggest that occurrence, as alleged by the prosecution, had never taken place. It has also been submitted that no witness has come up to support the case of the prosecution. Two witnesses, PW-3 and PW-5, who are independent witnesses, have not supported the case of the prosecution and so, they were declared hostile. Whoever remained, are own family members, being hostile, interested partisan and in the aforesaid background, their evidences are fit to be rejected in absence of corroboration. 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 Additional Public Prosecutor while controverting the submission made on behalf of learned Amicus Curiae has submitted that true it is that PW-3 and PW-5 have been declared hostile, but being hostile, they are not going



to affect adversely, because of the fact that remaining witnesses are an injured. They are consistent over manner of occurrence. It has also been submitted that occurrence begin right from chilly field to their house, which has not been controverted. Furthermore, the dispute being amongst the close agnate on account thereof, the villagers did not opt to take any of the party side and that happens to be reason behind their absence.

10. Also submitted that non-examination of the I.O. as well as doctor has properly been considered by the learned lower Court and that happens to be reason behind convicting the appellants for lesser offence. So, submitted that the judgment impugned did not warrant interference.

11. From the record, it is evident that I.O. and doctor have not been examined. Because of non-examination of doctor, injury report is not on the record as an exhibit. So, the learned lower Court irrespective of allegation did not opt to inflict conviction under Section 307 of the I.P.C. Even though, at the present moment, same is not taken otherwise save and except, observing that injury is not at all material in order to attract conviction under Section 307 of the I.P.C., as action of the accused is to be considered to the extent whether same has been with an intention to cause murder or was within knowledge of the accused with regard to its ultimate result.



12. Be that as it may, coming to ocular evidence, it is evident that PW-3 and PW-5, who are independent in nature, have not supported the case of the prosecution, whereupon they were declared hostile. Now, remains the evidence of PW-1, who is the father, PW-2, who is the wife and PW-4, brother and PW-6 informant. All are injured. The evidence of injured has got primacy during course of consideration unless and until, there happens to be cogent reason to discard as held by the Hon'ble Apex Court reported 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. PW-1, during course of his examination-in-chief, had stated that on the alleged date and time of occurrence while he was standing at his darwaza had seen she-goat of Dhaneshwar Yadav



grazing chilly plant, whereupon Satyendra Yadav requested Dhaneshwar Yadav to remove followed with an altercation. Then had stated that Dhaneshwar Yadav, Ramraj Yadav, Karmdeo Yadav, Ramdeo Yadav, Tileshwar Yadav, Rajendra Yadav, Vijay Yadav, Ajay Yadav, Sanjay Yadav, Uday Yadav altogether ten persons came where he was standing out of whom, Ramraj Yadav gave lathi blow over his head as a result of which, he sustained injury. Karmdeo Yadav gave lathi blow as a result of which, he sustained three fracture over his hand. Ramdeo Yadav, Tileshwar Yadav and Vijay Yadav have assaulted over his back. Rajendra, Ajay, Sanjay, Udayji have assaulted Satyendra, Awadhesh Yadav by lathi. Both have sustained injuries over their head. The accused persons also assaulted his daughter-in-law Kunti Devi as a result of which, she also sustained injury. Then thereafter, they were taken to Navinagar hospital and from there, he was referred to Sadar Hospital, Aurangabad, identified the accused. During cross-examination at Para-2, he had admitted status of the accused to be his Gotia. In Para-3, he had admitted that for the last 20 years, there happens to be land dispute amongst them. At Para-4, he had stated that he is not remembering the date of occurrence, month of occurrence, year of occurrence and in likewise manner, when plantation of chilly plant was done. But the same was planted one month prior to the occurrence. Irrigation had already been done. In Para-5, he had stated that when accused persons came armed



with lathi, he perceived fear, but did not move. Accused persons began to assault him before he could rush there from. After sustaining injury, he fell down. He had sustained fracture of his hand, injury over his head as a result of which, he became unconscious. He regained sense at Aurangabad hospital. He had not counted, but might have sustained fifty blows. He had sustained blows over ten places over his body. In Para-6, he had stated that his cloth soaked with blood. Blood had spread over the ground. Police had not taken away blood stain earth in his presence. In Para-7, he said that occurrence continued for two hours during midst thereof, none of the villagers came, out of fear of the accused. All the accused persons are from same family. In Para-8, he had stated that his statement was recorded by the police at Sadar Hospital, Aurangabad. Then at Para-9, there happens to be contradiction. At Para-10, he had denied the suggestion that no occurrence had taken place rather in the background of land dispute, this case has been instituted taking collusive injury report.

14. PW-2 had deposed that on the alleged date and time of occurrence, she was at her darwaza. She had seen the she-goat of Dhaneshwar Yadav inside chilly field, whereupon she directed her child to chase, Karmdeo objected. Then thereafter, Dhaneshwar, Ramraj, Ramdeo, Tileshwar, Rajendra, Vijay, Ajay, Sanjay, Uday, Karmdeo came with lathi and assaulted her along with her husband,



Satyendra and Nageshwar. They became injured. Her father-in-law sustained fracture of his hand. They were taken to hospital, identified. In Para-2 of her cross-examination, she had admitted the inter se relationship. In Para-3, she had stated that Karmdeo had instructed them to get the land measured. For the last ten years, dispute is going on relating to the land. In Para-4, she had stated that first of all, her father-in-law was assaulted as a result of which, his hand fractured. He might have sustained five blows. Then thereafter, Awadhesh was assaulted. 5-6 blows were given over him. Then Satyendra was assaulted. He was given 3-4 blows. She sustained four lathi blows. In Para-5, she had stated that after sustaining injury, her father-in-law fell down and then, became unconscious. He regained sense after an hour. She also fell down after sustaining injury. At Para-6, she had stated that at the time of occurrence, none came from her village. In Para-7, she had stated that her statement was recorded by the police on the same day. She had further stated that the accused persons are not claiming the field wherein chilly plant was planted. She had further disclosed that all the accused came one by one. Firstly, Dhaneshwar had come. After five minutes, Karmdeo came and then, other accused came in same manner. Then had denied the suggestion that it is false to say that no such kind of occurrence had taken place and only to defeat the claim of the accused persons, this case has



falsely been instituted.

15. PW-4 had deposed that on the alleged date and time of occurrence, he was in his chilly field where she-goat of Dhaneshwar Yadav came and began to graze the chilly plant, Dhaneshwar was present there. So, he requested him to remove his she-goat, but he declined. During midst thereof, his brother Awadhesh came and he also insisted, whereupon Dhaneshwar abused and ordered to assault, whereupon Karmdeo Yadav, Ramraj Yadav, Ramdeo Yadav, Tileshwar Yadav, Ramdeo Yadav came with lathi seeing whom, he along with his brother rushed to their house. He stood outside of his house while his brother gone inside the house. His father was standing out the darwaza since before. Then thereafter, Rajendra Yadav, Vijay Yadav, Ajay Yadav, Sanjay, Uday Yadav joined them. They all came and then, Karmdeo Yadav gave lathi blow over hand of his father causing fracture, Ramraj Yadav had assaulted his father with lathi on his head causing injury thereupon, his father fell down. Then Ramdeo Yadav assaulted with lathi over his head causing injury thereupon. Then they gone inside their house in order to save themselves, but the accused persons followed them and then, Sanjay Yadav assaulted Awadhesh with lathi over his head. His bhabhi was also assaulted by Sanjay Yadav. After assault, they left the place. Then thereafter, they have gone to Navinagar Hospital where



they were treated, his statement was recorded by the police. During cross-examination at Para-2, he had also admitted the accused persons to be his near agnate (cousin brother). Then had said that this occurrence had not taken place on account of land dispute. In Para-3, he had stated that dispute arose on account of entering of she-goat of Dhaneshwar Yadav inside his chilly field. In Para-4, he had stated that chilly was planted 15-20 days prior to the date of occurrence. In Para-5, he had stated that seeing the accused persons, they rushed. He remained outside the house while his brother went inside the house. At Para-6, he had stated that no marpit took place at the chilly field. In Para-7, he had stated that occurrence continued near-about two hours. He had further stated that during midst thereof, none of the villagers came. In Para-8, he had stated that he is unable to say, how many blows, he sustained. In Para-9, he had stated that first of all, his father was assaulted, then he was assaulted, then Awadhesh Yadav was assaulted and then, his bhabhi was assaulted. He had also been suggested that no occurrence took place rather on account of land dispute, this case has been instituted.

16. PW-6 is the informant. During his examination-in-chief, he had reiterated the earlier version. During cross-examination at Para-2, he had stated that Ramraj Yadav happens to be 60 years old while Karmdeo happens to be 45 years old. In Para-4, he had stated



that an altercation took place at the chilly field while they were assaulted inside the house. When accused persons chased them, they have gone inside the house, at that very moment, they have not shut the door. Because of the fact that he had gone inside the house, so he is unable to say whether any villagers have come or not. Though in Para-5, he had named 5-6 persons namely Chandradeo Yadav, Dharmdeo Yadav, Santan Yadav, Ramdahin Yadav etc., who had seen the occurrence. In Para-6, he had stated that first of all, accused persons assaulted him. He was assaulted with 10-12 danda. Then his father was assaulted. In Para-7, he had stated that blood had fallen over the ground in the courtyard, but he is unable to say whether police had seized it or not as he was not present there. They have not given blood stain cloth to the I.O. In Para-8, he had disclosed the location of the place where Satyendra Yadav had sustained injury and in Para-9, he had disclosed with regard to his wife. In Para-10, he had stated that he along with accused persons are descendant from common ancestor. Partition had already taken place. No dispute relating thereto, is existing amongst them. There was oral partition. Then had shown the boundary of the field wherein chilly plant was planted. Then, there happens to be disclosure with regard to treatment. At Para-16, there happens to be contradiction. In Para-17, a suggestion has been given to him that as they desired to grab the land of the accused persons, in the aforesaid background, this false case



has been instituted with false and frivolous allegation.

17. DW-1 has been examined on behalf of defence, who during course of examination-in-chief had denied the commission of any kind of occurrence on the alleged date and time at the end of the accused persons. Furthermore, he had further stated that both the parties are claiming land and for that, this false case has been instituted at the end of the prosecution party. During cross-examination, he had stated that both the parties are agnate, there happens to be claim and counter-claim. His house lies south to the house of informant. He had further stated that no statement was made by him before the I.O.

18. After giving anxious consideration to the evidences having adduced on behalf of prosecution, it is evident that they all are consisted with regard to presence of an unlawful assembly and for that, they have rightly been convicted for an offence punishable under Section 147 of the I.P.C. So far Section 148 of the I.P.C. is concerned, none of the appellants has been shown to be in possession of any weapon as finding under Section 148 of the I.P.C. and that being so, the conviction and sentence recorded by the learned lower Court relating thereto would not survive. Moreover, so far applicability of Sections 341, 448 of the I.P.C. are concerned, in the facts and circumstances of the case as well as considering the evidence



available on the record, is found duly substantiated.

19. As such, retaining the finding recorded by the learned lower Court relating to Sections 147, 341, 448 of the I.P.C. and the sentences inflicted therefor as well as sentences to run concurrently, conviction and sentence relating to Section 148 of the I.P.C. is hereby set aside. This appeal is party allowed to that extent. Appellants are on bail, hence their bail bonds are hereby cancelled directing them to surrender before the learned lower Court to serve out the remaining part of sentence within fortnight, failing which, the learned lower Court will proceed against the appellants in accordance with law. The first and last page of the judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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