

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.141 of 2013

Arising Out of PS. Case No.-55 Year-2008 Thana- BAJPATTI District- Sitamarhi

1. Aash Narain Rai S/O Late Banarsi Prasad Singh Resident Of Village- Sawandi, Police Station And District- Lakhisarai.
2. Shashi Kant Rai S/O Chet Narayan Rai Resident Of Village- Sunderpur Bantolba, P.S- Sursand, District- Sitamarhi.
3. Khattar Rai S/O Late Ghuran Rai Resident Of Village- Sunderpur Bantolba, P.S- Sursand, District- Sitamarhi.
4. Dukhran Rai S/O Late Ghuran Rai Resident Of Village- Sunderpur Bantolba, P.S- Sursand, District- Sitamarhi.
5. Chet Narayan Rai S/O Late Sukumar Rai Resident Of Village- Sunderpur Bantolba, P.S- Sursand, District- Sitamarhi.
6. Raju Rai @ Raju Kumar S/O Dukh Haran Rai Resident Of Village- Sunderpur Bantolba, P.S- Sursand, District- Sitamarhi.
7. Shushil Kumar @ Shushil Kr. S/O Late Sahadeo Rai Resident Of Village- Sunderpur Bantolba, P.S- Sursand, District- Sitamarhi.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae
For the Respondent/s : Mrs. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date : 27-11-2018

Heard Mr. Ranbir Singh, *Amicus Curiae* for the appellants and learned APP for the State on this Criminal Appeal.

2. This criminal appeal has been preferred against the judgment and order of conviction dated 19.02.2013 and order of sentence dated 20.02.2013 passed by the *Ad hoc* Additional Sessions Judge-IV, Sitamarhi in Sessions Trial No. 358 of 2009, arising out of Bajpatti P.S. Case No. 55 of 2008, whereby the learned Trial Court convicted the accused Aash Narain Rai, Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Rai @ Raju Kumar and Shushil Kumar @ Sushil Rai under Section



323, 504 and 307/34 of the Indian Penal Code (hereinafter in short referred to as IPC) and sentenced them to undergo rigorous imprisonment for 7 years each and also slapped them with a fine of Rs. 1000/- each and in default of payment of fine further sentenced them to undergo S.I. for two months each and further sentenced them to undergo S.I. for six months each under Section 323 IPC and S.I. for six months each u/s. 504 IPC. All the sentences were directed to run concurrently.

3. Factual matrix of the case is that Bajpatti P.S. Case No. 55 of 2008 was instituted under Sections 447,341, 323, 324, 325 and 504/34 of the IPC against Aash Narain Rai, Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Rai @ Raju Kumar and Sushil Kumar @ Sushil Rai on the basis of written report of Satyendra Narayan Rai, son of Late Mahendra Rai with the allegation in succinct that on 03.08.2008 at 1:00 PM Chet Narayan Rai and Dukhran Rai were grazing the paddy crop in his field by their she-buffalo. On learning the same, when he rushed to his field to raise protest they left the scene along with their she-buffalo extending threatening to him and arrived at his field at 3:00 PM along with Aash Narain Rai, Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Rai @ Raju Kumar and Sushil Kumar @ Sushil Rai while he was planting the



seedling in his another field Aash Narain Rain gave Farsa blow to him but he dodged the same but sustained injury on his head. Other accused persons assaulted him by means of Lathi. In course of intervening the occurrence accused persons assaulted Vijay Narayan Rai inflicting injury on his finger. During the course of occurrence Shashi Kant Rai was giving order to eliminate the informant. On congregation of his brothers, accused persons left the scene assaulting them.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against accused Aash Narain Rai, Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Rai @ Raju Kumar and Sushil Kumar @ Sushil Rai under Sections 447, 341, 323, 324, 325, 307 and 504/34 IPC.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused persons and committed the case to the Court of Sessions and after commitment and on transfer finally the case came in the seisin of *Ad hoc* Additional Sessions Judge-IV, Sitamarhi for trial.

6. Charge against the accused Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Rai @ Raju Kumar and



Sushil Kumar @ Sushil Rai was framed under Section 323, 325, 504 and 307/34 IPC while charge against the accused Aash Narain Rai was framed under Section 307 IPC. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

7. During the course of trial, in ocular evidence, the prosecution has examined altogether six prosecution witnesses, namely, Bijay Narayan Rai as P.W.1, Tej Narayan Rai as P.W. 2, Laxmeshwar Rai as P.W. 3, Ram Nath Prasad Rai as P.W. 4, Informant Satyendra Narain Rai as P.W. 5 and Dr. Md. Aarif, who has examined the victims, as P.W. 6. The Prosecution has also filed and proved some documents by way of documentary evidence in the case.

8. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. The accused persons neither adduced any ocular nor documentary evidence in buttress of their case.

9. After hearing the parties and pursuing the record, the learned trial court passed the aforesaid judgment and order of conviction and sentence as detailed in the earlier paragraph.



10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned *Amicus Curiae* for the appellants that all the material witnesses examined by the prosecution happen to be informant and his family members and they are interested witnesses of the case. No independent witness has been examined by the prosecution in corroboration of the prosecution case. It is further submitted that as per the prosecution case the paddy crops planted in one of the fields of the informant was grazed by the accused persons by their she-buffalo which was the genesis of the occurrence but the I.O. has not been examined by the prosecution to bring on record the objective evidence in the case. It is further submitted that there is a vital contradiction regarding the manner of occurrence between the testimony of the witnesses. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants by adducing consistent, trustworthy and worth credence evidence, hence the aforesaid judgment and order of conviction and sentence



passed against the appellants by the learned trial Court is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that all the witnesses examined by the prosecution barring P.W. 4 are injured witnesses and they happen to be natural witnesses of the case and their presence at the place of occurrence and witnessing the occurrence by them cannot be ruled out. The testimony of the aforesaid witnesses who have supported the prosecution case also stands corroborated by the independent witness, namely, Ram Nath Prasad Rai (P.W. 4) and the ocular evidence stands substantiate by the medical evidence and the learned trial Court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid judgment and order of conviction ad sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of the record, it appears that to substantiate its case the prosecution has examined altogether five material witnesses in the case. Out of them P.W. 1-Bijay Narayan Rai, P.W. 2-Tej Narayan Rai and P.W. 3 -Laxmeshwar Rai happen to be brothers of the informant, P.W. 4-Ram Nath Prasad Rai is the



son-in-law of the brother of the informant, namely, Bijay Narayan Rai and P.W. 5- Satyendra Narain Rai is the informant himself. Thus, the aforesaid witnesses happen to be family members and relative of the informant and may be termed as interested witnesses of the case. But it is the settled principle of law that the testimony of the interested witness of a case should not be discarded outrightly rather it should be scanned and scrutinized cautiously and carefully.

15. On perusal of evidence of P.W. 1, P.W. 2, P.W. 3 and P.W. 5 it appears that the aforesaid witnesses happen to be injured witness of the case, hence their presence at the place of occurrence at the time of occurrence and witnessing of the occurrence by them cannot be ruled out. P.W.1-Bijay Narayan Rai has stated in his examination-in-chief that at the time of occurrence he was planting the seedling in his field. In the mean time Aash Narain Rai armed with Farsa and Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Kumar and Sushil Kumar armed with Lathi descended at his field. They started slating, Aash Narain gave Farsa blow to the Satyendra Narain Rai inflicting injury on left side of his head, while other accused persons assaulted him by means of Lathi. Sri Kant Rai gave order to eliminate him. When he rushed in rescue all the accused persons assaulted him by means of



lathi inflicting fracture injury in his left palm and injury in his finger. When Tej Narain Rai and Laxmeshwar Rai rushed in rescue they assaulted them by means of Lathi. P.W. 2 Tej Narain Rai has stated in his examination-in-chief that at the time of occurrence he was planting seedling in his field. His brothers Satyendra Narain Rai, Laxmeshwar Rai and Bijay Narain Rai were also at field. At 3:00 PM Aash Narain Rai, Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Kumar and Sushil Kumar descended at his field. Aash Narain Rai was armed with Farsa while others were armed with Lathi. Aash Narain assaulted on the head of Satyendra Rai by means of Farsa while other accused persons assaulted him by means of Lathi. They assaulted his brothers by means of Lathi. When they rushed in his rescue. He was also assaulted by lathi Laxmeshwar Rai, Satyendra Rai and Bijay Narain were assaulted. Hand of Bijay Narain was broken by the accused persons. The occurrence took place over grazing of his field by the she-bufallo. P.W. 3 Laxmeshwar has stated in his examination-in-chief that on the date of occurrence he was planting seedling in his field. Aash Narain Rai, Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Kumar and Sushil Kumar descended at his field. Aash Narain Rai was armed with Farsa while others were armed with Lathi. Aash Narain Rai



gave farsa blow on the head of Satyendra Narain Rai while other accused persons assaulted him by means of lathi. When he and Bijay Narain Rai (P.W. 1) rushed in his rescue Khattar Rai and Dukhran Rai assaulted them by means of Lathi. All the accused persons assaulted them by Lathi and the hand of Bijay Narain Rai was broken in the assault. Informant P.W. 5 –Satyendra Narain Rai has stated in his examination-in-chief that on the date of occurrence at about 1:00 PM Chet Rai and Dukhran Rai were grazing his field by she-buffalo on learning the same when he rushed there and raised protest they slated and extended threatening and left the scene. Thereafter, 7-8 persons armed with Bhala, Farsa and Lathi arrived there Aash Narain Ray Shashi Kant Rai, Khattar Rai, Dukhran Rai, Chet Narayan Rai, Raju Kumar and Sushil Kumar arrived at the place of planting seedling and started assaulting them. Aash Narain Rai gave Farsa blow on left side of his head and other accused persons assaulted him by means of Lathi. When Bijay rushed in his rescue they also assaulted him by means of Lathi and broke his finger. They also assaulted Laxmeshwar Rai and Tej Narain Rai by means of Lathi. Sri Kant Rai was giving order to eliminate him. Thereafter, the aforesaid accused persons left the scene. The aforesaid witnesses were subjected to lengthy cross-examination by the defence but from



perusal of their cross-examination, I find that nothing convincing and cogent has been elicited in their cross-examination having potential to create any doubt about the sanctity and credibility of the testimonies of aforesaid witnesses.

16. As per account of P.W. 4- Ram Nath Prasad Rai he was present at the place of occurrence at the time of occurrence and witnessed the occurrence and has also supported the prosecution case by giving his statement in consonance to the prosecution case and he also stood the test of cross-examination as nothing convincing and cogent has been elicited in his cross-examination having potential to rule out his testimony. The aforesaid witnesses appears to have been examined after 2-4 years of occurrence and there is some minor contradiction between their testimonies but the aforesaid contradictions are bound to happen in the testimony of the natural witnesses by the passage of time as power of witnessing, perceiving, retention, and reproduction differs from man to man and is also dampened by the passage of time. Thus, the aforesaid four witnesses stood the test of cross-examination. Thus, on scanning and scrutinizing the testimony of the aforesaid witnesses, who though happen to be interested witnesses of the case, I find that nothing convincing and cogent has been elicited in their cross-examination to create doubt about



the sanctity and credibility of their testimony their testimonies are unblemished.

17. From perusal of the medical evidence adduced by the prosecution i.e. the injury report of the victims, and testimony of Dr. Mohammed Aasif, P.W. 6 who had examined the victims it appears that the doctor has found several injuries on the persons of the victims in corroboration of the ocular evidence. Thus, the consistent ocular evidence of the prosecution also stands corroborated by the medical evidence.

18. Though as per the witnesses' account the blood had fallen at the place of occurrence and as per the prosecution case and the witnesses account the field of the informant was grazed by the accused persons by their she-buffalo but I.O. of the case has not been examined by the prosecution to bring on record the objective evidence. But in view of the aforesaid consistent ocular testimony of the injured witnesses corroborated by the medical evidence, non-examination of the I.O., in my considered opinion, is not going to affect the merit of the case by any stretch of imagination.

19. From perusal of the record, it appears that there were seven accused persons in the occurrence and they were armed with farsa and Lathi while the victims were, though four in numbers but



they were unarmed and as per account of P.W. 1 Bijay Narain Rai as given by him in para-14 of his cross-examination the occurrence took place for 5-7 minutes. As per account of P.W. 5-Satyendra Narain Rai as given in para 5 of his cross-examination accused persons gave 20-25 Lathi blow to him. They had assaulted incessantly. But the doctor has found all the injuries including head injury of the informant, barring fracture injury in the left arm of Bijay Narain Rai which is on non-vital part, simple in nature. As the occurrence took place for 5-7 minutes and the accused persons were seven in numbers and were armed with Farsa and Lathi and victims were four in numbers and they were unarmed and accused persons assaulted the victims incessantly and during the course of occurrence there was no intervening circumstance at the place of occurrence at the time of occurrence, so had the accused persons intended to eliminate the informant and other victims they would have executed their intention but they did not do so. Hence, in my considered opinion, the offence under Section 307 IPC is not made out. However, as the informant has sustained simple injury on his head caused by sharp-cutting weapon the appellants are convicted under Section 324/34 IPC instead of Section 307/34 IPC as made by learned Trial Court.



20. From perusal of record, it appears that the occurrence is of the 2008 and the appellants have faced the rigor of the trial for considerable period of 10 years and moreover, the appellant Dukhran Rai happens to be aged about 76 years, Khattar Rai of 61 years, Chet Narayan Rai of 71 years and Aash Narain Rai of 51 years and there is no evidence on record indicating any criminal antecedent of the appellants, hence, taking the aforesaid facts and circumstances of the case, the appellants are sentenced to undergo S.I. for six months each and they are also slapped with a fine of Rs. 5,000/- each and in case of default of payment of fine to further undergo S.I. for one month each under Section 324/34 IPC respectively which in my considered opinion would sub-serve the ends of justice. However, conviction of the appellants under Section 323 and 504 IPC and sentence awarded to them under the aforesaid Sections by the learned trial Court remains intact. All the sentences shall run concurrently.

21. Accordingly, this appeal is dismissed with the aforesaid modification in the order of conviction and sentence. The bail-bonds of the appellants are cancelled and they are directed to surrender before the learned lower Court forthwith.

22. Let a copy of the first and the last page of this judgment be handed over to the learned amicus curiae. Learned



Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
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