

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.38 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- KHAGARIA

[Against judgment of conviction and order of sentence dated 19.12.2008 passed by the Additional Sessions Judge, FTC V, Khagaria, in Sessions Trial No.60 of 2006 arising out of Gogri P.S. Case No.133 of 2002]

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1. Kailash Yadav, son of Gultu Yadav,
 2. Deva Yadav, son of Bhudev Yadav, &
 3. Rabin Yadav, son of late Jaldhari Yadav, all reidnet of village- Baraitha, P.S.- Gogri, District-Khagaria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Swaroop Prasad, Amicus Curiae

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 26-04-2018

None appeared on behalf of the Appellants.

Sri Ram Swaroop Prasad, Advocate, is appointed as Amicus Curiae to assist the Court on behalf of the Appellants.

Heard learned Amicus Curiae for the Appellants and learned APP for the State.

By judgment of conviction and order of sentence dated 19.12.2008 passed by the Additional Sessions Judge, FTC V, Khagaria, in Sessions Case No.60 of 2006 arising out of Gogri P.S. Case No.133 of 2002, all the three appellants have been convicted



for the offence under Section(s) 323/149, 148, 341 Indian Penal Code as well as Section 27 of the Arms Act and sentenced to undergo simple imprisonment for six months under Sections 323/149, six months simple imprisonment for the offence under Section 148 Indian Penal Code, one month simple imprisonment Under Section 341 Indian Penal Code, and three years simple imprisonment for the offence under Section 27 of the Arms Act. Further, Appellant, Kailash Yadav, has been convicted for the offence under Section(s) 379 Indian Penal Code in place of Section 386 Indian Penal Code and sentenced to undergo simple imprisonment for two years. All the sentences were ordered to run concurrently.

On the basis of the written report filed by the Informant, Rajiv Kumar Yadav, PW 5, on 11.07.2002, all the four accused persons as named in the written report along with 4-5 unknown persons arrived with tractor to cultivate the land of the Informant, which he has purchased through sale deed. Accused, Kailash Yadav, raised protest on cultivating the land. All the accused started forcibly cultivating the land. The informant proceeded on motorcycle to his house to give information then at 12.30 Noon, one person, who was getting the land cultivated, came in front of the Informant. Thereafter, all these Appellants and other



accused persons, as named in the written report, arrived armed with rifle, .303. It is alleged that Appellant No.1 made one firing and other accused persons forcibly got the Informant down from the motorcycle. It is alleged that Kailash Yadav snatched gold chain, gold ring, accused, Phulo Yadav, snatched watch from the possession of the Informant. It is further alleged that all the accused persons assaulted the informant with butt of the rifle and .303 causing injury in his hand, left shoulder and other parts of the body as mentioned in the written report.

The police registered case under Section 307 IPC and other allied sections of Indian Penal Code as mentioned in the impugned judgment. Charge-sheet was submitted and thereafter trial of the case proceeded.

During trial, total six witnesses were examined by the prosecution. No defence witness was produced. The Investigating Officer did not appear in the Court below to give evidence.

Naresh Yadav, PW 1, has stated that on the date of occurrence at about 12 Noon he was cutting grass. Informant was going on the motorcycle. He was surrounded by accused Kailash Yadav, Deva Yadav, Rabin Yadav and Phulo Yadav. He was assaulted by lathi and .303. Accused also snatched his gold chain, watch. He has also stated that father of the Informant has purchased



the land. Accused persons were forcibly cultivating the aforesaid land.

Shambhu Yadav, PW 2, has supported the occurrence. He has stated that on the date of occurrence accused persons were forcibly cultivating the land of the Informant. When the informant was going to Police Station, they assaulted the informant. He became unconscious. He was taken to Hospital. Accused also snatched chain and watch from the Informant.

Similarly, Anil Yadav, PW 3, has also supported the case that while the Informant was going, all the accused persons assaulted him. He has also stated that Kailash Yadav fired from pistol and also assaulted with butt of the rifle and snatched gold chain and ring. It is alleged that Phulo Yadav snatched watch. Injured was taken to hospital for treatment.

Ram Bahadur Yadav, PW 4, has stated that he saw the informant being taken to hospital on *Khatoli*. He learnt that the accused persons have assaulted the informant after stopping his motorcycle when he was going to inform police. He has also stated that accused persons made demand of *Rangdari* from the Informant for the land, which has been protested by him.

Rajeev Kumar, PW 5, is the informant himself. He has given *fard-e-beyan* in injured condition in Gogari Hospital. He has



stated in his evidence that on the date of occurrence at 12.30 PM accused persons told him to pay rupees fifty thousand as *Rangdari* for the land, which has been purchased by his father from Gopal Sah, otherwise, they will not allow him to cultivate the land. On 11.07.2002, at about 12 Noon, all the accused persons arrived along with Tractor and started cultivating the land. The Informant reached near his field by the motorcycle, then all these Appellants and other accused surrounded him at the point of rifle. Kailash Yadav fired and he fell down from the motorcycle. Thereafter, Kailash Yadav, snatched his gold chain and Phulo Yadav snatched his watch. Accused persons also assaulted with butt of the pistol.

Dr. Janardan Prasad Yadav, PW 6, has stated that he had examined the injured, Rajeev Kumar, in Referral Hospital, Gogri at 4.00 PM. He has described the injuries in his evidence which are found on the leg, chest and head of the Informant. All the injuries were found to be simple in nature caused by hard and blunt substance like lathi. The Doctor has stated that such injuries cannot be caused by firing of the rifle or gun. Injuries were within six hours from the occurrence. Injury Report has been marked as Ext.2. This witness has also stated in his cross-examination that none of the injuries of the injured were dangerous to life.

The defence has not produced any witness during trial.



The Court below on the basis of aforesaid evidence has acquitted the accused persons for the offence under Section(s) 307 Indian Penal Code. The Court below has, however, convicted the Appellants for the offence under Section(s) 341, 323, 148 Indian Penal Code and Section 27 of the Arms Act. The Court below has convicted Appellant, Kailash Yadav, also for the offence under Section(s) 379 Indian Penal Code.

From the nature of evidence available on record, which has been discussed above, in detail, this Court finds that all the witnesses have supported the evidence of the Informant of assaulting him while he was returning on motorcycle. The Doctor, PW 6, has found injuries on the person of the Informant although all the injuries were simple in nature caused by hard and blunt object. The Doctor has mentioned in his evidence that those injuries cannot be possible from the butt of the gun or rifle and they were not dangerous to life.

Therefore, this Court does not find any ingredient of offence under Section 27 of the Arms Act on the basis of evidence of prosecution witnesses. Therefore, the conviction and sentence of accused persons for the offence under Section 27 of the Arms Act is set aside. They are acquitted from the offence under Section 27 of the Arms Act.



The conviction under Section(s) 341, 323, 148 and 379 Indian Penal Code is, however, upheld.

This Court after looking into the nature of evidence brought on record and also considering the fact that trial is of the year 2006 and the Appellants have faced rigours of the trial for last ten years, period already undergone by them during trial would suffice ends of justice under all counts.

Therefore, sentence passed against the Appellants is modified to the period already undergone by them during trial.

The Appellants will not be required to go to custody any further.

This Criminal Appeal is, accordingly, allowed in part with modification in sentence as mentioned above.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12-05-2018
Transmission Date	12-05-2018

