

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.154 of 2009

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Nirmala Devi, wife of Late Jai Prakash Thakur, resident of village-Gauripur,
P.S.-Naya Ram Nagar, District-Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Nawal Kishore Singh, Adv.

For the Respondent/s : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 04-12-2018

1. Sole appellant Jai Prakash Thakur who has been directed to undergo R.I. for six months under Section 323 of the IPC, R.I. for one year under Section 3(i)(x) of the SC/ST (POA) Act vide judgment of conviction dated 28.01.2009 and order of sentence dated 02.02.2009 passed by Special Judge, SC/ST (POA) Act, Munger in Sessions Trial no.259/2005 has challenged the same under the instant appeal. It is evident from the record that aforesaid appellant Jai Shankar Thakur has died of 24.01.2017 and on account thereof, asking for substitution in accordance with Section 394 of the Cr.P.C in the background of the fact that the judgment impugned was to adversely affect upon their prospect being the appellant Jai Prakash Thakur a railway employee, under I.A. No.2133 of 2018 along with prayer for condonation of delay under I.A. No.132/2018 and, vide order dated 07.09.2018 appellant's wife, namely, Nirmala Devi has been allowed to be substituted after condonation the delay and accordingly, instant appeal is being sailed at her end.



2. On 20.05.2003 Shail Devi wife of Tufani Paswan filed written report disclosing therein that while she was at the place of her neighbour Urmila Devi to participate in *Tilak* ceremony of her son on the preceding night at about twelve midnight, appellant armed with *lathi* came at the place of Urmila Devi and inquired why this *Dushadhin* has been invited. Further, he scolded her on the pretext of being member of scheduled cast which was resisted by her and then thereafter, Jai Prakash Thakur gave indiscriminate *lathi* blow. On account of intervention of local people she was rescued. Jai Prakash Thakur also took away ornaments. He also abused her. Land dispute has been shown to be motive of the occurrence. After registration of Sadar (SC ST) Case no.18/2003, the matter was investigated upon and after concluding the same, charge sheet was submitted followed with trial, meeting with the ultimate result, subject matter of instant appeal.

3. 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 wherein, the appellant won the title suit, this case has falsely been filed in retaliation. To substantiate the same, oral as well as documentary evidences have been adduced on behalf of appellant.



4. Prosecution, in order to substantiate its case has examined altogether five PWs who are PW.1-Pairu Paswan, PW.2-Yogendra Yadav, PW.3 Urmila Devi, PW.4-Shail Devi and PW.5-Vishwanath Prasad. Side by side has also exhibited Ext.1-Formal FIR, Ext.2-Endorsement on FIR. In likewise manner one DW Dayanand Mandal has been examined along with Ext.A- Judgment and order of Title Suit No.22/1997, Ext.A/1-Decree of the Title Suit No.22/1997, Ext.A/2-Order sheet of M.T.A. No.30/2005.

5. Gone through the record. It is evident that PW.1 and PW.2 have not supported the case of the prosecution and on account thereof, have been declared hostile. PW.5 is the part investigating officer who had simply submitted charge sheet. Thus, the prosecution rest its case upon two witnesses that means to say PW.3 and PW.4. When the judgment has been gone through more particularly paragraph 5 thereof, it is apparent that learned lower court had recorded the evidence of the witnesses contrary what has been deposed at their end. PW.3 had stated that on the alleged date and time of occurrence she was at the place of occurrence that means to say at her Aagan then again she said that people have taken away her son for "*Hathpakraua Marriage*" and so, she was alone at her house. At about 12 midnight Prakash Thakur came and assaulted Shail, wife of Tufani Paswan with *lathi* as a result of which, she became injured. She began to weep. The females began to scatter



hither and thither out of fear. During course of Marpit she (Shail) lost her ornaments regarding which, she is unable to say. Identified the accused. During cross-examination, at para-5 she had stated that as it was "*Hathpakraua Marriage*" so, *Tilak* was not performed. In para-6 she had stated that litigation since before is going on in between Tufani and Jai Prakash. In para-9 she had stated that no one was invited. In para-10 she had stated that on account of assault by *lathi* there was tearing over body. In para-11 she had stated that she was alone at her house. Then at para-12 & 13 she had denied to have stated before the police that there was *Tilak* of her son wherein Jai Prakash was also invited.

6. PW.4 is the victim herself. She had stated that on the alleged date and time of occurrence she had gone to the house of Urmila to sing the song on the eve of *Tilak* of her son. After coming to know about the same, at about 12:00 midnight Jai Prakash came there with *lathi* and addressed her why this *Dushadhin* has been called for to participate and further, to sing the ceremonial song. Whereupon, she protested as, she is participating on being invited. Then thereafter, Jai Prakash began to assault her with *lathi*. Striking over different parts of her body. He also took away ornaments. She had filed written report before the police. Identified the accused. During cross-examination she had stated that she had gone to the place of Urmila on being invited by her. So many villagers were



present but she is unable to disclose their identity. Then had stated that it was *Tilak* ceremony and also detailed the items having been offered on the eve of *Tilak* but, she herself controverted the same by way of stating that the son of Urmila had himself married so there was no question of *Tilak*. At para-8 she had stated that accused is single person in the village while 150 houses are of Paswan. She had further stated that she was alone of representing the Paswan community at the place of Urmila. In the background of friendship. In para-10 she had stated that she had dictated which was scribed by the Officer-in-charge and then thereafter, she had put her thumb impression. Then had shown prevailing animosity amongst the parties since 1987. In para-15 she had stated that she was assaulted by the accused indiscriminately by *lathi*. Villagers have rescued her. She was treated at hospital. In para-17 she had admitted the accused to be a railway employee. Then had denied the suggestion that on account of land dispute this false case has been instituted.

7. It is also evident from the record that DW-1 has been examined in the background of persisting land dispute amongst the parties which is admitted one. Ext.A Series has been filed to divulge that Title Suit No.22/1997 has been decreed in favour of the accused as well as, appeal filed on behalf of informant is husband got dismissed for default.



8. Thus, from the evidence as stated above it is crystal clear that presence of informant at the place of Urmila was on the eve of *Tilak* which is not at all found substantiated by the PW.3, Urmila. When evidence of Urmila has been gone through, it is apparent that at one occasion she had stated that P.O. happens to be her *Aagan* where she was present but, she created doubt over her assertion in the background of the fact that subsequently she had shown herself alone at her house. When she was alone, there was no question of presence of Shail at her place. If this aspect is taken together with the evidence of PW.4 Shail Devi, it is evident that Shail Devi had stated that so many villagers came who rescued her but, she was unable to disclose her identity and in likewise manner, PW.3 also failed to disclose their identity. In likewise manner, there happens to be specific disclosure that indiscriminate blow were given as a result of which, there was tearing of muscle for which, she was medically examined but, no medical report is there and further, on account of non-examination of the I.O. the situation has become more clumsy at least, on account of non-examination of the I.O. the actual P.O. in the background of inconsistency amongst PW.3 and PW.4, remained unresolved.

9. The ingredients of the Section 3(1)(x) detrimental activity should be within public view at public place is also not at all found substantiated more particularly when the occurrence so



alleged happens to be *Aagan* of the PW.3, and the time of occurrence happens to be dead of night. Apart from this, PW.3 had not spoken a word to substantiate the same. That being so, the major ingredient, the prosecution failed to substantiate. That means to say, the prosecution case suffers from inherent defect whereupon, the judgment of conviction and sentence would not survive. Consequent thereupon, the same is set aside. Appeal is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
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