

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.63 of 2009

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

- =====
1. Indradeo Rai, s/o Narain Rai, deceased
 2. Dharamnath Rai, S/o Shri Indradeo Rai
 3. Ram Janam Rai, s/o Shri Indradeo Rai
- r/v, P.O. & P.S.-Bathnaha, District-Sitamarhi.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Jogendra Mishra
Mr. Ramesh Kumar Chaudhary

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

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 23-08-2018

In the present appeal, Interlocutory Application has been filed bearing I.A. No. 2022/2018 stating that appellant no. 1 Indradeo Rai died on 01.01.2018. Death certificate of Indradeo Rai is annexed as Annexure-1 to the I.A. Petition.

Therefore, name of appellant no. 1 Indradeo Rai is expunged from memo of appeal and the judgment of conviction and sentence became *non est* against appellant no. 1.

Heard the learned counsel for Appellant nos. 2 and 3 as well as the State.

The appellants Dharamnath Rai and Ram Janam Rai (Appellant Nos. 2 and 3) have been convicted for the offences under



Sections 323, 341, 324 and 379 of the Indian Penal Code by the judgment and order dated 06.01.2009 passed by learned Additional Sessions Judge, Fast Track Court III, Sitamarhi in S. Tr. No. 65 of 2005/39 of 2007, arising out of Bathnaha P.S. Case No. 70/2004 and they have been sentenced to undergo R.I. for six months under Sections 323 and 341 of the Indian Penal Code and further sentenced to undergo R.I. for three years under Section 324/34 of the Indian Penal Code. Appellant no. 2 Dharmnath Rai has been further sentenced to undergo R.I. for six month for the offence under Section 379 of the Indian Penal Code. All the sentences have been directed to run concurrently.

Learned counsel for the appellants has submitted that besides the informant, there is no other witness to corroborate the occurrence. It is further submitted that injury has been found to be simple in nature. There is land dispute between the parties.

The prosecution case, as per *Fardbeyan*, is that on 03.08.2004 at about 12:30 P.M., the informant was planting Banana tree in his land situated on northern side of his house. In the meantime, accused Indradeo Rai obstructed him and some altercation took place between them. Accused Indradeo Rai abused the informant and ordered his son to kill him on which accused Ram Janam Rai and Dharmnath Rai (appellants) armed with *Tangi* and *lathi* came. Ram



Janam Rai gave *Tangi* blow on the head of informant with intention to kill him. His head was cut and blood started oozing. He fell down and became unconscious. Appellant Dharmnath Rai also assaulted the informant with *lathi*. He took out Rs. 500/- from the pocket of informant. On hulla, villagers came there and saved the informant.

During trial, the prosecution has examined altogether five witnesses in the case.

P.Ws. 1 to 3 have not supported the case. They have been declared hostile.

P.W. 5 is the informant of the case. He has stated that on the date of occurrence, appellant Ram Janam Rai armed with *Kulhari* and Dharmnath Rai and other accused persons armed with *lathi* arrived. It has been stated that Ram Janam Rai assaulted the informant on head with *Tengari* causing cut injury on his head. Dharmnath Rai assaulted with *lathi*. He was treated in hospital. In his cross-examination, this witness has stated in para 10 and 11 that Ram Janam Rai assaulted with *Tengari* and he fell down. Thereafter, Dharmnath Rai assaulted with *lathi*. He has stated in para 11 that he reached hospital at 12:30 P.M. which is situated 1 K.M. far from his village. He was brought to hospital in unconscious stage. He got consciousness after 2 to 3 hours. He has further stated in para 15 that Ram Janam Rai assaulted with *Kulhari* from front. He sustained



injury by *Kulhari*.

Learned counsel for the appellants has submitted that counter case has also been filed by the appellants.

Mother of informant, namely Shital Devi has been examined as P.W. 4. She has stated in her evidence that Ram Janam Rai assaulted Ram Pratap Rai (informant) on head and other accused persons assaulted with *lathi*. Her son fell down on the ground after sustaining injury on his head with *Kulhari*. He was taken to police station from where he was taken to hospital. She further stated in her evidence that accused person are her *Pattidar*. In her cross-examination, in para 9 she has stated that her son became conscious after 2 to 3 hours.

In the F.I.R., the time of occurrence is said to be 12:30 P.M. on 03.08.2004.

P.W. 6 is Doctor. He has stated in his evidence that he examined the injured at about 1:20 P.M. and found three injuries on his person as mentioned in the injury report, which has been marked as Ext. 1. The doctor has stated in his cross-examination that the injured was sent to him by Police at 1:20 P.M. Injury report was prepared after inspection of the injuries on his body. When the injured came to him, no any bandage was put on his body. The doctor has further stated in his evidence that the injured was conscious. He



has further stated that all the injuries on the person of the injured, may be caused by fall.

In this manner, this Court finds that the informant is only eye-witness of the occurrence. There is contradiction in the evidence of informant during course of cross-examination. He has stated in his examination-in-chief that appellant no. 2 Ram Janam Rai arrived armed with *Tengari* and assaulted him with *Tengari*. In his cross-examination, he has stated in para 15 that Ram Janam Rai assaulted him with *Kulhari* and he fell down. Thereafter, he was brought to hospital.

The mother of informant claims to be eye-witness. She has stated in her cross-examination that Ram Janam Rai assaulted her son Ram Pratap Rai on his head.

It is alleged in F.I.R. that her son sustained injury by *Kulhari* on his head but the informant has stated in his cross-examination that accused persons assaulted him with *Tengari* and *Lathi*.

The doctor has found three injures on the person of injured, i.e. one incised wound over occipital region of scalp 2 ½” x 1/2” x scalp deep, (ii) swelling with abrasion over right molar portion of face ½”x1/2”. And (iii) Swelling with bruise over left back below scapular region. The doctor has opined all the injuries to be simple in



nature. He has stated that injury no. (i) is caused by sharp cutting weapon and injury nos. (ii) and (iii) are caused by hard and blunt substance. He has not stated that the injured was brought in unconscious stage. He has stated that the injured was sent to hospital from police station at about 1:20 P.M. for his treatment.

In this manner, this Court does not find cogent evidence on behalf of the prosecution to substantiate the charge against the appellants. The prosecution has failed to substantiate the charge beyond all reasonable doubt.

Accordingly, the judgment of conviction and order of sentence dated 06.01.2009 is hereby set aside.

The appellants are acquitted from the charge levelled against them.

This Criminal Appeal is allowed.

The appellants are on bail. They are discharged from liability of their bail bond.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	10.09.2018
Transmission Date	10.09.2018

