

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.464 of 2015

Arising Out of PS.Case No. -115 Year- 1996 Thana -NANHPUR District- SITAMARHI

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1. Ramashish Sahani
2. Ram Babu Sahani Both sons of Late Betam Sahani
3. Shital Sahani
4. Kishori Sahani Both Sons of Ramashish Sahani All residents of Village- Gauri,
P.S. Nanpur, Dist Sitamarhi.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prasoon Sinha,
Mr. Prabhat Kumar, Advocates.
For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 03-08-2018

All the appellants, namely, Ramashish Sahani, Ram Babu Sahani, Shital Sahani, Kishori Sahani have been found guilty for an offence punishable under Section 307/34 IPC and each one has been sentenced to undergo RI for 7 years as well as to pay fine of Rs. 10,000/- in default thereof, to undergo RI for 1 year additionally, under Section 341 IPC and each one has been sentenced to undergo RI for 1 month, Kishori Sahani and Ramashish Sahani have further been found guilty for an offence punishable under Section 324 IPC and sentenced to undergo RI for 2 years as well as to pay fine of Rs. 5000/- and in default thereof, to undergo RI for six months, Kishori Sahani and Ramashish Sahani have further been found guilty for an offence punishable under Section 148 IPC and sentenced to undergo RI for 2 years as well as to pay fine of Rs. 2000/- and in default



thereof, to undergo RI for three months, Shital Sahani has been found guilty for an offence punishable under Section 147 IPC and sentenced to undergo RI for 6 months, Ram Babu Sahani has been found guilty for an offence punishable under Section 323 IPC and sentenced to undergo RI for 1 month with a further direction to run the sentences concurrently by 2nd Additional Sessions Judge, Sitamarhi vide judgment of conviction dated 29.05.2015 and order of sentence dated 30.05.2015 in connection with Sessions Trial No. 137/1997.

2. Ram Ekbal Rai (PW-3) while was admitted at the Additional Health Centre, Raipur gave his fard-beyan on 07.11.1996 at about 10.30 A.M. in an injured condition alleging *inter alia* that on the same day at about 7 A.M. he along with his father proceeded to Madaripur cattle fair to purchase bullock having Rs. 16,184/- and as soon as reached near the house of Ram Sewak Thakur, his wife prayed for to stay and said that no male member is present, litigation is going on with regard to the land since before even then, Ramashish Sahni and his henchmen are forcibly constructing the house. On this, he said not to erect the building. After disposal of the litigation, the matter could be taken up as per judgment whereupon, Ramashish Sahni, Sital Sahni armed with rod, Yogi Sahni armed with lathi, Kishori Sahni armed with Katta, Ram Baboo Sahni armed with Katta, Battam Sahni armed with lathi who were standing since before out of them Ramashish Sahni ordered to assault, whereupon, Yogi Sahni



gave a lathi blow over his left leg on account thereof, he stumbled. Shital Sahni gave rod blow over his head, as a result of which, he sustained injury thereupon. Blood oozed out therefrom. Seeing this, his father began to raise alarm as well as, also rushed in his rescue whereupon, Kishori Sahani gave katta blow over head of his father causing injury thereupon. Ramashish Sahni gave a sickle blow over his right hand causing injury thereupon. Batam Sahani assaulted with lathi. Shital Sahni snatched away the cash and at that very time, Ram Babu Sahni had thrown him on the ground and was threatening with the katta having in his hand. On hue and cry, the people of the surrounding assembled but, they were hesitating to interfere out of fear. Anyhow, Laxmi Rai followed by Ram Sresth Thakur, Jinish Thakur, Parichhan Thakur along with others interfered and got them rescued, taken to hospital, where they are being treated.

3. After registration of Nanpur P.S. Case No. 115/96, investigation commenced and after concluding the same, charge-sheet was submitted which happens to be the basis of trial, meeting with the ultimate result, subject matter of instant appeal.

4. 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 the land under dispute was originally belonging to the father of Most. Ratia Devi who left behind three daughters out of



whom, Most. Ratia Devi had executed the sale deed in favour of Ramashish Sahni. During the intermediary period, the enemies of Most. Ratia Devi got the land recorded in the name of State of Bihar and seeing an opportunity, taking the block officials in their collusion, Ram Sevak succeeded in getting *parcha*. After coming to know about the same, Ramashish had filed title suit no. 54/1995 wherein there happens to be specific disclosure apart from others that land happens to be under their possession since the day of execution of sale deed and before that, in the possession of their vendor. On the alleged date and time of occurrence, while they were constructing thatched house, the prosecution party came, interrupted and then assaulted causing injuries upon their person, for that, Nanpur P.S. Case No. 114/96 has been registered. After coming to know about the same, this case has been falsely instituted taking the police in their collusion putting false and frivolous allegations and to substantiate the same, apart from oral evidence, relevant documents have also been made an exhibit.

5. In order to substantiate its case, prosecution had examined altogether six PWs, who are PW-1 Parichhan Thakur, PW-2, Ram Sresth Thakur, PW-3, Ram Ekbal Rai, PW-4, Laxmi Rai, PW-5, Dr. Ramashankar Prasad and PW-6, Rajmangal Rai, side by side had also exhibited, Ext.1 series- injury report of Dineshwar Rai as well as Ram Ekbal Rai respectively, Ext.2- formal F.I.R.

6. On the other hand, defence had also examined



one D.W, DW-1, Raj Mangal Rai and had exhibited the plaint of Title Suit No. 54/95 as Ext.A and F.I.R. of Nanpur P.S. Case No. 114/96 as Ext.B.

7. While assailing the judgment of conviction and sentence, it has been submitted on behalf of learned counsel for the appellants that the finding recorded by the learned lower court happens to be unsustainable in the eye of law. In order to buttress such plea, it has been submitted that there happens to be version and counter version. The appellants have also admitted by way of Ext.B that on the alleged date and time of occurrence, they were erecting the thatched house on the land purchased by them whereupon they have got peaceful physical possession and that has specifically been pleaded under Ext-A, plaint.

8. To controvert the aforesaid assertion/claim of the appellants, there happens to be no documentary evidence. The oral evidence having adduced on behalf of prosecution failed to create doubt over the defence version, more particularly, regarding possession over the 12 dhurs of land on the basis of sale deed executed Most. Ratia Devi in favour of Ramashish Sahni. Irrespective of the fact that litigation was going on, at the behest of appellant Ramashish Sahni but the fact remains that there was specific plea that the land happens to be in their possession so, the prosecution party were intruders who intervened in between and further, when the



aforesaid act was reiterated at the end of the appellant, Ramashish and his daughter were brutally assaulted and for that Exhibit- B, FIR has been instituted. It is also evident that institution of case at the end of Ramashish Sahni was much prior to the fard-beyan having at the end of the PW-3, Ram Ekbal Rai which is found duly admitted at the end of prosecution.

9. The learned lower court failed to appreciate the crux of the case that means to say possession over the disputed land more particularly, confining to the area having been purchased by the appellant from Most. Ratia Devi and so, failed to identify the approach of the prosecution party. That happens to be reason behind unaccredited absence of proper finding at the end of lower court, who were aggressor. Because of the fact that learned lower court failed to record its opinion on that very score, in the aforesaid background, the judgment impugned would not survive, more particularly, in the background of the fact that I.O. has not been examined.

10. By non-examination of the I.O. serious prejudice has been caused to the appellants on several grounds including the objective finding over possession of the disputed land as well as with regard to version, counter version having been investigated at his end.

11. Then, it has been submitted that there happens to be inherent lacuna persisting in the prosecution case on account of non-examination of father of informant Ram Ekbal Rai who also



happens to be one of the injured, namely Dineshwar Rai as well as Ram Sevak Rai or his wife and on that very score. In terms of Section 114 of the evidence Act, adverse inference is to be drawn. In order to justify such plea, it has been submitted that admittedly informant is not occupant of the disputed land nor he was connected in any manner therewith. If his testimony is going to be accepted then he had shown himself to be a good Samaritan who intervened at the request made by wife of Ram Sewak and so presence of wife of Ram Sevak was very much essential to justify that on her request the informant and his father had intervened into the matter. On account of absence of Ram Sewak Thakur as well as his wife, the status of informant as a good samaritan melted down whereupon, their presence happens to be in a manner as identified under the counter version, being henchmen.

12. It has then been submitted that PW-5 has come up to depose with regard to the injuries having over the person of PW-3 as well as his father but, when the evidence is minutely gone through, it is evident that injury report issued by him happens to be collusive. To justify the same, it has been submitted that being Additional Primary Health Centre, whether it was possible for him to identify through naked eye without taking help of x-ray in order to ascertain that too from outside that there was fracture of skull bone. If that part of evidence is accepted, then the conduct of doctor itself found properly exposed. That means to say the injury report whatever



been at the end of PW-5 relating to Dineshwar as well as Ram Ekbal Rai, (PW-3) are not at all reliable in the eye of law. Discarding the same, nothing remains and so the judgment of conviction and sentence recorded by the learned lower court is not at all found supported with. Accordingly, is fit to be set-aside.

13. On the other hand, the learned APP while vehemently opposing the submissions made on behalf of the learned counsel for the appellants has submitted that submissions should not be on an imagination nor under banner of as if. To arrive at a just conclusion, the courts are expected to see the evidence and to see the probability and improbability coming therefrom. When the judgment impugned is gone through, it is apparent that the learned lower court had recorded its finding after meticulously examining the materials available on the record.

14. Before coming to analyze the evidence available on the record, it is apparent that one of the injured namely Dineshwar has not been examined. There happens to be no evidence on the record whether he was alive or dead during course of trial. In likewise manner, neither Ram Sewak Thakur nor his wife has come up. From the charge sheet, it is evident, that all of them have not been cited as a charge sheet witnesses. The reason, on account of non-examination of I.O. remained unresolved. Non-examination of the I.O. in a general phenomenon would not cast dent in the prosecution case. It depends



upon the fact of the case. Until and unless, it adversely affect or causes prejudice to the interest of the accused and so, vary case to case. In *Baldev Singh v. State of Haryana* as reported in *2016 Cri. L.J. 154*, it has been held as follows:-

“16. Contention at the hands of the learned Senior Counsel for the appellant is that non-examination of Chander Singh-SI who prepared rukka and who investigated the case raises serious doubts about the prosecution case. Material on record would show that Chander Singh-SI who investigated the case was not examined by the prosecution in spite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution case. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case.”

15. Therefore, the impact of non-examination of I.O. would be seen on proper appraisal of the case having framed and further whether appellants are entitled to get some sort of wavelet in their favour.

16. PW-5, is the doctor. He had examined both the injured i.e. Dineshwar Rai (not examined) as well as Ram Ekbal Rai on 07.11.1996. He, during course of examination of Dineshwar Rai had found the following injuries over his person

- i. lacerated injury on left parietal scalp 8 cm x 2 ½ cm x bone deep with fracture and depression of scalp.
- ii. Contusion left side of back 8 cm x 1 cm.



Injury no. i has been found grievous in nature while injury no. ii simple in nature. Both the injuries were caused by hard and blunt substance. Though, no timing is there but from exhibit 1, it is evident that he was examined at 8.50 A.M on 07.11.1996.

(B). Ram Ekbal Rai was examined at 8.30 A.M. on 07.11.1996 and following injuries were found:-

i. lacerated injuries on left parietal scalp measuring 6 cm x 3 ½ cm x scalp deep, (ii.) 2 ½ cm x ½ cm x scalp deep, (iii.) injury is abrasion 1 cm x 1 cm, (iv.) injury is on the right elbow 2 cm x 2 cm, (v) injury is contusion they were found on right scapula in two size (a) 12 cm x ½ cm, (b) 14 cm x 3 cm. All the injuries are simple in nature and caused by hard and blunt substance.

17. While considering the Ext-1, Ext.1/1, respective injury reports, it has been found that both the injury reports are photocopies of the original. Though, there happens to be endorsement that substituted by original dated 03.03.2011 and for that, the relevant order sheet of 03.03.2011 as well as subsequent thereto have been minutely gone through wherefrom it is evident that there was no occasion for the same, nor there happens to be any kind of order on that very score. During course thereof, while appreciating the relevant order-sheets, it is evident from the order dated 24.03.2012 that while hearing the argument on behalf of accused, a petition was filed on behalf of learned APP to the effect that case diary was not available



on the record since before and so, carbon copy of case diary should be called for which was allowed and lastly, as is evident from the order dated 27.11.2014/28.11.2014, the photocopy of the diary has been produced. This theme has been exposed only to enable the superior courts or the learned lower court itself how in a mechanical manner, the trials are being conducted without having sincere attention at the end of court as well as the prosecuting agency.

18. The photocopy of Ex-1, Ext.1/1 did not satisfy the ingredients so prescribed under Section 63 as well as 65 of the Evidence Act, on account thereof, appears to be inadmissible in the eye of law.

19. Now coming to oral evidence, it is evident from the evidence of PW-3, informant that during course of his examination-in-chief, he had substantiated the allegations and further stated that on an order given by Ramashish Sahni, Yogi Sahni gave a *lathi* blow over his leg as a result of which, he stumbled and fell down. Then, Shital Sahni came with rod and hurled it over his head causing injury thereupon. When his father came in rescue, he was assaulted by Kishori Sahni by *katta* over his head as a result of which, he sustained cut injury. Blood oozen out. Then, Battam Sahni gave *lathi* blow. Shital snatched away cash, Ramashish Sahni inflicted sickle blow over his hand. Laxmi Rai, Ram Sresth Thakur and others came in rescue who lifted them to hospital, where his fard-beyan was



recorded. During cross-examination, he had admitted presence of counter case. In Para-3, he had stated that he is unable to say that how much times, he sustained blows as he became unconscious. He regained sense at the hospital where his father was also present. He had not seen anybody at hospital but again corrected that seen Laxmi Rai (PW-4) and Ram Sresth Thakur (PW-2). He had also seen Jinish Ram. In Para-4, he had stated that he is not knowing whether there happens to be Title Suit amongst Sakaldeo and Ramashish Sahni. At Para-5, he had shown boundary of place of occurrence, East- Rameshwar Thakur, West-Road, North- Road, South- Sakaldeo Thakur. In Para-6, he had stated that blood had spread over the ground but he is unaware whether it was seized or not.

20. PW-1 had stated that on the alleged date and time of occurrence, Ramashish Sahni was constructing house over the land of Sakaldeo Thakur. That land is under litigation as the cases are pending relating to it. Ramashish along with Shital, Kishori, Yogi, Rambabu, Battam Sahni were also engaged therein. Wife of Sakaldeo came and forbade. At that very moment, Ram Ekbal Rai along with his father came at that very place who were going to purchase bullock. They halted there seeing the dispute. Ram Ekbal Rai forbade Ramashish to construct the house whereupon, Ramashish Sahni provoked. Shital Sahni gave rod blow over Ram Ekbal Rai, as a result of which, he sustained injury over his head. Yogi also assaulted.



Dineshwar came in rescue who was assaulted by Kishori with katta over his head as a result of which he sustained cut injury. Dineshwar became unconscious. Ram Ekbal Rai also fell down. After falling of Dineshwar Rai and Ram Ekbal Rai, Ramashish assaulted them with Katta, again corrected, Ramashish assaulted only Ram Ekbal. Shital Sahni snatched away cash. On hue and cry, villagers came. During cross-examination at Para-4, he had admitted that there happens to be litigation amongst complainant and the accused. At Para-5, he had stated that he knew there happens to be land dispute in between Ramashish and Sakaldeo Thakur since before the occurrence. He had further stated that disputed land belongs to Bihar Government, whereupon, house of Sakaldeo lies. Then, again corrected, house of Sakaldeo lies over ridge of this land. This house happens to be since before the survey. Then had denied the suggestion that at an earlier occasion, house of Sakaldeo Thakur, was at village-Gaura. Then had stated that the land belonging to Sakaldeo and the disputed land have got independent survey plot number but he is unable to disclose the khesra number with regard to disputed plot. Litigation is going on before the court of Munsif. In Para-6, he had stated that altogether 10-15 minutes took time in completing the quarrel. First of all, Ramashish Sahni came, then Shital Sahni and others came. In between 10-15 minutes, Laxmi Rai, Ram Sresth Rai, Dineshwar and others came. In Para-7, he had stated that he had not seen wound over



Ramashish Sahni as well as his daughter. In Para-8, he had stated that apart from Ram Ekbal Rai and Dineshwar Rai, wife of Sakaldeo was also assaulted but she was treated at her house. He had further stated that there was no dispute amongst Ram Ekbal Rai and Ramashish since before. Then had denied the suggestion that he deposed falsely.

21. PW-2 had deposed that on the alleged date and time of occurrence, while he was going from village towards his house and as soon as he reached near the house of Sakaldeo, house of Ram Sewak Thakur also lies there, where he had seen altercation in between female members of Sakaldeo with Ramashish Sahni. Kishori, Shital, Rambabu, Yogi Sahni and Battam Sahni. A large number of persons assembled there. Ram Ekbal Rai and Dineshwar Rai who were going to market, in absence of Sakaldeo forbade to construct the house whereupon, Ramashish enticed. Then thereafter, Ramashish Sahni and Yogi Sahni assaulted Ram Ekbal with lathi. Shital Sahni assaulted with rod over his head. He along with Laxmi Rai and Parichhan had gone in rescue. During midst thereof, Kishori assaulted Dineshwar with Katta over his head and then thereafter accused persons fled away and during midst thereof, Rambabu took away the money, they have taken Ram Ekbal and Dineshwar to hospital. In Para-3, he had admitted Sakaldeo to be his nephew. He had identified the P.O. as North- house of Sakaldeo, land of Dewangi Rai, South-house of Sakaldeo, East – house of Battam Sahni, West-



house of Ram Sewak Thakur. He had also admitted that civil litigation is going on in between Ramashish and Sakaldeo relating to land. He had further admitted that for the same occurrence, Ramashish had also instituted case against Ram Ekbal Rai and others. In Para-4, he had stated that when he reached at the P.O., he had seen the injury over right thigh and head of Ram Ekbal Rai. He had also seen wound over body of Dineshwar Rai. He had further stated at Para-5, that he had seen accused persons at the *darwaza* of Sakaldeo Thakur, then had denied the suggestion.

22. PW-4 had stated that on the alleged date and time of occurrence, he was going to plough the field. When he reached at the darwaza of Ram Sewak Thakur had seen the mob. He had seen Ramashish Sahni constructing the house over the land of Sakaldeo. Ram Ekbal came and said to resolve the dispute whereupon, Ramashish provoked to assault. Then, Ramashish, Shital, Kishori, assaulted Ram Ekbal Rai and Dineshwar with lathi, rod and katta. During cross-examination at Para-2, he had stated that first of all there was an altercation followed with *marpit*. He had further stated that there happens to be no house over the disputed land belonging to the Ramashish Sahni.

23. From the evidence available on the record, it is evident that photo copy of injury reports have been placed without fulfilling the requirements, that means to say, one has to come



forward to say that it was photo copy of the original having been tallied by him, bore his certificate to that extent, then in that event, the photo copy could be admitted as secondary evidence. In the background of the aforesaid deficiency, the injury report would not be admissible in the eye of law. In the aforesaid background, considering the evidence of the witnesses, more particularly, with regard to proper identification of the place of occurrence as is evident from PW-2, North-Sakaldeo Thakur, South-Sakaldeo Thakur, East-Batam Sahani, West-Road. From the evidence of PW-3, informant East-Rameshwar Thakur, West-Road, North-Road, South-Sakaldeo Thakur, it is apparent that they had tried to justify their action in the background of the fact that PW-1 had admitted in para-5 of his cross-examination that the disputed land as well as land over which house of Sakaldeo lies are two different plots. That being so, from their evidences, it is apparent that they are not at all consistent over the place of occurrence and more particularly, in the background of non examination of Investigating Officer, that looks fatal.

24. From the evidence of doctor (PW5) inconsonance with the Ext-1 Series, it is evident that the same is not at all supportive to the prosecution version. As per allegation, Dineshwar was assaulted by Kishori with sharp cutting weapon. No cut injury over the person of Dineshwar was found. There happens to be no evidence at the end of prosecution that assault was made from the



back side of Katta, so there should have been presence of sharp cut injury as per allegation over the person of Dineshwar. In likewise manner, with regard to presence of injury over the person of informant is concerned, doctor had found four injuries over the scalp, that means to say, injury no. 1, 2, 3 and 5 while one injury over his elbow and that is not at all found corroborated by the evidence of witnesses, more particularly by PW-3, himself who had deposed that first of all he was assaulted by Yogi over his leg but, no injury has been found over leg of PW-3, In likewise manner, he had deposed that when he fell down, then Shital Sahani gave rod blow over his head. There happens to be single blow and then, an assault over his waist by Batam Sahani and then assault by sickle blow over his hand by Ramashish Sahani, did not find support therewith. That means to say, there happens to be inconsistency amongst the oral evidences as well as medical evidence and more particularly, in the background of nature of dispute inconsonance with the conflicting version with regard to proper identification of place of occurrence coupled with non examination of the Investigating Officer on that very score had really caused prejudiced to the interest of the appellants, side by side caused dent in the prosecution case.

25. In any view of the matter, considering the infirmities persisting on the record as indicated hereinabove did not justify the finding recorded by the learned lower court. That being so,



the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.

26. Since appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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