

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.188 of 2009

1. Kashi Nath Singh
2. Ganga Sagar Singh, both sons of Asha Karan Singh
3. Ram Ashish Singh
4. Ram Awadhesh Singh, both sons of Kashi Nath Singh, all resident of
village-Bhitihara, P.S.-Itarhi, District-Buxar. ... Appellant/s
Versus
State of Bihar ... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Singh 2-Advocate
For the Respondent/s : Mr. Parmeshwar Mehta-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

18-12-2018

Appellants Kashi Nath Singh, Ganga Sagar Singh,

Ram Ashish Singh and Ram Awadhesh Singh have been found guilty for an offence punishable under Section 323/ 149 of the I.P.C. and each one has been sentenced to undergo S.I. for six months while Ram Ashish Singh further been found guilty for an offence punishable under Section 435 of the I.P.C. and sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for six months, additionally, with a further direction to run the sentences concurrently vide judgment of conviction and order of sentence dated 20.02.2009 passed by the Additional Sessions Judge, Fast Track Court No.II, Buxar in Sessions Trial No.05 of 2005.

2. Ram Dular Singh (PW-3) filed written report on 16.10.2010 alleging inter alia that his land bearing Khata No.160, Khesra No.378, area 05 decimal, Khata No.161, Khesra No.416, area 05 decimal, Khata No.239, Khesra No.371, area 27 decimal



corresponding to C.S. Khata No.13, Khesra No.648, area 3 decimal, R. S. Khata No.201, Khesra No.541, area 05 decimal belong to him. It has further been disclosed that in Khata No.161, Khesra No.416, $3\frac{3}{4}$ he has got share from western side appertaining to $3\frac{3}{4}$ decimal. The accused persons forcibly tried to erect Palani, whereupon he protested as a result of which, Mathura Singh, Ramashray Singh, Kashi Nath Singh, Ganga Sagar Singh, Ram Ashish Singh, Ram Awadhesh Singh began to abuse, followed with an assault. On an order of Ganga Sagar Singh, Mathura Singh gave Garasa blow over his left temporal region causing injury, blood oozen out. Ramashray Singh caught hold his son Janardan Singh (PW-1) and snatched Rs.1500/-, one wrist watch. Ram Ashish Singh, who was armed with pistol said that in case, you people would not leave the place at once, you all will be murdered as a result of which, they escaped there from. Then thereafter, Asturni Devi, Dalsingar Devi and Lalita Devi pelted stone. Furthermore, Mathura Singh, Ramashray Singh lit fire in his Palani after sprinkling kerosene oil due to which, Sonalika's thrasher machine, wheat, weight, bed, tools etc. turned to ashes.

3. After registration of Itarhi P. S. Case No.138 of 2004, investigation commenced and after concluding the same, chargesheet was submitted facilitating the 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. It has further been pleaded that on the alleged date and time of occurrence, prosecution party armed variously forbidden them to erect Palani over their land and also tried to assault for that, on the written report of Ganga Sagar Singh, Itarhi P. S. Case No.139 of 2004 was registered. As a counter-blast, this case has been registered making false and frivolous allegation. In order to substantiate the same, two DWs along with F.I.R. of counter-case has also been exhibited.

5. In order to substantiate its case, prosecution has examined altogether seven PWs, who are PW-1, Janardan Singh @ Munna Singh, PW-2, Gokul Singh, PW-3, Ram Dular Singh, PW-4, Dr. Anil Kumar Singh, PW-5, Kiran Kumari, PW-6, Deoki Tanti and PW-7, Baijnath Singh as well as also exhibited, Exhibit-1, written report, Exhibit-2 series, injury report/ supplementary injury report, Exhibit-3, injury report issued by the I.O., Exhibit-4, formal F.I.R. As stated above, two DWs, DW-1, Sudarshan Pandey and DW-2, Sri Kishun Kumhar have been examined at the end of the defence, while Exhibit-A and Exhibit-B, formal F.I.R. of Itarhi P.S. Case No.138 of 2004, written report of Itarhi P. S. Case No.139 of 2004 have been brought up on record by way of an exhibit.

6. After going through the record, it is evident that PW-2 is the brother of the PW-3, informant. PW-1 is the son of PW-3. PW-5 is the daughter of PW-1, that means to say, own family members are the material witnesses. PW-4 is the doctor and PW-6 is



the I.O. PW-7 is the formal witness.

7. It has been gathered from the evidence of the PWs that Ash Karan Singh and Jawahir Singh were two brothers. Prosecution party is the son of Jawahir Singh while Ash Karan Singh's descendants are the accused persons (appellants). It is further evident that they have got meager land as an ancestral property. Substantial land have been purchased by both the brothers jointly by Janardan Singh and Ash Karan Singh. Partition by metes and bounds has not been effected in the family, but for convenience sake, partition has already been effected. It is further evident from the evidence of the PWs that the plot, whereupon Palani was being erected at the end of the accused/ appellants, both the parties have got share. Furthermore, it is also an admitted that for the occurrence having been committed on 16.10.2004, case and counter-case has been drawn up. In the aforesaid background, now the evidences of the PWs have to be seen in order to adjudge the sanctity of finding recorded by the learned lower Court.

8. PW-4 has examined the victim/ informant Ram Dular Singh on 16.10.2004 and found the following:-

- i. *Incised wound on left side of the face, near left ear ½" 1/8" x skin approximately. X-ray skull advised.*
- ii. *Lacerated wound on middle finger*



of left hand posterior aspect 1" x 1/8" x skin approximately. X-ray left hand advised.

- iii. *Swelling 1" x 1/2" with pain in left hand shoulder.*

Nature of Injury-Regarding injury 1 and 2, the opinion reserved till X-ray report.

Injury no.3 is simple in nature.

Cause of Injury-Injury no.1 is caused by sharp cut instrument and injury no.2 and 3 are by hard and blunt substance, within 24 hours.

On 18.10.2004, received X-ray report and plate dated 18.10.2004.

- i. *X-ray skull shows no bony lesion.*
ii. *X-ray left hand A/P and lateral views shows no bony lesion, hence injury no.1 and 2 also simple in nature.*

During cross-examination, nothing substantial has been procured. So, the injury over the person of Ram Dular Singh by means of sharp cut weapon as well as by means of hard and blunt substance is found duly substantiated.

9. Now, coming to the evidence of material witnesses. PW-1, during his examination-in-chief has stated on the alleged date



and time on occurrence, he was in the village. At that very time, one girl came to him and disclosed that accused persons are adamant to erect Palani over his land, whereupon he rushed and seen Mathura Singh, Ramashray Singh, Ganga Sagar Singh, Kashi Nath Singh, Ram Ashish Singh, Ram Awadhesh Singh along with Dalsingari Devi, Lalita Devi, Asturni Devi engaged in erecting thatched hut. He along with his father protested, whereupon they began to abuse. On an order of Ganga Sagar Singh, Mathura Singh gave Garasa blow over left temporal region of his father as a result of which, he fell down, blood oozen out from the injury. He was apprehended by Ramashray Singh, Ganga Sagar Singh, Kashi Nath Singh, who snatched away wrist watch, cash appertaining to Rs.1500/-. He was also assaulted. Ram Ashish Singh took out pistol and directed to leave the place, otherwise will have to face dire consequences. They fled there from. Accused persons also pelted stone. Thereafter, they have sprinkled kerosene oil and lit fire in the Palani existing adjacent to the P.O. land. Due to aforesaid event, his Sonalika thrasher, straw, cloth and other items turned to ashes. Then gone to the police station, filed case. Thereafter, they were sent to hospital for treatment, identified the accused. During cross-examination, he has shown the boundary of the P.O. as East-Ram Babu, West-Gokul Singh, North-road, South-Parti land of Gokul Singh. In Para-6, there happens to be cross-examination over their family status as well as mode of partition. In Para-8, he has admitted presence of counter-case. In



Para-9, he has stated that stones were pelted from P.O. land. In Para-10, he has admitted that one partition suit bearing no.139 of 2002 is pending amongst the parties. He has further disclosed plot number of the disputed land as 416, area 05 decimal, which happens to be his ancestral property. Accused persons also got share therein. Then, he has stated that as per oral partition, the accused persons has got share from Eastern side. In Para-11, he has stated that the Palani, which has been set ablaze lies 20-25 links North to the P.O. land where Palani was being erected. At that very moment, the Court had recorded demeanor of the witness, who had recorded the event over his palm and after seeing the same, he was deposing. In Para-13, there happens to be contradiction relating to his previous statement, but those things have not been confronted to the I.O.

10. PW-2 is Gokul Singh, full-brother of PW-3. He has stated that on the alleged date and time of occurrence, he had seen Ramashray Singh, Ganga Sagar, Mathura Singh, Ram Ashish Singh, Kashi Nath Singh erecting Palani over the land belonging to Ram Dular Singh. During midst thereof, Munna Singh and Ram Dular Singh came, forbidden them followed with marpit. Stones were also pelted during course thereof. Ram Dular Singh sustained hurt over his temporal region by means of Garasa. When accused persons began to flee, Ramashish, Mathura lit fire in the Palani of the Ram Dular Singh. During cross-examination Paras-4, 5 is over family status as well as mode of partition. In Para-6, he has stated that the



land detailed under dispute happens to be five decimal, accused persons have got share to the extent of 1.25 decimal from Eastern side. For that, Title Suit is going on amongst the parties. In his presence, there was brick-batting. In Para-8, there happens to be contradiction and the same has been confronted to the I.O., PW-6, Para-7.

11. PW-3 is Ram Dular Singh, informant, who during his examination-in-chief has stated that on the alleged date and time of occurrence, he was over the land where Palani was being erected by Ramashray Singh, Mathura Singh, Ganga Sagar Singh, Kashi Singh, Ramashish Singh, Ram Awadhesh Singh, wife of Mathura Singh, wife of Kashi Singh namely Lalita Devi, wife of Ramashray Singh namely Kasturi Devi. He protested over which, they began to assault. During course thereof, Mathura Singh gave Garasa blow causing injury over his left temporal region. His son was also assaulted. They also lit fire in his Palani on account thereof, thrasher, weighing tools, wheat etc. also burnt. Thereafter, he had gone to police station and filed written report (exhibited). He was treated at the hospital, identified the accused. In Para-5, there happens to be cross-examination relating to his family status. In Para-6, he has stated that he is unable to disclose Khata-Khesra number of the plot, but disclosed the area as five decimal. It happens to be an ancestral property. He has further stated that irrespective of the fact that both the parties are entitled for half share in the aforesaid plot. The



accused persons got possession over 1.25 decimal from Eastern side. Then had said that 2 ½ decimal land, belongs to Ash Karan Singh. They have got no concern with the same. In Para-8, he again controverted the same and stated that out of five decimal, 3 ¾ decimals belongs to him, which he got under the oral partition. In Para-9, he has stated that houses of both the parties lies adjacent to the aforesaid plot. In Para-10, he has stated that he is unable to disclose, who had taken them to hospital as he was unconscious. He regained sense after 24 hours. In Para-12, he has admitted the counter-case as well as presence of Title Suit.

12. PW-5 is the daughter of PW-1, grand daughter of PW-3, informant. During his examination-in-chief, she has narrated the prosecution version. During cross-examination at Para-3, there happens to be contradiction and same is evident from the evidence of PW-6, Para-7. At Para-4, she has stated that at the time of occurrence, she was there. She denied the suggestion that the P.O. land belonged to Ganga Sagar Singh. Then at Para-5, she has stated that there happens to be two Palani in presence of her house measuring 03 feet x 05 feet, wherein thrasher were kept inside. Then has stated that she is unable to disclose how many persons have assembled there and names of those persons. She has also declined to say how many persons have got share in the aforesaid land. She has further stated at Para-8, that she had shown the P.O. to the Darogaji.

13. PW-6 is the I.O., who has stated that after



registration of the case, he took up investigation. During course thereof, he inspected the body of the injured and issued injury report and sent him to hospital (exhibited). Then thereafter, he took further statement of the informant, then recorded statement of Munna Singh and then, gone to the P.O. Place of occurrence, as per his objective finding happens to be 4 ½ feet South to the house of Haridwar Singh. Both the parties were claiming the land and on account thereof, marpit took place. He has shown the boundary of the P.O. as North-road and then, adjacent North to this road, house of Haridwar Singh, South-portion land of Gokul Singh, East-Ganga Sagar Singh and West-Ram Dular Singh. Then has disclosed that 70 feet North-West to this plot, there happens to be mill of the informant, adjacent to the mill, there happens to be a thatched hut, which he found in burnt condition. Save and except aforesaid theme, nothing has been found at the P.O. Then thereafter, he recorded statement of the witnesses, procured injury report. As he was transferred, so he handed over charge to the O/c. During cross-examination at Para-6, he has stated that he had inspected the P.O. in presence of local Chaukidar Chandrika Paswan. He met with the family members of the informant. He had not mentioned plot number of both the disputed plot, though directed so. Then has stated that he had mentioned the fact that the land belongs to Haridwar Singh. Then has said that he had seen the hut in burnt condition, but he had not found thrasher and other items burnt. He had not found half burnt items. Only ashes was



there. He had not found anything at the P.O. facilitating erection of the hut.

14. PW-7 is the formal witness, who has simply exhibited the F.I.R.

15. DW-1 and DW-2 are the persons, who had come forward to support the plea of the defence followed with Exhibit-A as well as Exhibit-B.

16. From the evidences as disclosed hereinabove, it is apparent that in the background of inter se relationship as disclosed hereinabove, as well as status with regard to the properties possessed by the family and further, manner whereunder they have deposed with regard to partition coupled with manner of occurrence so alleged, it is evident that none of the prosecution witnesses have stated that after covering such long distance as found by the I.O. (PW-6) 70 feet, the accused persons lit fire in a hut lying adjacent to the mill. In the aforesaid background, deposing in vagueness that accused persons have lit fire in a hut will not serve the purpose. More particularly, when it has been stated that the hut was contiguous to the disputed plot. In likewise manner, when prosecution has admitted that both the parties have got share in the land under dispute half and half, which subsequently been controverted and further, when there happens to be objective finding of the I.O. with regard thereto that no materials were found at the P.O. for construction of the hut over the P.O. land and for that, the prosecution party had not explained that



during the intermediary period, the accused persons taken away/ removed articles, non-presence thereof, is a circumstance, which goes against the prosecution, more particularly in the background of the fact that I.O. (PW-6) has stated that on the same day, he had visited the P.O. in presence of Chaukidar. There also happens to be story of brick-batting, which also found not supported with the finding of the I.O. Furthermore, in the background of admission over case and counter-case coupled with factum of joint possession, though tried to contradict, there should have been definite assertion at the end of the prosecution that it was accused party, who were the aggressor in order to have exclusive possession, whereupon they were assaulted, would be seen a dent in the prosecution case, whereupon the judgment of conviction and sentence would not survive irrespective of injury having over the injured. Furthermore, it also suggests that prosecution has not come with clean hand, and by such activity, suppressed the manner as well as genesis of occurrence.

17. Consequent thereupon, finding recorded by the learned lower Court is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	26.12.2018
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