

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.287 of 2015

Arising Out of PS.Case No. -84 Year- 1999 Thana -BHARGAWAN District- ARARIA

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1. Md. Muslim son of Late Gul Mohammad
2. Md. Azam son of Md. Muslim
3. Md. Faiyaz @ Faiyaz son of Md. Muslim
4. Md. Hussain @ Hussain Ansari, son of Md. Muslim All resident of village- Bir
Nagar Kadwahan, P.S.- Bhargama, District- Araria Appellant/s
Versus
1. The State of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Naushaduzzoha, Adv.
For the Respondent/s : Mr. S. Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-01-2018

Appellants, Md. Muslim, Md. Azam, Md. Faiyaz @

Faiyaz and Md. Hussain @ Hussain Ansari, have been found guilty for an offence punishable under Section 323 of the IPC and sentenced to undergo SI for six months, under Section 342 of the IPC and sentenced to undergo SI for six months with a further direction to run the sentences concurrently vide judgment of conviction and sentence dated 01.4.2015 passed by Additional Sessions Judge- 3rd, Araria in Sessions Trial No. 294/2002/62/2014.

2. Md. Sahabul (PW 6) filed written report before the Officer Incharge, Bhargama on 22.06.1999, alleging inter alia that as he was not allowing Md. Muslim and others to affix thatched wall, Md. Muslim and his sons, Md. Azam, Md. Faiyaz and Md. Hussain caught hold of him, tied him and then, on an order of Md. Muslim, Hussain gave Farsa blow over his head while Azam and Faiyaz assaulted him with Lathi. They also assaulted his mother, sister with Lathi. They also snatched away his wrist watch. Azam and Faiyaz



took away a box containing ornaments, clothes etc.

3. The aforesaid written report led institution of Bhargama PS Case No. 84/1999, followed with an investigation as well as submission of charge-sheet after completing the same, facilitating the trial in a manner, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.PC is that of complete denial. Furthermore, it has been also suggested that Md. Muslim as well as Kasim, father of informant are full brothers and on account of land dispute, this case has been falsely instituted. However, neither oral nor documentary evidence has been adduced.

5. In order to substantiate its case, prosecution had examined altogether 7 PWs who are PW-1, Md. Shahabuddin, PW-2, Md. Khurshid, PW-3 Abdul Quddus, PW-4, Jagdish Mandal, PW-5, Md. Munsif, PW-6, Sahabul, PW-7, Ram Kumar Singh as well as had also exhibited Ext-1, signature of informant over written report, Ext-1/A, endorsement over written report, Ext-2, injury report, Ext-3, Formal FIR. As stated above, neither oral nor documentary evidence has been adduced in defence.

6. Learned counsel for the appellants made two alternative arguments. The first one happens to be with regard to merit of the case whereupon, it has been submitted that from the evidence of the PWs, it is evident that PWs-2, 3, 4, and 5 have not supported the case of the prosecution and that being so, were declared hostile. Now



remains the evidence of PWs-1 and 6. Though denied but PW-1 happens to be maternal uncle of PW-6. From their evidence, it is evident that as thatched wall was being affixed at the end of the appellants, which was resisted at the end of prosecution, on account thereof, the occurrence as alleged is said to have taken place. If the evidence of PW-6 is taken in its entirety, it is evident that father of informant happens to be three brothers and with regard to share of third brother, both the parties were claiming and in the aforesaid background, the occurrence took place. But, the same could not be accepted for want of non examination of mother, sister, father of the informant. Moreover, it has also been submitted that doctor has not been examined. The objective finding of the Investigating Officer suggests contrary to the evidence of the PWs as PW-1 had stated that the thatched wall was not allowed to be offenced while though not mentioned in the description of the place of occurrence by the Investigating Officer, PW-7 who during course of cross-examination had stated that he had seen newly erected thatched wall. In the aforesaid background, the finding arrived at by the learned lower court happens to be perverse as prosecution would have been aggressor while being defender whereupon, fit to be set aside.

7. It has further been submitted on behalf of the appellants that the occurrence is of the year 1999 and we are sailing in the year 2018, that means to say, 19 years have already passed, appellants have faced rigour of trial for such a long period along with the fact that apart from absence of criminal antecedents, the allegation



whatsoever been levelled happens to be relating to claim/counter claim over the land. Furthermore, it has also been submitted that both the parties are close agnates and so, it is fit case wherein benefit of Probation Of Offenders Act should be given.

8. On the other hand, learned APP submitted that from the evidence of PW-6, injured, it is crystal clear that he was assaulted at the end of the appellants. During course of cross-examination of PW-6, the defence cunningly escaped over manner of occurrence. Furthermore, it has also been submitted that place of occurrence happens to be house of informant and on that very score, appellants happens to be intruder who, by having their presence inside their court-yard, assaulted the informant. So the judgment of conviction, a sentence recorded by learned lower court is fit to be confirmed. During course of recording such finding the learned lower court had already taken into consideration, effect of non examination of injured, coupled with non examination of the doctor. However, submitted that alternative argument having raised by the appellants may be entertained on the facts and circumstance of the case.

9. Considering the overall events visualizing from the record, it is evident that appellants have properly justified their plea with regard to applicability of Probation Of Offenders Act. The occurrence is of the year 1999. From the evidence of PW-6, it is evident that the dispute relates with share of third brother. Furthermore, there happens to be no evidence of criminal antecedents, there happens to be non examination of doctor, there happens to be



non examination of mother, sister, father of the informant and the cumulative effects do justify the submission having been made on behalf of the appellants.

10. That being so, retaining the conviction for offence punishable under Sections 323, 342 of the IPC, the sentence having been inflicted by the learned lower court is hereby modified giving benefit to the appellants in terms of Section 3 of the Probation Of Offenders Act and for that the appellants are directed to appear before the learned lower court on 20.02.2018 on which date the learned lower court will release them on due admonition. In terms thereof, the instant appeal is partly allowed. The appellants who are on bail will be discharged from its liability after 20.02.2018 failing which the learned lower court will proceed in accordance with law.

(Aditya Kumar Trivedi, J)

perwez.

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