

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.23 of 2017

Arising Out of PS.Case No. -150 Year- 1995 Thana -TEKARI
District- GAYA

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1. Yugal Yadav son of Late Phagu Yadav
2. Mithilesh Yadav son of Late Phagu Yadav
3. Om Prakash Yadav son of Late Man Bahal Yadav
4. Jay Prakash Yadav son of Late Man Bahal Yadav
5. Naresh Yadav son of late Munni Lal Yadav All residents of village Chhakan Bigha, P.S. Tekari, District Gaya.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the State : Mr. Z. Hoda

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 17-07-2018

The appellants have been convicted under Section 307/34 of the Indian Penal Code by judgment dated 01.12.2016 passed by the learned Sessions Judge, Gaya in Sessions Trial No. 267 of 1998, arising out of Tekari P.S. Case No. 150 of 1995 and by order dated 06.12.2016, they have been sentenced to undergo rigorous imprisonment for seven years, to pay a fine of Rs. 5000/- and in default of payment of fine, to further suffer imprisonment for six months.

The appellants are said to have assaulted the informant/P.W. 5, his father viz. Sohrai Gope/P.W. 1 and his



brother viz. Badri Prasad/P.W. 2.

The father of the informant Sohrai Gope/P.W. 1 has received two injuries, one of which is stated to be grievous which has been authored by appellant/Jay Prakash Yadav. The other injury which is a lacerated wound over the parietal region of the scalp has been stated to be simple in nature. The other injured persons viz. the informant/P.W. 5 and his brother/P.W. 2 have received simple injuries.

There is an admitted land dispute between the parties.

The prosecution case in brief is that while the mother and sister of the informant/P.W. 5 were sowing crops in the field and the father and brother of the informant were making arrangements for drainage, the accused persons came and assaulted the father and brother of the informant. When the informant came to their rescue, he too was assaulted. All the accused persons are said to have assaulted the father and brother of the informant as well as the informant himself by means of *lathi*. Appellant/Jay Prakash Yadav is said to have assaulted the father of the informant for the second time on his head by means of *khanti*, which is a metallic hard and blunt substance attached to a *lathi*.

The police, after investigation of the case submitted charge-sheet whereupon cognizance was taken under Section 307 and other Sections of the Indian Penal Code and the case



was committed to the Courts of Sessions for trial.

The Trial Court has examined five witnesses on behalf of the prosecution and has returned the verdict of guilt as referred to above.

The informant of this case P.W. 5 has narrated before the Trial Court the version which is quite in consonance with the F.I.R lodged by him. He has clearly stated that while his mother and sister were sowing the crops, the accused persons assaulted him, his father and his brother. One of the appellants viz. Jay Prakash Yadav assaulted with *khanti* on the head of his father leading to grievous injuries.

Similar statement has been made by Sohrai Gope/P.W. 1 who has affirmed the fact that *khanti* was used by appellant/Jay Prakash Yadav for hurting him. However, in his deposition, he has stated that the accused persons/appellants were staking their claim of the land but the *Kewala* of the land is in his favour. He has also admitted that the appellants are his agnates and the entire stock of land was, sometimes before the occurrence, partitioned between the agnates. A Title Suit is also pending between the parties before the competent Court of law.

Similar statements have been made by Badri Prasad/P.W. 2 and Monakka Devi/P.W. 3.

What is of relevance is that Dr. Kalim Ashraf/P.W. 4 who has examined the injured persons, has found simple injuries



on the persons of P.W. 2 and P.W. 5. Only with respect to one of the injuries suffered by P.W. 1, he has opined that the aforesaid injury is an incised wound over the partial region of the scalp. The nature of injury was kept reserved. He has also stated that the injury No. 2 is by a sharp cutting weapon like *khanti*.

Mr. Ajay Kumar Thakur, learned advocate for the appellants has submitted that the opinion of P.W. 4 is not worth accepting. *Khanti* is not a sharp cutting weapon, rather a hard and blunt substance and a metallic one at that.

In any view of the matter, an assault by *khanti* can cause an incised wound because of it being metallic.

He has thereafter referred to the deposition of the witnesses wherein contradictory statements have been made by them with respect to the manner of assault. He has also stressed the point that there is an existing land dispute and the appellants are agnates of the informant. He has therefore argued that assuming that a fight had taken place over the issue of possession, without there being any evidence on record to indicate the requisite intention and bring home charges under Section 307 of the Indian Penal Code, the judgment impugned cannot be sustained.

The manner of assault and the circumstances of the case do not bring the case within the mischief of Section 307 of the Indian Penal Code.



On going through the records of the case, this Court is of the view that an occurrence of assault took place over a plot of land which is in dispute. However, the nature and manner of assault clearly do not make out a case of Section 307 Indian Penal Code.

Except for appellant/Jay Prakash Yadav, all other appellants are alleged to have caused simple injuries to the informant, his father/P.W. 1 and his brother/P.W. 2. Only appellant/Jay Prakash Yadav is said to have used a *khanti* leading to incised wound on the head of P.W. 1.

Under such circumstances, the conviction of the appellants viz. Yugal Yadav, Mithilesh Yadav, Om Prakash Yadav and Naresh Yadav is converted into one under Section 323 of the Indian Penal Code.

The conviction of the appellant/Jay Prakash Yadav is converted into one under Section 325 of the Indian Penal Code.

This Court has been informed that appellant/Jay Prakash Yadav is in custody since 01.12.2016 and has thereby remained in jail for one and half years. The other appellants, during the period of investigation, had remained in jail for more than three months.

Considering the nature of assault, the circumstances of the case and the fact that the appellants are agnates and the occurrence arose out of a dispute over the possession/ownership



of a plot of land, this Court is of the view that interest of justice would be satisfied if the sentence imposed upon the appellants are reduced to the period of custody which they have already undergone respectively.

The appeal is partially allowed; in as much as the conviction as well as the sentence of the appellants have been altered as aforesaid.

The appellants Yugal Yadav, Mithilesh Yadav, Om Prakash Yadav and Naresh Yadav are on bail. They are discharged from the liabilities of their bail bonds.

The appellant/Jay Prakash Yadav is in jail. He is directed to be released forthwith, if not wanted in any other case.

A copy of the judgment be transmitted to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20/07/2018
Transmission Date	20/07/2018

