

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.645 of 2017**

Arising Out of PS. Case No.-130 Year-2009 Thana- RAMNAGAR District- West Champaran

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Shiv Bin alias Mukhiya, Son of Ramdeo Mukhiya, Resident of Village-  
Pakari Devraj, P.S.- Ramnagar, District- West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. Adalat Paswan, son of Nathuni Paswan.
3. Kishore Paswan, son of Birjhan Manjhi.
4. Shambhu Manjhi, son of Birjhan Manjhi.
5. Kushar Manjhi, son of Sugriv Manjhi.
6. Bachcha Manjhi, son of Sugriv Manjhi.
7. Jagdish Manjhi, son of Sugriv Manjhi.
8. Rajdeo Bin, son of Ghogh Bin.
9. Govind Bin, son of Ghuran Bin.
10. Ghuran Bin, son of Bharat Mukhiya.

All Resident of Village- Pakari Devraj, P.S.- Ramnagar, District- West  
Champaran.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-----------------------------------------|
| For the Appellant/s  | : | Shri Bakshi S.R.P. Sinha , Sr. Advocate |
|                      |   | Shri Vijay Kumar Singh No. 1, Advocate  |
| For the Respondent/s | : | Shri Dilip Kumar Sinha, A.P.P.          |
|                      |   | Shri Sunil Kumar Dubey, Advocate        |

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA**  
CAV ORDER

**(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

6     31-01-2018             The present Appeal has been filed by the victim/  
  
informant under     Section 372 of the Code of Criminal  
  
Procedure , 1973 (hereinafter referred to as the “Cr.P.C.”)  
  
along with a petition vide I.A. No. 2052 of 2017 under



Section 378(3) of the Cr.P.C. for grant of leave to Appeal. The Appeal has been preferred against judgment dated 10th April, 2017 passed by Shri Deepak Kumar Singh, learned 1st Additional Sessions Judge, Bagaha, West Champaran in Sessions Trial No. 133 of 2011 , C.I.S. No. Sessions Case No. 1744 of 2014 {arising out of Ramnagar P.S. Case No. 130 of 2009} registered for the offence under Sections 147/148/149/341/323/324/307/379 of the Indian Penal Code, 1860 (hereinafter referred to as the "I.P.C.") . By the said judgment while acquitting respondent no. 3 / Kishore Paswan, respondent no. 6 / Bachcha Manjhi and respondent no. 9 / Govind Bin, the learned trial judge has found sufficient evidence to fasten criminal liability against respondent no. 10 / Ghuran Bin, respondent no. 8 / Rajdeo Bin, respondent no. 7 / Jagdish Manjhi , respondent no. 5 / Kushar Manjhi, respondent no. 4 / Shambhu Manjhi and respondent no. 2/ Adalat Paswan for offence punishable under Sections 323 and 324 of the I.P.C. However, on the same date i.e. 10.04.2017 the learned trial judge released respondent no. 10, 8, 7, 5, 4 and 2 after due admonition on the plea that it was the first offence of the convicts and there was no previous conviction to their list.



2. Shri Bakshi S.R.P. Sinha, learned senior counsel, assisted by Shri Vijay Kumar Singh No. 1, learned counsel for the victim / appellant has argued that the present Appeal has been preferred against judgment of acquittal in respect of respondent no. 3/ Kishore Paswan, respondent no. 6/ Bachcha Manjhi and respondent no. 9/ Govind Bin and has also assailed the judgment of conviction for lesser offence against respondent no. 10 / Ghuran Bin, respondent no. 8 / Rajdeo Bin, respondent no. 7/ Jagdish Manjhi, respondent no. 5 / Kushar Manjhi , respondent no. 4 / Shambhu Manjhi and respondent no. 2 / Adalat Paswan on the plea that the prosecution though had established its case for commission of offence under Section 307 read with Section 149 of the I.P.C. the learned trial judge ignoring those evidences held them guilty and convicted for offence under Sections 323 and 324 of the I.P.C. and that too they were released only on admonition.

3. In the present Appeal by order dated 13.10.2017 while directing for issuance of notice to respondent no. 2 to 10 both on Memo of Appeal and on interlocutory application i.e. I.A. No. 2052 of 2017 filed under Section 378(3) of the Cr.P.C. for grant of leave, this Court had also summoned the Lower



Court Record. After receipt of the Lower Court Record and after appearance of all private respondents the Appeal was listed under the heading “For Admission”. Since lower court record was received and private respondents had already appeared and in view of the fact that during trial doctor who had examined the injuries of injured witnesses as well as the Investigating Officer of the case were not examined, the Court considered it appropriate to finally dispose of the Appeal at the stage of Admission itself. Accordingly, on 08.01.2018 we heard Sri Bakshi S.R.P. Sinha, learned senior counsel, assisted by Shri Vijay Kumar Singh No. 1, learned counsel for the victim / appellant, Sri Dilip Kumar Sinha, learned Additional Public Prosecutor as well as Sri Sunil Kumar Dubey, learned counsel who had appeared on behalf of respondent no. 2 to 10 and after hearing and examining the lower court record, order was reserved.

4. Short fact of the prosecution case is that on 23.5.2009 at 11.25 Hours Sub Inspector of Police Sabhapati Rai of Ram Nagar Police Station recorded fardbayan of Shiv Bin (appellant) / P.W. 7. The said fardbayan was recorded at Ram Nagar Primary Health Centre. In the fardbayan the informant in his injured condition stated that on the same date i.e. on



23.5.2009 at 7.30 A.M. (morning) his villagers : Ghuran Bin @ Mukhiya / respondent no. 10, Govind Bin / respondent no. 9, Rajdeo Bin/ respondent no. 8, Jagdish Manjhi / respondent no. 7, Bachcha Manjhi / respondent no. 6, Kushar Manjhi / respondent no. 5, Kishore Paswan / respondent no. 3, Shambhu Manjhi / respondent no. 4 all resident of Pakari Devraj, P.S. : Ramnagar & Adalat Paswan/ respondent no. 2 , resident of village: Silwatiya Bargo, P.S. -Ramnagar, District: West Champaran suddenly armed with deadly weapons entered into his house and Ghuran Bin ( respondent no. 10) gave farsa blow on the informant, then Bharat Bin by way of exhorting by using filthy language ordered to kill. Thereafter, Govind Bin (respondent no. 9) started assaulting by means of lathi and Kishore Paswan (respondent no. 3) gave garasa blow on the head of Dhruv Bin whereby he received head injury and blood started oozing out. Kushar Manjhi ( respondent no. 5) gave farsa blow on Lilawati Devi through which she received injury on her head and fell down. Bachcha Manjhi ( respondent no. 6) and Adalat Paswan (respondent no. 2) started assaulting by means of lathi and danda. Rajdeo Bin (Respondent No. 8) gave injury on head and shoulder of Bhikhari Bin/ P.W. 2 by means of farsa



whereby said Bhikhari Bin received cut injury on his head and shoulder. The informant further stated that in the said occurrence other accused persons assaulted his brother Shambhu Bin by means of lathi and danda. He further alleged that Ghuran Bin ( respondent no. 10) also took Rs. 20,000/- from the pocket of brother- in- law of the informant namely: Dhruv Bin. The reason for the occurrence was stated to be land dispute. The said fardbyan was read over to him and thereafter, the informant in presence of his brother Shambhu put his L.T.I. The said fardbyan was also identified with the L.T.I. of Shambhu Bin.

5. After recording fardbayan on the same date i.e. 23.05.2009 a formal F.I.R. vide Ramnagar P.S. Case No. 130 of 2009 was registered for offences under Sections 147/ 148, / 149/ 341/ 323/ 324/ 307/ 379 of the I.P.C. against nine accused persons, who are respondent no. 2 to 10. During investigation accusation was found true against all the private respondents. Police vide Charge- Sheet No. 87 of 2010 dated 22.3.2010 submitted report for offence under Sections 147, 148, 149, 341, 323, 324 and 307 of the I.P.C. against ten accused persons. Thereafter, the learned Additional Chief Judicial Magistrate on 19.05.2010 took cognizance of



offence and thereafter, on 02.04.2011 the case was committed to the court of Sessions and finally, it was numbered as Sessions Trial No. 133 of 2011. In the case on 24.6.2011 against all the ten accused persons charges were framed for offence under Sections 148, 341/149, 324/149 and 307/149 of the I.P.C.. Thereafter, till 23.06.2012 prosecution altogether examined six witnesses. P.W. 6 / Birendra Nath Mishra was examined, cross –examined and discharged on 23.06.2012 and thereafter, the case was fixed to 11.07.2012 for further evidence. However, on 11.07.2012 advocates were on strike and evidence was deferred to 31.07.2012, however, in the meanwhile, Presiding Officer had already been transferred. On 19.03.2013 the learned trial judge ordered for issuance of N.B.W. for securing attendance of witnesses mentioned in the charge- sheet. Then, on 17.05.2013, P.W. 7/ Shiv Mukhiya @ Bin appeared for his evidence on which date his examination –in- chief was completed, however after being partly cross-examined, on the prayer made by defence (accused side) cross –examination was deferred to 13.06.2013, however, in the meanwhile, again the Presiding Officer was transferred and finally, on 12.09.2014 after new Presiding Officer joined further cross -examination of P.W. 7 resumed and after his



cross -examination he was discharged and case was fixed for further evidence and it was also ordered that Office may comply the earlier order in respect of witnesses i.e. N.B.W. On 9.12.2014 the trial judge directed the office to comply earlier order in respect of witnesses and thereafter, order-sheet suggests that on 10.12.2014 N.B.W. was issued. It appears that thereafter no report was received. Subsequently, on 14.01.2015 it was recorded in the order sheet that report regarding N.B.W. in respect of witnesses has not been received and next date was fixed to 13.02.2015 with order to A.P.P. to produce witnesses. Again, on 21.03.2015 in the order sheet it was recorded that report in respect of N.B.W. issued against the witnesses has not been received. Thereafter, on number of occasions the case was fixed for evidence and finally, on 07.01.2017 prosecution evidence was closed and on 11.01.2017 statement of accused under Section 313 Cr.P.C. was recorded and the case was fixed for defence evidence to 20.01.2017 and on the next date i.e. 25.01.2017 defence evidence was closed and case was fixed for argument and finally, on 10.04.2017 only three pages judgment was passed by Shri Deepak Kumar Singh, learned 1st Additional Sessions Judge, Bagaha which is under challenge.



6. Shri Bakshi S.R.P. Sinha, learned senior counsel, by way of referring to the entire order- sheet of the trial court has argued that learned Public Prosecutor has not taken any sincere effort to examine important injured witnesses and he also had not taken any effort to examine the doctor, who had examined injuries of the witnesses on requisition made by the investigating officer. He has further submitted that prosecution has also not taken any step to examine the investigating officer of the present case. He further submits that though Public Prosecutor has not taken sincere effort, considering the nature of accusation in the present case, there was some duty on the part of the trial judge also for taking steps to secure attendance of witnesses particularly injured witnesses, the doctor who examined injuries of witnesses and the investigating officer. According to Shri Bakshi S.R.P. Sinha due to failure on the part of prosecution and insensitive approach of the trial judge the victim may not be allowed to suffer more. It has further been argued that even in absence of evidence of doctor as well as non- production of injury report by the prosecution on the one hand, the learned trial judge has held some of the private respondents guilty for offence under Sections 323 and 324 of the I.P.C. and by the



same order on the same date the learned trial judge without assigning plausible reason has released all those convicts in the garb of giving admonition to them. He further submits that if there was evidence of causing injury on vital portion of the witnesses particularly scalp area by means of deadly weapons i.e. farsa and garasa certainly it was a clear cut case of commission of offence under Section 307 read with Section 149 of the I.P.C.

7. Shri Dilip Kumar Sinha, learned Additional Public Prosecutor and Sri Sunil Kumar Dubey, learned counsel who appeared on behalf of respondent no. 2 to 10 have argued that the informant's side had not taken any sincere effort for producing witnesses, even some of the injured witnesses despite the fact that in the case occurrence had taken place long back in the year 2009. It has further been argued that during trial sufficient opportunity was given to the informant's side to produce witnesses and this was the reason that conclusion of trial continued for several years and left with no option, the learned trial judge on the basis of evidences whatever were available on record, has passed the judgment which has been assailed in the present Appeal. It has been argued that it is not a fit case in which this Court



may allow the leave petition and also and it has been argued to dismiss the Appeal.

8. Besides hearing learned counsel for the parties, we have minutely examined the evidences including the entire order- sheet of the trial court. Admittedly in the present case there was accusation of causing injury on the head and other vital parts of number of witnesses from the informant's side by the private respondents by use of deadly weapons like farsa, garasa , lathi and danda. On examination of evidence of P.W. 2/ Bhikhari Bin it is evident that this witness had also shown the scar of injury received on head and on his other parts, which was noticed by the then Trial Judge however since at the moment we are not dealing with the merit of the case, it would not be appropriate to discuss about the evidences, which were brought on record, but fact remains that during trial some of the injured witnesses were not examined and during trial two vital witnesses: (1) the doctor who had examined injuries of the witnesses and (2) the investigating officer of the case were not examined, and as such, it is necessary to examine the matter as to whether the prosecution or learned trial judge had taken any sincere efforts to examine those vital witnesses for just decision in the



matter.

9. On examination of the order -sheet of the trial court it is evident that despite the fact that for securing attendance of witnesses of the prosecution N.B.W. was issued, but record does not suggest regarding any report of such execution. The order- sheet is also silent on the point as to whether after passing order for issuance of N.B.W. any report from the concerned Superintendent of Police was summoned or not. In such situation, there is reason to record a finding that neither Public Prosecutor nor trial judge had taken any sincere efforts for securing attendance of doctor and the investigating officer, besides some of the injured witnesses. Moreover, we are also of the opinion that the learned trial judge has committed serious error in passing order for releasing D.W. 10 / Ghuran Bin, D.W. 8 / Rajdeo Bin, D.W. 7/ Jagdish Manjhi, D.W. 5 / Kushar Manjhi , D.W. 4 / Shambhu Manjhi and D.W. 2 / Adalat Paswan even though they were held guilty for offence under Sections 323 and 324 of the I.P.C. on the same day by the same judgment i.e. judgment dated 10.04.2017 without assigning any plausible reason.

10. In view of the facts and circumstances, leave is



granted, and as such, the interlocutory application i.e. I.A. No. 2052 of 2017 stands allowed.

11. Accordingly, for just decision in the matter, it is necessary to interfere with the judgment impugned, and as such, judgment dated 10.04.2017 passed in Sessions Trial No. 133 of 2011 by Shri Deepak Kumar Singh, learned 1st Additional Sessions Judge, Bagaha is hereby set aside and the matter is remitted back to the court below with a direction to proceed as if the case was fixed for prosecution evidence. It is further directed that prosecution as well as learned trial judge may take appropriate steps for securing attendance of prosecution witnesses particularly the doctor, who examined the injuries of the injured witnesses and investigating officer / officers of Ramnagar P.S. Case No. 130 of 2009. The prosecution is also directed to take steps for bringing on record of the case the injury report prepared by the doctor as well as requisition for injury report issued by the police official(s). The prosecution and the learned trial judge are required to take appropriate steps so that the case may come to its logical end without unnecessary delay. It is also necessary to direct the concerned Superintendent of Police to produce witnesses as and when asked by the trial court. Office



is directed to remit back the entire lower court record which was earlier received from the court below forthwith.

12. On perusal of the order- sheet of the trial court particularly orders from the month of September, 2014 till the date of impugned judgment, we have noticed that the learned trial judge has also not adopted sincere and judicious approach for adjudicating the case in its right perspective accordingly learned District and Sessions Judge, West Champaran, Bettiah may consider to take up the trial himself or may authorize any other Additional Sessions Judge, not to the learned trial judge who has passed the impugned judgment.

13. Let a copy of this order be sent to the Superintendent of Police, West Champaran, Bettiah for its compliance.

**(Rakesh Kumar, J)**

Arvind Srivastava, J: **I agree**

praful/-

**( Arvind Srivastava, J)**

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