

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.624 of 2015**

Arising Out of PS.Case No. -97 Year- 2007 Thana -JHAJHA District- JAMUI

- =====
1. Rajendra Yadav
 2. Bholi Yadav
 3. Baso Yadav All 1 to 3 are sons of Tulo Yadav
 4. Huro Yadav
 5. Bhim Yadav Both 4 and 5 are sons of Kartik Yadav
 6. Subodh Yadav son of Rajendra Yadav All 1 to 6 are residents of village Kakaniya Tari, P.S. Jhajha, District Jamui.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

Appearance :

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- | | | |
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| For the Appellant/s | : | Mr. Prem Chand Yadav, Amicus Curiae |
| For the Respondent/s | : | Mrs. Abha Singh, APP |
| For the informant | : | Mr. Naresh Chandra Verma, Adv.
Mr. Ram Kumar Singh, Adv. |
- =====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 12-07-2018

As learned counsel for the appellants failed to turn up on account thereof, Sri Prem Chand Yadav has been requested to assist the court as an Amicus Curiae.

2. Appellants Rajendra Yadav, Bholi Yadav, Baso Yadav, Huro Yadav, Bhim Yadav and Subodh Yadav have been found guilty for an offence punishable under Section 147 of the IPC and each one has been sentenced to undergo S.I. for one year, under Section 148 IPC and sentenced to undergo S.I for 2 years, under Section 307/149 IPC and sentenced to undergo R.I for 10 years as well as to pay fine appertaining to Rs. 5,000, in default thereof, to



undergo S.I for one year, under Section 323/149 IPC and sentenced to undergo S.I for one year, under Section 324/149 IPC and sentenced to undergo S.I for two years, under Section 325/149 IPC and sentenced to undergo R.I for 5 years as well as to pay fine appertaining to Rs. 2,000/- in default thereof, to undergo S.I for 6 months additionally, under Section 341/149 IPC and sentenced to undergo S.I for one month, under Section 447/149 IPC, and sentenced to undergo S.I for three months with a further direction to run the sentences concurrently, with a further direction that the period having undergone during course of trial should be set off as provided under Section 428 of the Cr.P.C, by the 1st Additional Sessions Judge, Jamui, vide judgment of conviction dated 11.09.2015 and order of sentence dated 15.09.2015 passed in connection with Sessions Trial No.75/2008.

3. Lakhan Mandal, (PW-10), filed a written report on 09.08.2007 disclosing therein that on the same day at about 7.00 A.M while he was ploughing his filed lying behind the house of Kartik Yadav, his co-villagers Rajendra Yadav, Subodh Yadav, Bholi Yadav, Baso Yadav came armed with *lathi* and *danda* and forbade him to plough the field. During midst thereof, Kartik Yadav, Fulo Yadav, Bhim Yadav also arrived and began to abuse. They provoked to assault whereupon, Subodh Yadav who was armed with sword gave a



blow over his head, Rajendra Yadav assaulted him by *lathi*. On his alarm, his daughter-in-law Kunti Devi, wife Sajiya Devi came in order to rescue him and during course thereof, his daughter-in-law was assaulted by Huro Yadav with sword while rest assaulted her with lathi. His wife Sajiya Devi was assaulted by Subodh and Bhim Yadav. After assault, the accused persons have taken away his plough. It has further been disclosed that there happens to be cases pending with Rajendra Yadav and Kartik Yadav before the respective Court.

4. After registration of Jhajha P.S. Case No. 97/2007 investigation commenced and after concluding the same, charge-sheet was submitted, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

5. 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 also been pleaded that land happens to be under their possession and, the prosecution party on the alleged date and time of occurrence, attempted to dispossess and during course thereof, they were brutally assaulted by the prosecution party and for that, Jhajha P.S. Case No. 98/2009 has been drawn up against them. It has also been pleaded that in the background of land dispute, they have been roped in this case after managing the police as well as doctor.



6. In order to substantiate its case, prosecution had examined altogether 11 PWs, who are PW-1, Bhikho Mandal, PW-2, Ram Mandal, PW-3, Bhim Mandal, PW-4, Sabiya Devi, PW-5, Kunti Devi, PW-6, Kamaldeo Mandal, PW-7, Dr. Binod Pd. Sinha, PW-8, Sahdeo Mandal, PW-9, Sitaram Yadav, PW-10, Lakhan Mandal and PW-11, Sham Nath Ram. Side by side had also exhibited Ext.1 series, signature of executant of a sale deed having in favour of informant Lakhan Mandal (PW-1), Ext.2 series, injury report relating to Lakhan Mandal, Ext.3 series-X-ray plate, Ext.4 series, injury report of Kunti Devi, Sabiya Devi respectively, Ext.5, written report and Ext.6, Judgment of G.R. No. 1059/2007. No ocular evidence has been adduced on behalf of appellant, save and except, documentary evidences as, Ext.A- Khatian, Ext.B-sale deed dated 08.07.2005 executed by Indradeo Mandal in favour of Kartik Yadav, Rajendra Yadav, Ext.C- Remt receipt, Ext.D- rent receipt, Ext.E- CC of sale deed dated 15.05.2003 executed by Ishwar Mandal in favour of Sabiya Devi, Ext.F- order of complaint case no. 818C/2006, Ext.G- certified copy of complaint case no. 818 C/2006, Ext.H- S.A, Ext.I- order of cognizance relating to Jhajha P.S. Case No. 211/08, Ext.J- statement of Kamaldeo Mandal under Section 164 Cr.P.C, Ext.K- F.I.R. of Jhja P.S. Case No. 211/08, Ext.K/1, complaint case no. 1329/08, Ext.L, F.I.R. of Jhajha P.S. Case No. 98/07, Ext.L/1- charge-



sheet, Ext.L/2- order of cognizance.

7. Learned amicus curiae while assailing the judgment of conviction and sentence has submitted that the same is unsustainable in the eye of law in the background of certain admitted status coming out from the evidences of the witnesses. In order to justify such submission, it has been submitted that prosecution witnesses have admitted more particularly, Kunti Devi, daughter-in-law of informant that the land was under the possession of the appellants. In the aforesaid background coming of informant Lakhan Mandal over the field and began to plough the filed on the alleged date and time of occurrence was nothing but as a trespass, that being so, appellants have got right to defend their property. Apart from this, it has also been submitted that even considering for a moment not admitted that appellants have got illegal possession over the land even then, they would not have been forcibly dispossessed rather, they could have been dispossessed adopting the proper legal procedure. Apart from this, the claims of appellants are found legally acclaimed by way of counter case already instituted at their end which, the prosecution witnesses had already admitted.

8. It has also been submitted that the land under dispute was not the ancestral property of the prosecution party rather they had claimed to have purchased from PW-1, 2 and 3, on the other hand,



appellant Rajendra and Kartik have also purchased the aforesaid land from Indradeo whose identity had already been acknowledged by the prosecution party being one of the co-sharers by way of Ext.E, sale deed in favour of Sabiya, w/o informant, apart from the fact that from the Khatiyani, Ext.A, it is apparent that there happens to be presence of forefather of the Indradeo. Furthermore, it has also been submitted that there happens to be fault at the end of the I.O during course of inspection of the P.O and in likewise manner, during course of evidence whereunder he failed to give clear pasteurization of the P.O.

9. So far evidences of witnesses are concerned, in spite of the fact that prosecution had claimed injury over three persons that means to say the informant Lakhan Mandal (PW-10), his wife Sabiya Devi (PW-4) and daughter-in-law, Kunti Devi (PW-5) but, after proper scrutiny of the evidences of the PWs, it is apparent that the finding of the doctor happens to be inconsistent to the allegations. So, either prosecution version is found tainted or the injured might have sustained injury in different manner at different place. So, in the facts and circumstances of the case, the Judgment impugned did not justify its prevalence whereupon, is fit to be set-aside.

10. On the other hand, the learned APP assisted by learned counsel for the informant while controverting the submission made on behalf of learned Amicus Curiae has submitted that from the



evidence of doctor, it is apparent that defence could not be able to shake the finding regarding nature of the injuries sustained by the injured. Furthermore, the consistency amongst the witnesses including that of injured is found notable corroborated by the medical evidence. That being so, the judgment impugned did not attract interference.

11. PW-7 is the doctor, who had examined the respective injured and found the following.

Lakhan Mandal

1. (i) Incised wound on vault of skull 3"x 1/6" x scalp deep.

(ii). Swelling on left wrist 3"x 2 ¼" x ‘

iii). Swelling on right forearm, 3"x 2 ¼" ”

iv. Swelling on ankle joint 3" x 2"

v. Complaint of pain.

2. Nature of injury- Injury no. 1 simple in nature caused by sharp cutting substance such as sword. Injury no. ii and iv opinion reserved till ‘X’ ray report. Injuries no. iii and v simple in nature caused by hard blunt substance such as lathi, within six hours. After X-ray report fracture has been found over lower end of ulna as well as fibula so both the injuries have been found grievous.

Kunti Devi

i. Two lacerated wounds on scalp 2 ½ "x 1/6" skin deep



and 3" x 1/6" skin deep on vault of skull.

ii. Abrasion on back of neck 1"x 1/2".

iii. Swelling on left wrist 2"x 1/2".

iv. Swelling on left shoulder 3"x 1/2".

4. Nature— Simple in nature caused by hard blunt substance within six hours.

Sabiya Devi

i. Lacerated wound on chin 1 1/2 "x 1/4", skin deep.

ii. Swelling on left side of scapular region 4" x 3".

iv. Lacerated wound on left index finger 1/2" x 1/4" skin deep.

6. Nature- simple in nature caused by hard and blunt substance caused by lathi within six hours.

12. Now, the oral evidence has to be seen in the background of finding having recorded by the doctor. Before that, the admitted position has to be taken into consideration and the same happens to be with regard to status of both the parties. Admittedly, both the parties are not claiming the land being their ancestral property rather, the prosecution party claims that they have purchased the land from PW-1, 2 and 3 which they supported during course of evidence and for that also exhibited the sale deed, Ext.1. In likewise manner, appellant Rajendra and Kartik also claimed the land on the



basis of sale deed having executed by Indradeo having difference in area vide Ext-B, supported by Khatiyani Ext-A showing presence of forefather of Indradeo. However, status of Indradeo is found admitted by the prosecution party as is evident from Ext-Examination-in-chief sale deed executed in favour of Sabiya. In its continuity, it looks appropriate to refer the evidence of I.O. PW-11 who during course of cross-examination at Para-6 had stated that he had not prepared genealogical table relating to family of Bodhi Mandal but, the genealogical table furnished by Lakhan Mandal has been referred in the case diary. He had further stated that accused persons have furnished photocopy of sale deed having in their favour but, he had not investigated on that very score. From his evidence at Para-2, he had detailed the topography of place of occurrence but, there happens to be no apparent conclusive finding in whose premised P.O. land was. The attitude of I.O. is found further exposed under Para-4 of his examination-in-chief wherein he had deposed that during course of investigation, he came to know that accused Rajendra, Huro at one side and informant Lakhan Mandal at other side are litigating since long over the land under dispute. He had further stated that Lakhan Mandal had purchased the land in the year 1996. Accused persons have also purchased same area (7 decimal) in the year 2005 from Indradeo Mandal. He had further stated that informant Lakhan Mandal



had possession over the land and in the aforesaid background, the accused persons after forming unlawful assembly had gone over the land and assaulted the prosecution party. On that score, the evidence of PW-5, daughter-in-law of informant is also to be taken into consideration wherein she had stated (Para-3) that there happens to be land dispute amongst her father-in-law as well as accused persons. Her father-in-law is claiming the land on the basis of sale deed and in likewise manner, accused persons are also claiming the land on the basis of sale deed. Her father-in-law is directing the accused persons to leave the land but, accused persons are not inclined to leave the land.

13. PW-10, the informant during course of his examination-in-chief had disclosed the details of disputed land as Khata No. 76, Khesra No. 3615, area 11.5 decimal which he purchased in the year 1996 from PW-1, PW-2 and PW-3. He had further stated that mutation has been done in his name, he is paying the rent and in possession of rent receipt. During cross-examination at Para-3, there happens to be admission at the end of the informant that accused persons are also claiming the land. Then, he has been cross-examined over the genealogical table in the background of entry having in the Khatihan. He had shown ignorance with regard to mutation having effected in the name of accused persons and in



likewise manner, paying of rent and having in possession thereof, (exhibited, at the end of accused) under Ext. C, D. PW-6, son of informant at Para-2 of his examination-in-chief had stated that his father had purchased the land from Bhikho Mandal, Bhim Mandal and Ram Mandal (PW-1, PW-2 and PW-3). In Para-3 of the examination-in-chief, he had stated that accused persons have committed this occurrence after purchasing the land only to possess the same. During course of cross-examination at Para-4, he had stated that there happens to be land dispute among both the parties. They themselves along with accused persons have advanced rival claim over the land. Title suit has been instituted in order to annul the sale deed having in favour of accused persons but, he is unable to say in which court the same is pending.

14. PW-4 is the wife of the informant who during course of examination-in-chief had not spoken a word over the same but, during course of cross-examination at Para-6, she had stated that there happens to be land dispute amongst both the families. Both the parties are claiming over the land dispute. Then she stated that she is unaware regarding pendency of title suit. It is further evident from the evidence of prosecution witnesses that irrespective of Ext.A, Khatihan, they have not disclosed the total area of the plot and further the location towards which they have purchased in pursuance of sale



deed Ext.1.

15. In the aforesaid background, now other part of evidences are to be seen. It is evident that for the same occurrence, counter case has also been instituted and that has been admitted at the end of the all the prosecution witnesses including the I.O. Furthermore, Ext.6, the judgment by which the prosecution party have been acquitted is also on the record. From perusal of the judgment, it is apparent that I.O. as well as doctor had not been examined and further, *Marpit* whereunder prosecution party had also sustained injury is found admitted. That means to say, irrespective of acquittal of the prosecution party, there happens to be admission at the end of prosecution party in the same breath over case and counter case, rival claim over the land under dispute.

16. PW-10 is the informant who had deposed that while he was ploughing his field, all the accused persons came armed with lathi and abused, forbade him to plough but, as he declined Subodh gave sword blow over his head. Rajendra assaulted him with lathi again corrected all of them assaulted with lathi. When his wife and daughter-in-law came in rescue they were also assaulted. Accused persons untied the bullocks and then, took away. During cross-examination at Para-5, he had stated that while he was ploughing field, during course thereof, accused had hurled sword as a result of



which, he fell down. Again got up and then had seen blood coming out from the head of Kunti Devi and lips of Sabiya and blood was also coming out from his injury. Then had asserted that out of fear of accused persons, none came. Then had said that first of all they had gone to police station and then to hospital. In Para-8, he had stated that he sustained 5-6 lathi blow. Rajendra inflicted lathi blow over his leg, Kunti and Sabiya were assaulted within a minute after his falling over the ground. But he is unable to say how many blows were given. Huro had assaulted his daughter-in-law with sword. They have fallen over the ground. His statement was recorded at the police station. Then at Para-9, he had shown ignorance with regard to injury over the persons of accused and for that, they were also admitted in the same hospital.

17. PW-9 is the resident of different village. He had deposed that on the alleged date and time of occurrence, he was in the village where he had gone to place of blacksmith. He heard sound of uproar coming from behind the house of Huro Yadav, he rushed and seen Lakhan Mandal, lying on the ground, Rajendra, Subodh, Basudeo, Kartik, Huro, Bhim, Bholi were indulged in assaulting Lakhan Mandal with lathi, Paina and sword. Subodh was armed with sword. Son, wife and daughter-in-law of Lakhan were engaged in saving him and during course thereof, wife and daughter-in-law of



Lakhan were assaulted by the accused persons. In Para-3, there happens to be cross-examination over his hostility with the accused persons. In Para-5, he had stated that he had seen blood coming out from the body of Lakhan but he had not seen coming out from the body of daughter-in-law as well as wife of Lakhan. He had not seen injury over the person of wife, daughter-in-law of Lakhan. They have not fallen over the ground. Lakhan was taken away by his wife, daughter-in-law, son to hospital. Then had stated that he can speak Khata, Khesra no. of disputed land. At Para-10, he had stated that he had made statement before the police with regard to Subodh being armed with sword.

18. PW-8 is also of different village who had stated that on the alleged date and time of occurrence, he had gone to place of blacksmith and during course thereof, he, after hearing uproar gone to the P.O. where found Lakhan Mandal lying over the ground and was shouting. Blood was coming out from his head. So many persons were there. He had not seen the occurrence. He had seen accused Rajendra, Subodh, Kartik, Basudeo, Huro, Bhim, Bholi who were armed with lathi. He had seen blood coming out of body of wife, daughter-in-law of Lakhan. Then was declared hostile. To some extent, during cross-examination at the end of prosecution, he admitted that he had stated before the police regarding blood coming out from the injury of



Lakhan, assault over the person of wife, daughter-in-law by the accused persons, taking away Lakhan to hospital by his son, wife, daughter-in-law. In Para-5 of cross-examination, he had admitted that his house lies approximately ½ K.M away from the P.O village. In Para-8, he had admitted that Lakhan happens to be his Batiadar.

19. PW-6 is the son of informant, he had stated while he was going towards river along with cattle, he heard the sound of uproar. Then rushed to field where he saw his father was being abused by Kartik, Bhim, Bholi, Rajendra, Subodh and Basu. During course thereof, Rajendra assaulted his father with lathi. Others also assaulted his father with lathi. When his mother and *bhabhi* came in rescue, his mother was also assaulted by lathi by Bhim while Huro gave sword blow over his *bhabhi*. During cross-examination at Para-5, he had stated that when he reached at the place of occurrence, till then neither his father nor his mother was assaulted. He has further stated that after sustaining assault his father fell down over the ground. Even thereafter he was assaulted. In Para-6, he had stated that his *Bhabhi* was assaulted only by sword and not by lathi. In Para-7, he had stated that his mother had sustained two injuries. In Para-8, he had stated that at that very time, none was present in the surrounding. At Para-9, he had admitted that P.O was shown to the I.O. by him. I.O had not seen the bloodstain lach. In Para-11, he had stated that first of all



injured were taken to referral hospital, Jhajha then, thereafter, at the private clinic of Dr. Ajay Singh.

20. PW-5 is the daughter-in-law of informant. She had stated that on the alleged date and time of occurrence, she was engaged in an agricultural work. During course of which, she had seen Rajendra, Huro, Subodh, Baso, Bholi, Bhim, Kartik abusing her father-in-law who was present in a field purchased by him. At that very time, Lakhan was ploughing the field. On protest made by Lakhan, accused persons began to assault. Subodh gave sword blow over his head as a result of which, he fell down and then thereafter other accused assaulted him with lathi. She along with her mother-in-law rushed in rescue during course of which, Huro gave sword blow over her head while her mother-in-law was assaulted with lathi. In Para-4 of her cross-examination, she had stated that when she reached the place of occurrence, her father-in-law was not there was cut injury over his head, blood was oozing, her father-in-law was lying over the ground, blood had spread over the ground. Seeing the condition of her father-in-law she became unconscious. Then, she stated that all the injured became unconscious. All the injured were lying over the ground. In Para-8, she had stated that all the injured were taken to hospital, they regained sense after four days. They have not seen sign of assault, injury over the person of accused. In Para-6, she had stated



that after returning from hospital, she had seen three wounds over her persons, then there happens to be contradiction over material aspect.

21. PW-4 is the wife of informant, as well as one of the injured. She had deposed that on the alleged date and time of occurrence, while she was harvesting paddy, her husband was ploughing field. During midst thereof, her husband began to shout. She along with her daughter-in-law rushed and then saw Subodh armed with sword, Rajendra lathi, Baso lathi, Bholi lathi, Kartik lathi, Bhim lathi, Huro sword were present. Subodh gave sword blow over head of her husband as a result of which he sustained injury and then fell down. Then thereafter, remaining accused assaulted her husband with lathi. When she rushed there she was assaulted with sword by Huro causing injury over his chick. Then, Huro Yadav kept the sword and assaulted with lathi causing injury over upper part of back side; finger of left thumb. Her daughter-in-law was also assaulted by Huro with sword causing injury over her head. She was also assaulted with lathi causing injury over her neck, hand. Then, Bhulo untied the bullock and taken away. During cross-examination at Para-7, she had stated that till the time of occurrence, about 1 ½ Katha of land was ploughed by her husband. She had further stated that other were also present in the surroundings. In Para-8, she had stated that P.O. lies after 4 plots from her house. In Para-9, she had stated that at the time



of occurrence, she was in her field lying at the distance of one K.M. from P.O. In Para-10, she had stated that they have seen accused persons duly armed but they have not become apprehensive so have not tried to flee from there. From Para-10 as well as 11, it is found that first of all her husband was taken over ridge by Sahdeo and Sitaram along with her son and then she was taken to and then, her daughter-in-law. She had further said that none of the assailants had sustained injury. In Para-14, she had stated that she had shown the P.O. to the I.O but again controverted that she had not shown the I.O.

22. From the evidence as referred hereinabove, it is crystal clear that all the witnesses are no at all consistent with the manner of assault. More particularly, the injured PW-4 had claimed to have sustained sword blow at the end of Huro while PW-5 had not stated so. The evidence of PW-6, son of injured also contradicted the evidence of PW-4. PW-6 in same manner had deposed. When the aforesaid evidences are taken together with the finding recorded by the doctor, PW-7, it is evident that one injury over the person of informant Lakhan Mandal was found to be caused by sharp cutting weapon while remaining by hard and blunt substance and so far other injured are concerned, those were caused by hard and blunt substance. So, injury though is found contradicted to the extent of PW-4 and PW-5, but is found corroborated with the allegation so far PW-10.



23. Now the sole question survives whether for the aforesaid injury, the accused persons appellants should be held responsible. As stated above, both the parties are purchasers. As stated above, Ext.A, Khatian recognizes presence of ancestors of vendor of prosecution party as well as appellants. That means to say, there happens to be legality, genuineness over the document having in favour of accused. Vendor of accused is found duly recognized by the prosecution party by Ext-E. Furthermore, it is also evident that neither prosecution had disclosed the total area of the survey plot no. 3615 nor, during course of cross-examination, appellants have tried to explicit the same.

24. It is further evident from the objective finding of the I.O. with regard to P.O. that Khata No. 76, Khesra No. 3615, area 11.5 decimal happens to be barren land (Parti Jameen). The plot south to that plot has been found the P.O. wherein, occurrence is said to have taken place and that is indicative of the fact that Marpit had not taken place over the land which was under the possession of prosecution in pursuance of a sale deed and that finding of the I.O., has not been challenged at the end of the prosecution party themselves. In the background of aforesaid inconsistency, more particularly in the background of having sale deed with regard to the aforesaid survey plot no. in favour of both the parties by their



respective vendors whose ancestors presence is found Ext.A-Khatiyani, duly acknowledged under Ext-E, did not justify the finding recording by the learned lower court, more particularly when there happens to be inspiration that prosecution had suppressed the true version of the manner, genesis of the occurrence whereupon, accused is found entitled for benefit if doubt.

25. Accordingly, 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.

27. The first and last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

Ranjeet

(Aditya Kumar Trivedi, J)

AFR/NAFR	A.F.R.
CAV DATE	N/A.
Uploading Date	17/07/2018
Transmission Date	17/07/2018

