

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.9 of 2013

Arising out of PS.Case No. -22 Year- 2003 Thana -KANHAULI District- -

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1. Nagendra Rai S/o Late Gopal Rai Resident of Village- Bhaluaha, P.S.- Kanhauli, Dist.- Sitamarhi
 2. Lal Babu Rai S/o Nagendra Rai Resident of Village- Bhaluaha, P.S.- Kanhauli, Dist.- Sitamarhi
 3. Shiv Chandra Mandal S/o Late Baldeo Mandal Resident of Village- Bhaluaha, P.S.- Kanhauli, Dist.- Sitamarhi
 4. Shiv Shankar Mandal S/o Late Baldeo Mandal Resident of Village- Bhaluaha, P.S.- Kanhauli, Dist.- Sitamarhi
 5. Satrugan Mandal S/o Shiv Shankar Mandal Resident of Village- Bhaluaha, P.S.- Kanhauli, Dist.- Sitamarhi
 6. Manoj Mandal S/o Shiv Chandra Mandal Resident of Village- Bhaluaha, P.S.- Kanhauli, Dist.- Sitamarhi
 7. Binod Mandal S/o Shiv Chandra Mandal Resident of Village- Bhaluaha, P.S.- Kanhauli, Dist.- Sitamarhi

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Shailendra Kumar Singh
Mr. Shambhu Nath Thakur

For the State : Ms. Anita Kumari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

C.A.V. JUDGMENT

Date: 29-06-2018

The present appeal was preferred against the judgment of conviction and sentence dated 29.02.2012 passed in Sessions Trial No. 107 of 2005/ 55 of 2010 passed by the learned Court of Additional Sessions Judge, FTC-I, Sitamarhi.

The appellants of the aforesaid appeal were held guilty for the offences punishable under Sections 324 and 323 of the Indian Penal Code. The appellants no. 2, 3, 6 and 7 have been sentenced to undergo R.I. for a period of two years and a fine of Rs. 200/- and in default



they have been directed to undergo further S.I. for three months , under Section 324 of the Indian Penal Code while the appellants no. 1, 4 and 5 have been sentenced under Section 323 of the Indian Penal Code and they have been directed to undergo R.I. for a period of one year and a fine of Rs. 200 and in default they have been directed to undergo further S.I. for a period of three months.

The short facts of the case, as per the fardbeyan of Deo Lal Rai (informant), recorded by A.S.I. Jagdish Choubey of Sonbarsa Police Station on 08.07.2003 at about 9:45 hours at Primary Health Centre Sonbarsa is that on 07.07.2003 he had came out of his house, carrying a sum of Rs. 12,000/- along with two other persons namely Ram Jee Rai (P.W. 2) and Raudi Mandal (P.W. 1) for the purposes of purchasing buffalo and when they reached the market at Larakawa Arehiya (Nepal) and were looking for buffalo for the purposes of purchasing the same, they did not like any buffalo, hence they decided to return back to their house. It is further case of the informant that when he along with two other persons was returning from Nepal to his residence and had reached near the boring of Suresh Mahto, then all the seven accused persons who were hiding in a nearby place came and surrounded the informant as well as the two other persons who were coming along with the informant. The informant is stated to have told them as to why they were doing like this, whereupon the



appellant no. 3 (Shiv Chandra Mandal) who was holding farsa in his hand, gave a farsa blow on the forehead of the informant resulting in him being injured. Thereafter, the appellant no. 1 namely Nagendra Rai who was carrying lathi in his hand, starting beating the informant with lathi and also snatched a sum of Rs. 12,000/- from the informant. Thereafter Binod Mandal (appellant no. 7), Manoj Mandal (appellant no. 6), who were carrying *Dabia* in their hands, inflicted *Dabia* blow on the left hand of the informant resulting in injury to the informant. The appellant no. 2 namely Lal Babu Rai, the appellant no. 4 namely Shiv Shankar Mandal and appellant no. 5 namely Shatrughan Mandal, who were carrying lathi and knife also started beating the informant and during the course thereof the appellant no. 2 had inflicted a knife blow. According to the informant, two persons accompanying him, on account of fear had ran way and gone to the village where they had raised an alarm. It is the case of the informant that the said accused persons had assaulted him with the intention of killing him and when he had raised alarm, the villagers had arrived and the accused persons fled away whereafter the informant was taken to the Primary Health Centre, Sonbarsa for treatment. On the basis of the aforesaid fardbeyan of the informant namely Deo Lal Rai, Kanhauli P.S. Case No. 22 of 2003 was registered on 09.07.2003 for the offences under Sections 147, 341, 307, 324, 323, 379/34 of the Indian Penal Code.



The Police had then investigated the case and filed a charge sheet dated 14.4.2003 against all the aforesaid 7 appellants under Sections 147, 341, 323 and 324 of the Indian Penal Code. The learned trial court had taken cognizance under Sections 307/149 IPC and the case was committed to the court of sessions, after completion of supply of police papers, on 10.02.2005, whereafter charges were framed against the aforesaid accused persons on 25.11.2005. The charges were framed under Section 147 IPC against the appellants no. 1, 4 and 5, under Section 148 of the IPC against the appellants no. 2, 3, 6 and 7 and under Section 307/149 against all the aforesaid appellants.

During the course of the trial, the prosecution produced altogether eight witnesses.

P.W. 1 is Raudi Mandal, who is stated to be an eye witness, P.W. 2 is Ramjee Rai who has turned hostile, P.W. 3 is Jai Kishore Mandal, a hearsay witness, P.W. 4 is Ram Chandra Rai, who claims to be an eye witness, P.W. 5 is Jagdish Rai, who is also a hearsay witness, P.W. 6 is Dr. Krishna Nandan Prasad, P.W. 7 is Vidya Nand Rai who is the son of the informant and P.W. 8 is Ram Swaroop Choudhary, the Investigating Officer of the present case.

The defence has examined three witnesses namely Ram babu Rai (D.W. 1) who is the grandson, in village relation, of the informant and Rajan Mandal (D.W. 2) as well as Paswan Kumar



Shrivastava (D.W. 3).

The learned counsel for the appellant has submitted that admittedly series of litigation was pending in between the informant and the appellants herein which has also been admitted by the informant, hence false implication of the appellants by the informant cannot be ruled out. It is further submitted that a bare perusal of the FIR would show that in fact there was no eye witness to the occurrence inasmuch as the informant himself has stated that the two persons accompanying him had ran away to the village out of fear after the appellants herein had surrounded them and were assaulting the informant. Nonetheless, it is submitted that out of the two persons accompanying the informant, at the time of the occurrence, one of them has turned hostile whereas rest of the witnesses are hearsay witnesses, hence their deposition does not have any evidentiary value. It is further submitted that a perusal of the injury report coupled with the statement of the prosecution witnesses would show that there is material variation and contradiction in the statement of the witnesses. It is argued that grave prejudice has been caused to the appellants herein on account of non-examination of the informant of the present case. It is submitted that paragraph no. 7 of the deposition of the P.W. 1 would show he has admitted that he had not disclosed the name of any accused person when he had gone to Sonbarsa. It has been further



submitted that though the doctor (P.W. 6) has found six injuries on the person of the informant but most of them are simple in nature and in fact the doctor in paragraph no. 9 of his examination has stated that all the six injuries could have been caused on account of fall in a ditch containing pieces of glass. It is further submitted that it is apparent from paragraph no. 15 of the evidence of P.W. 8 i.e. the Investigating Officer of the present case that blood soaked clothes were not given to the Investigating Officer and that he had not submitted charge sheet under Section 307 of the Indian Penal Code. Thus in nutshell, the submission of the learned counsel for the appellants is that the prosecution has not been able to prove the case beyond all reasonable doubt, the injuries suffered by the informant is not skin deep, admittedly various litigations are pending between the parties, the prosecution has miserably failed to explain the injuries sustained by the informant of the present case, who has not been examined in the present case on account of his natural death during the course of the protracted trial and there is no eye witness to the said occurrence, hence a lenient view ought to have been taken by the learned trial court. In such view of the matter, the learned counsel for the appellants submits that in the totality of the factual situation, this Court may take a lenient view. The learned trial court on scrutiny of the evidence, convicted and sentenced the appellants for the offences



mentioned hereinabove. However, all the appellants have been acquitted for the offences under Sections 307/149, 147 and 148 of the Indian Penal Code and instead they have been convicted under Sections 323/324 of the Indian Penal Code.

Learned counsel on behalf of the State submits that most of the appellants herein are of advanced age, appellant no. 1 being about 64 years of age, appellant no. 3 being 67 and appellant no. 4 being 84 years of age.

The learned Additional Public Prosecutor has admitted herein that the incident is of the year 2003 and the appellants have already undergone the rigors of trial for about 15 years. It is further admitted that the appellants are not hardened criminal, they have a clean antecedent and as such in the totality of the fact situation no penological purpose would be achieved by sending the appellants in jail custody to serve the remaining sentences. The learned A.P.P. further is unable to dispute the fact that there are lacuna in the case of the prosecution.

In the instant case, the Court finds that most of the appellants are of advanced age and admittedly litigation was pending amongst the parties from before, most of the injuries are simple in nature and 15 years have lapsed since the time of occurrence and the appellants herein are not hardened criminals inasmuch as they are having a clean



antecedent and after the occurrence in question, peace and harmony has been maintained since there is no complaint of any misbehaviour by the appellants herein.

Having regard to the totality of the facts and circumstances of the present case, this Court is of the view that ends of justice would be met by disposing of the appeal, considering the fact that the appellants have already sufficiently suffered the ordeal of trial and the pending appeal as also considering the fact that no penological purpose would be served to send the appellants to jail to serve the remaining sentence.

Accordingly, the present appeal is disposed of and while upholding the conviction, the sentence of the appellants herein is reduced to the period of custody already undergone. Since the appellants are on bail, they are discharged from the liability of their bail bonds.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
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