

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.123 of 2013

Arising Out of PS.Case No. -26 Year- 2001 Thana -MOHAMMADPUR District -

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1. Bhola Rai S/o Late Chandar Rai.
 2. Satyendra Rai S/o Late Chandra Rai.

Both residents of village Ghograha, P.S. Mohammadpur, District Gopalganj.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant/s	:	Mr. Mritunjay Prasad Singh, Advocate Mr. Rajesh Kumar Singh, Advocate Mr. Ram Parwesh Kumar, Advocate
For the State	:	Smt Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 01-11-2018

Heard learned counsel for the appellants as well as learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the judgment and order of conviction and sentence dated 24.01.2013 passed by 1st *Ad hoc* Additional Sessions Judge, Gopalganj, in Sessions Trial No. 445 of 2004/368 of 2009, arising out of Mohammadpur P.S. Case No. 26 of 2001, whereby the learned trial Court convicted the accused Bhola Rai under Section 325 IPC and accused Satyendra Rai under Section 324 IPC and sentenced convict Bhola Rai to undergo



three years imprisonment and also slapped him with a fine of Rs. 2000/- and in default of payment of fine to further undergo R.I. for three months under Section 325 IPC and sentenced accused Satyendra Rai to undergo R.I. for two years and also slapped him with a fine of Rs. 1000/- and in default of payment of fine to further undergo R.I. for one and half months under Section 324 IPC.

3. Factual matrix of the case is that Mohammadpur P.S. Case No. 26 of 2001 was instituted under Sections 341/324/307/34 of the Indian Penal Code against the accused Bhola Rai and Satyendra Rai on the basis of *fardbeyan* of Rameshwar Rai, son of Gannu Rai recorded by A.S.I. Md. Hasnain Khan of Police Station Mohammadpur on 15.05.2001 at 3:00 PM at A.P.H.C Mohammadpur with the allegation in succinct that on 15.05.2001 at around 11:00 AM he along with his father Gannu Rai and brother Chandeshwar Rai was cutting soil from his land to fill his door. In the meantime Bhola Rai armed with farsa and Satyendra Rai armed with spade arrived there and forbade them from cutting the soil claiming the land of their own. On protest made by informant Bhola Rai assaulted on his right upper side of the chest (Pakhura) and on the left knee of his father by means of



farsa while Sastyendra Rai assaulted near the left eyebrow of his brother Chandeshwar Rai by means of spade. On hulla made by them, several villagers including Vidya Rai, Jeetendra Rai and others rushed there and on congregation of the witnesses the accused persons left the scene. The bone of contention is cutting of the soil from his field.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused persons and committed the case to the Court of Sessions and after commitment and on transfer finally the case came in the seisin of 1st *Ad hoc* Additional Sessions Judge, Gopalganj for trial.

6. Charge against the accused, namely, Bhola Rai and Satyendra Rai was framed under Sections 307,/34, 326, 324 and 341 of the Indian Penal Code. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.



7. During the course of trial, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses, namely, Jitan Rai @ Jitendra Rai as P.W.1, Harendra Rai as P.W.2, Chandeshwar Rai as P.W.3, Kapil Dev Rai as P.W.4, Raghunath Rai as P.W.5, Gannu Rai as P.W.6, Informant Rameshwar Rai as P.W.7 and Dr Jitendra Prasad, who has examined the injured, as P.W.8. Out of the aforesaid witnesses, P.W.4 turned hostile. The Prosecution has also filed and proved several documents by way of documentary evidence in the case.

8. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The accused persons neither adduced any ocular nor documentary evidence in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the



convicts have preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants that P.W. 1 Jitendra Rai, P.W.2 Harendra Rai and P.W.5 Raghunath Rai do not happen to be eye witness of the occurrence, while P.W.3 Chandeshwar Rai, P.W.6 Gannu Rai and informant P.W.7 Rameshwar Rai are the injured of the case and father and sons and are interested witnesses of the case. Thus, the prosecution case does not stand established by any independent witnesses of the occurrence. There is vital contradiction in the testimonies of witnesses regarding manner of occurrence. It is further submitted that the informant himself happens to be aggressor. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants by adducing consistent, trustworthy, worth credence evidence hence the judgment and order of conviction and sentence passed by the learned trial Court is liable to be set aside and the appellants are entitled to be acquitted.



13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant has supported the prosecution case in toto and rest witnesses including the injured witnesses have also corroborated the prosecution case. The ocular evidence also stands corroborated by the medical evidence and the learned trial Court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of the record, it appears that to substantiate the prosecution case seven material witnesses have been examined by the prosecution. Out of whom P.W.4, Kapil Dev Rai has turned hostile and P.W.7, Rameshwar Rai happens to be informant, P.W.6, Gannu Rai, father of the informant and P.W.3, Chandeshwar Rai brother of the informant and all the aforesaid three persons are injured of the case while P.W.1 Jitendra Rai, P.W.2 Harendra Rai and P.W.5 Raghunath Rai have come forward to corroborate the prosecution case as independent witnesses



of the occurrence. The aforesaid witnesses, namely, P.W.1 Jitendra Rai, P.W.2 Harendra Rai and P.W.5 Raghunath Rai appears to have made an abortive bid to support the prosecution case by stating in their respective examination-in-chief in consonance to the prosecution case to the effect that while the informant and his father and brother were cutting the soil from his land accused Bhola Rai and Satyendra Rai armed with farsa and spade respectively arrived there and forbade them from cutting the soil. On protest made by the informant accused Bhola Rai assaulted on the right upper side of the chest (Pakhura) of the informant and on the left knee of his father by means of farsa while Sastyendra Rai assaulted near the left eye brow of his brother Chandeshwar Rai by means of spade. But they do not appear to be eye witnesses of the occurrence as P.W.2 Harendra Rai in para-12 of his cross-examination has stated that when he arrived at the place of occurrence Gannu Rai, Rameshwar Rai and Chandeshwar Rai were lying in their field sustaining injury. P.W.3 Chandeshwar Rai has stated in para-13 of his cross-examination that the occurrence took place for 5-10 minutes and the witnesses arrived at the place of occurrence 10 minutes later to the occurrence, while as per prosecution case informant had made hulla after



sustaining injury at the head of appellants and responding hulla witnesses had arrived at the place of occurrence and P.W.6 Gannu Rai has stated in para-9 of his cross-examination that the aforesaid witnesses had arrived at place of occurrence within five minutes of making hulla and after assaulting them the accused persons left the scene. The aforesaid prosecution case and testimonies of P.Ws. 2, 3 and 6 conjointly indicates that after assaulting the informant and other two injured the accused persons had left the scene and the aforesaid witnesses had arrived at the place of occurrence after culmination of the occurrence and escaping of the accused persons from the place of occurrence and they have not witnessed the occurrence of assault on the informant and other two injured at the hands of the appellants.

15. So far as the informant and the other two injured i.e. P.W.3 and P.W.6 are concerned, from the perusal of their testimonies it appears that the aforesaid three witnesses in their respective examination-in-chief have unanimously stated that at the time of occurrence the informant was cutting the soil from his field and his father Gannu Rai (P.W.6) and brother Chandeshwar Rai (P.W.3) were present there. In the meantime Bhola Rai armed with



farsa and Satyendra Rai armed with spade arrived there and forbade them from cutting the soil claiming the aforesaid land of their own. On protest made by them, Bhola Rai assaulted on the right upper side of the chest (Pakhura) of the informant and on the left knee of P.W. 6 by means of farsa while Sastyendra Rai assaulted on the left eyebrow of his brother Chandeshwar Rai (P.W. 3) by means of spade. They were rushed to the A.P.H.C., Mohammadpur where they were treated by the doctor. The aforesaid three witnesses were subjected to lengthy cross-examination but barring some minor contradictions which are bound to happen in the testimony of the natural witnesses recorded years after the occurrence due to passage of time, no convincing, cogent and material contradiction have been elicited in their cross-examination having potential to rule out their aforesaid testimony. More so, the aforesaid three witnesses happen to be injured witnesses of the case.

16. From perusal of the injury report of the aforesaid three injured and the testimony of the Dr. Jitendra Prasad (P.W.8), who had examined the aforesaid injured, it appears that informant Rameshwar Rai has sustained bone deep incised wound on right upper chest, grievous in nature



and bone deep incised wound on right thumb, simple in nature. Gannu Rai has sustained bone deep incised wound on left leg near the knee grievous in nature and contusion on the right back, simple in nature while Chandeshwar Rai has sustained muscle deep lacerated wound on left side of forehead near eye, simple in nature caused by hard and blunt substance. Thus, the aforesaid consistent ocular evidence also stands corroborated by the medical evidence.

17. Though, as per the prosecution case Satyendra Rai gave spade blow near the left eyebrow of Chandeshwar Rai by means of spade and the witnesses have consistently stated about giving of the spade blow over the left eye of Chandeshwar Rai by Satyendra Rai but the doctor has found muscle deep lacerated wound on the left side of the forehead near eye of Chandeshwar Rai by means of hard blunt substance like lathi but in view of the consistent ocular evidence, in case of any discrepancy about the nature of injury and the weapon used in the assault, between the ocular evidence and the medical evidence, the ocular evidence will prevail.

18. In view of the aforesaid facts and circumstances of the case and the discussions made by me



hereinabove, I find and hold that the prosecution has successfully substantiated its case and the charges levelled against the appellants by adducing consistent, trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction passed by the learned trial Court does not warrant any interference of this Court and it is upheld.

19. So far as the sentence is concerned, from perusal of the record it appears that the appellant Bhola Rai is about 69 years old while appellant Satyendra Rai is 51 years old at present. Both the appellants have faced the rigors of the trial for considerable period of about 17 years and they have no criminal antecedents, the aforesaid occurrence took place over a land dispute and the Bhola Rai has already gone under custody for 7 months and 4 days while Satyendra Rai for 27 days, hence considering the aforesaid facts and circumstances of the case, the sentence of the appellant Bhola Rai is reduced to the period of custody already undergone by him while appellant Satyendra Rai, who has been convicted under Section 324 IPC is slapped with a fine of Rs.10,000/- instead of awarding substantive punishment in addition to the fine slapped by the learned trial Court which in my considered opinion would subserve end of justice.



Accordingly, this appeal is dismissed with the aforesaid reduction and modification in the sentences, awarded by learned Trial Court.

(Prakash Chandra Jaiswal, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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