

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2 of 2003

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1. BISHUN YADAV @ KISUN YADAV son of Chullai Yadav
 2. Nageshwar Yadav son of Munger Yadav
 3. Manu Yadav @ Mannu Yadav son of Chullai Yadav
 4. Jageshwar Yadav son of Santoy Yadav, all residents of Village-Paharpur, Kundhar Tola, Gidhaur, Laxmipur, Distt-Jamui.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 43 of 2003

MANOJ YADAV son of Bateshwar Yadav, resident of Paharpur, Kundhar Tola, PS- Laxmipur, Distt-Jamui.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2 & 43 of 2003)

For the Appellant/s : Mr. Anwar Karim, Advocate

For the Respondent/s : Mr. Syed Ashfaq Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

14-05-2019

As Cr. Appeal (SJ) No. 2/2003 wherein Bishun Yadav

@ Kisun Yadav, Nageshwar Yadav, Manu Yadav @ Mannu

Yadav, Jageshwar Yadav are the appellants, Cr. Appeal (SJ) No.

43/2003 wherein Manoj Yadav is the appellant, commonly

originate against the judgment of conviction and order of

sentence dated 30.11.2002 passed by 3rd Additional Sessions

Judge, Jamui in Sessions Trial No. 396/1994, on account

thereof, have been heard together and are being disposed of by a



common judgment.

2. It is evident that appellant, Manoj has been found guilty for an offence punishable under Section 307 IPC and sentenced to undergo RI for 7 years under Section 148 IPC and sentenced to undergo RI for two years while appellants, Bishun Yadav @ Kisun Yadav, Nageshwar Yadav, Manu Yadav @ Mannu Yadav, Jageshwar Yadav have been found guilty for an offence punishable under Section 147 IPC and sentenced to undergo RI for one year. Further, Bishun Yadav has been found guilty for an offence punishable under Section 307/109 IPC and sentenced to undergo RI for 7 years, appellant, Nageshwar Yadav has been found guilty for an offence punishable under Section 325 IPC and sentenced to undergo RI for 4 years, Jageshwar Yadav and Mannu Yadav have been found guilty for an offence punishable under Section 323 IPC and sentenced to undergo RI for six months, independently, with a further direction to run the sentences concurrently.

3. Gopal Mandal (PW 4) while was admitted at Sadar Hospital, Jamui in an injured condition gave his Fardbeyan on 06.07.1993 at about 11.45 AM disclosing therein that on the same day at about 7.30 AM after coming to know about grazing of his Moong Crop by domestic animals of Nageshwar Yadav,



Mannu, Jugeshwar from a field lying at Chirauna Bahiar he along with his nephew, Kailash Mandal rushed and forbade them. During course thereof, all of them began to raise alarm attracting Bishun Yadav as well as Manoj Yadav. Manoj was armed with sword. When they reached at his field, on an order of Bishun Yadav, Manoj Yadav gave a sword blow over his head causing injury thereupon. Blood oozed out. He fell down on the ground. After that, Nageshwar gave Lathi blow over his hand resultantly, fracture of finger. Manu Yadav gave Lathi blow over his back. His nephew, Kailash Mandal came, was assaulted by Yogesh with Lathi while he tried to save. In order to save themselves, they raised alarm attracting Parmeshwar Mandal (not examined), Banarsi Mandal (not examined) Surendra Mandal (not examined) and others seeing whom, the accused persons fled away.

4. After registration of Laxmipur PS Case No. 138/1993, investigation commenced and concluded by way of submission of charge-sheet on the basis of which cognizance was taken, paving the way of trial which ultimately, concluded by way of verdict of guilt and sentence against the appellants, subject matter of these appeals.

5. Defence case as is evident from the mode of



cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that it happens to be the prosecution party who brutally assaulted the appellants/accused and on account thereof, on the Fardbeyan of Manu Yadav, Laxmipur PS Case No. 138/1993 was registered and only to safeguard their interest, this case has, later on, been instituted with false and frivolous allegations. Furthermore, three DWs also have been examined in order to substantiate the defence version.

6. In order to substantiate its case, prosecution has examined altogether 6 PWs out of whom PW-1, Shankar Mandal, PW-2, Kailash Mandal, PW-3, Madan Mandal, PW-4, Gopal Mandal, PW-5, S.K. Thakur, PW-6, Dr. V.K. Gupta, as well as has also exhibited Ext-1, Signature on Fardbeyan of Kailash Mandal, Ext-2, Formal FIR, Ext-3, Fardbeyan, Ext-4 and 4/1, Injury report. In likewise manner, defence has also examined three DWs i.e., DW-1, Bhola Prasad, DW-2, Tinku Kumar Sinha and DW-3 Sunil Kumar Sinha.

7. While assailing the judgment of conviction and sentence, it has been submitted at the end of learned counsel for the appellants that there is an admission at the end of the prosecution witnesses that counter case has been instituted at the



end of the appellant, Manu Yadav relating to the same occurrence prior to the registration of this case and that being so, in the background of admission of the prosecution witnesses to that extent, the non explanation of the injuries over the person of appellants is indicative of the fact that the prosecution party intentionally, *mala-fidely*, knowingly, suppressed the true version of manner as well as genesis of the occurrence. Consequent thereupon, the whole prosecution is fit to be brushed aside.

8. It has further been submitted that not even a single independent witnesses has been examined in this case. That being so, the evidence is to be seen with suspicious eyes, more particularly, being that of interested, partisan, inimical one. When the ocular evidence is properly scrutinized, it is apparent that there happens to be material exaggeration as well as inconsistency whereupon their evidences are fit to be disbelieved. Furthermore, it has also been submitted that there happens to be inconsistency in between oral as well as medical evidence whereupon, the reliability of the evidences of the witnesses is found completely lost.

9. Learned counsel for the appellants also submitted that IO has not been examined, on account thereof, serious



prejudice has been caused to them, not only relating to the status of the witnesses on account of presence of material exaggeration which the appellants been deprived of to bring on record rather, in the background of presence of case and counter case, the place of occurrence was also to be properly scrutinized coupled with the fact that who was the aggressive. That being so, the non examination of the IO is another vital lacuna in the prosecution case, sufficient to unbraid the finding. In likewise manner also submitted that the statement recorded under Section 313 CrPC is not at all in conformity with the requirement so prescribed thereunder.

10. It has also been submitted that in worst case, from the evidence available on the record, it is apparent that the dispute arose in spur of moment without any intention or knowledge to commit murder of Gopal and that being so, even considering that there was assault, it was without pre-meditation in order to commit murder and so, no offence under Section 307 IPC is made out. Furthermore, it has also been submitted that the occurrence is of the year 1993 and even after conviction and sentence, the appellants remained under custody and so, the sentence be modified as undergone.

11. Learned counsel for the appellants also referred



the case of *Bechan Rai @ Ram Bahadur Rai v. The State of Bihar:2015 (I) BBCJ 238* , *Baso Thakur v. The State of Bihar: 2015(1) BBCJ 352*, *Ragho Singh v. The State of Bihar: 2015(3) BBCJ 106*.

12. On the other hand, learned APP while controverting the submission made on behalf of the appellants, submitted that the finding recorded by the learned lower court is in accordance with law. It has also been submitted that from perusal of the judgment impugned, it is evident that learned lower court had considered each and every aspect so persisting and then delivered the verdict being well reasoned and that being so, did not attract interference.

13. In order to properly appreciate the submission raised on behalf of appellants when the evidence of PWs have been gone through, it is evident that I.O is the PW-5, who, the reason best known to the prosecution has not been cross-examined. It is further evident that the witnesses have admitted counter case but with an explanation that the case instituted by the accused Manu Yadav happens to be false as the same has been instituted by way of counter blast in order to save their skin. Furthermore, from the evidence of PW-1, (para-11), it is crystal clear that they have been acquitted relating to counter



case. Three DWs have been examined at the end of the appellants in order to substantiate that Gopalji (informant PW 4) had assaulted Manu Yadav. Further, they all have admitted that as the domestic animal of Manu Yadav had grazed the Moong Crop of Gopalji and for that, he begged pardon, even then Manu was assaulted but, they have not stated that Gopalji was ever assaulted nor they admitted presence of injuries over the person of Gopalji as well as Kailash Mandal. In likewise manner, DW-1 had not disclosed the weapon by which Gopalji has assaulted while DW-2 had deposed that Gopalji had assaulted Manu with Lathi. DW-3 had stated that Kamal and Ashok who were sons of Gopalji had assaulted Manu Yadav with Lathi. None have spoken about injury having over person of Manu. None had spoken whether Manu was taken to hospital. No injury report has been brought upon record as an exhibit. However, from the evidence of Dws, it is crystal clear that the motive as alleged at the end of prosecution is found admitted, side by side, also cast doubt over defence version.

14. Now, another aspect of instant case has to be seen which has got bearing over the finding. While cross-examining Kailash Mandal (PW 2), one of the injured, it was suggested to him para-14, as *“it is not a fact that Maar-peet took place from*



both the sides". The witnesses further answered that only accused persons have assaulted. That means to say, there happens to be implied admission at the end of appellant over assault as well as injury having over persons of Gopal and Kailash.

15. The aforesaid theme has been taken up on primacy in the background of the steps having taken at the end of appellants during conduction of trial, virtually, admitting the prosecution version, but tried to explain the same through different ways. Be that as it may, the burden was upon the prosecution, no evidence is to be seen whatever been adduced at their end.

16. Now coming to the prosecution case, the first of all evidence of the doctor, PW-6 is to be taken note of. He had examined both the victims, namely, Gopal Mandal as well as Kaislash Mandal on 06.07.1993 at Sadar Hospital, Jamui and found the following:-

Gopal Mandal

(i) Incised wound on left middle parietal 3" x 1/2" touching bone deep with profused bleeding, delirium, semi conscious, vomiting and headache, left pupil constricted, clothes was soaked with blood, dangerous to life. Accordingly, grievous in nature.

(ii) Lacerated wound on left index finger with pain, swelling, tenderness 1/2" x 1/3" bone deep with bleeding X-ray shows fracture of



proximal phalengs left index finger.

(iii) Lacerated wound on left middle finger 1/3" x 1/3" skin deep with bleeding simple in nature.

Injury no.1 was caused by sharp cutting object. Injury No.2 and 3 by hard object caused within six hours. Nature-grievous, dangerous to life.

Kailash Mandal

(i) Bruise on right upper arm 6" x 1".

(ii) Bruise on right thigh 4" x 1".

(iii) Bruise with swelling left calf 2" x 1/2",
All simple caused by hard and blunt object.

17. During cross-examination at para-4, he had stated that he had not X-rayed the injury no.1 of Gopal Mandal which has been taken a ground at the end of learned counsel for the appellant that this witness has not supported the case of the prosecution, more particularly, evidence of PW-4, the injured, Gopal Mandal as he had claimed that X-ray of his head was done. He has further stated that without X-ray at the first instance, he had found injury no.1 grievous and dangerous to life on the basis of feature of injury no.1 and at para-5 has explained while he has categorized the injury to be grievous and dangerous to life as well challenging that the injury should be extensive and cutting of large artery. Paragraphs-6, 7 and 8 are the cross-examination with regard to injuries no. 2, 3, . Furthermore, at para-9, 10, 11, 12, he had denied the suggestion



that for categorizing injury to be grievous or dangerous to life, there should be cutting of bone and without X-ray it could not be identified. Then he had denied the suggestion that patient was not carrying injuries as identified by him.

18. PW-5 is the I.O. who after registration of the case was entrusted with the investigation and during course thereof, recorded further statement of the informant, visited the place of occurrence and has identified the PO to be the land belonging to the informant, Gopal Mandal lying at Chilona Bahiar and further identified the same by boundary South-Manu Yadav, West-Kailash Mandal, East-barren land. He had also found 'Moong crops' damaged. He had recorded statement of the witnesses, procured injury report and then, after completing investigation submitted charge-sheet. Non appeared to cross-examine him and that being so, he was discharged.

19. PW-1, Shankar Mandal had stated that on the alleged date and time of occurrence while he was engaged in doing menial work at Chilona Bahiyar, after hearing alarm raised by Nageshwar, Jageshwar and Manu, he rushed to the field of Gopal Mandal. After arrival there, he had seen Gopal scolding Nageshwar, Manu and Jageshwar as to why they were engaged in getting his Moong Crop grazed by their animals over



which, an altercation took place and during course thereof, Bishun and Manoj armed with sword, again corrected, only Manoj was armed with sword, came and on the order of Bishun, Manoj gave a sword blow over the head of Gopal causing injury thereupon. Gopalji fell down whereupon, Nageshwar gave Lathi blow over his left hand causing fracture of finger. Manu Yadav assaulted over back of Gopalji. Kailash Mandal was assaulted with lathi by Jageshwar. Anyhow, at their intervention, they managed to save Gopalji. Claimed identification of the accused. In para-5 of his cross-examination, he had stated that victim's village lies at the distance of more than 500 yards while village of accused persons lies at a distance of 100 yards. The had admitted with regard to presence of counter case bearing Laxmipur PS Case No. 137/1993 and at para-11, he had admitted that they have been acquitted. In para-6 had stated that he along with others took Gopalji to the Sadar Hospital, Jamui. At para-8, he had stated as to how they have come to Jamui Sadar Hospital. In para-9, 10, there happens to be contradiction but gone futile as the IO, PW-5 was not at all cross-examined.

20. PW-2 had deposed that on 06.07.1993 at about 7.30 AM, he had gone to Chilona Bahiyar where he found, Nageshwar, Manu and Jageshwar engaged in getting Moong



Crop of Gopal Mandal grazed by their domestic animals (Cow/buffalo) which was resisted by Gopalji. On this, Manu, Nageshwar and Jageshwar raised alarm whereupon, Manoj and Bishun came and on the order of Bishun, Manoj gave sword blow over head of Gopalji causing injury thereupon, as a result of which, he fell down. Thereafter, Nageshwar gave Lathi blow causing injury over his finger and Manu gave Lathi blow over back. When he rushed in rescue, he was assaulted by Jageshwar with Lathi over his right thigh, right hand, below left knee. Parmeshwar Mandal, Banarsi Mandal, Surendra Mandal along with others came on an alarm raised by them and rescued. Then thereafter, Gopalji was lifted to hospital. Police came at Jamui Hospital, recorded his Fardbeyan over which he put his signature (identified). Identified the accused. During cross-examination at para-10, he had stated that quarrel took place for 1-2 minutes. He had also gone to Government Hospital, Jamui along with Gopalji. He had not seen injury over person of accused, Manu Yadav. In para-11, he had stated that cow/buffalo of co-accused persons were grazing since before their arrival. In para-12, he had stated that all the accused persons were there since before having lathi in their hands. All the witnesses were present since before in the vicinity. In para-13, he had stated that



after hearing uproar raised by the accused persons, Manoj and Bishun came from their house as the PO lies near to their house. All the five indulged in criminal activity. Witnesses came then thereafter. He denied the suggestion given under para-14 that there was free-fight amongst both the parties. In para-15, he had stated that seeing the witnesses, the accused persons fled away. In para-16, he had stated that Manoj gave sword blow from a distance of one and a half hands. He was assaulted by Lathi. In para-17, he had stated that he happens to be nephew of Gopalji. In para-18, he had stated that in order to save his skin, Manu Yadav had filed a false case against Gopalji. Then had denied the suggestion that being the nephew of Gopalji, he has deposed falsely.

21. PW-3 has deposed that on the alleged date and time of occurrence, he was at his house. After hearing the alarm, he rushed towards Chilona Bahiyar and then, had seen Gopalji lying in his field and also seen Manoj, Jageshwar, Nageshwar and Manu running toward their house. Gopalji was lying. Blood was coming from his head, from finger of left hand. Parmeshwar Mandal, Banarsi Mandal, Surendra Mandal were present since before. Gopalji had not disclosed anything to him. Identified the accused. During cross-examination at para-6 he



had stated that occurrence took place on account of grazing of Moong Crop. It has also been stated that the persons of village-Kandhar used to graze the crops by their domestic animals and on account thereof, there was quarrel amongst both the villagers. Then at para-7 had stated that Manu Yadav had instituted a case against Gopalji and others. Then had denied the suggestion that he has deposed falsely.

22. PW-4 is the informant/injured. He has stated that on the alleged date and time of occurrence, while he had gone to see his field in the Bahiyar, he had found Manu, Nageshwar, Jageshwar engaged in getting his Moong Crop grazed by their domestic animals. He along with his nephew Kailash resisted whereupon, they began to raise alarm attracting Bishun and Manoj. Bishun came armed with Lathi while Manoj with sword. At the instance of Bishun, Manoj gave sword blow over his head as a result of which he sustained injury. Blood oozen out. He fell down. Thereafter, Nageshwar assaulted him with Lathi over his hand and Manu assaulted with Lathi over his back. Kailash Mandal intervened who was assaulted by Jageshwar with Lathi. After hue and cry, armeshwar Mandal, Banarsi Mandal, Surendra Mandal came and rescued them. Thereafter, they were taken to hospital where police came and recorded his



Fardbeyan. Identified the accused. During cross-examination at para-6, he had stated that he is unable to disclose Khata and Khesra no. of the P.O but, his land lies in all the sides of boundary. In para-8, he has stated that Manu had instituted a false case against him and others in defence. At para-9, he has stated that Manu had instituted the case at Gidhaur while he had instituted at Jamui. In para-11, he has admitted that in a way to Jamui, Gidhaur lies but, as he was seriously injured, so he was directly taken to Jamui. In para-15, he has stated that there happens to be OP as well as PMC at Gidhaur. At para-20, he had stated that Manu Yadav was not assaulted. At para-21, he has stated that the house of the accused persons lies at the distance of ½ kilometers from the place of occurrence. In para-24, he has stated that *Yadavas* used to graze their domestic animals over the barren land at Chirauna Bahiyar. In para-27, he has stated that all the accused persons are *Gotias*. In para-29, he has stated that the occurrence took place at the spur of the moment. In para-30, he has stated that he protested whereupon, quarrel commenced. In para-31, he has stated that they have not abused the accused persons. Then has denied the suggestion that they have assaulted Manu Yadav and snatched away his Taweez. In para-33, he has deposed that blood had fallen from his injuries



over the earth. In para-34, he has stated that he was taken to the hospital, Jamui directly. In para-39, he has stated that he was assaulted with sword from the distance of two and a half hands. Sword was one and a half hand in length. In para-40, he has stated that seeing sword in the hand of Manoj Yadav, at the very moment, he did not become afraid of. At para-41, he has stated that when Kailash intervened, he was assaulted. In para-42, he has stated that he remained at hospital for eight days. Then has denied the suggestion that in order to procure false injury report, he got himself admitted at Sadar Hospital, Jamui.

23. From the evidence available on the record as discussed hereinabove, it is clearly evident that there happens to be no controversy with regard to the place of occurrence, Moong field belonging to Gopalji, PW-4 and that has also been corroborated, substantiated by the objective finding of the IO, more particularly, para-6 thereof. In likewise manner, there happens to be no controversy that Moon Crop of the informant, PW-4/injured was grazed by the cow/buffalo of accused/appellant and for that an excuse was tendered.

24. Furthermore, it is also evident from the evidence of PWs, the suggestion having been given to them during course of cross-examination also suggest that at the place of occurrence



Maar-peet took place on account of grazing of Moong. Now coming to the manner of occurrence, is also not at all subject to challenge at the end of the appellants. The interesting feature whatever is coming out from para-14 of PW-2, one of the injured, Kailash Mandal that both the parties have indulged in free-fight but, no such kind of suggestion has been given to PW-4, the informant, nor any of the Dws had corroborated the same. So far assault by means of sword is concerned, it is found unblemished corroborated by the doctor, PW-6.

25. Now remains the defence version, although, there happens to be an admission at the end of the PWs that appellant, Manu had also launched a case against the prosecution party but, neither the injury report, if any, relating to any of the appellants, has been suggested, substantiated and that being so, that remained under mystery. No challenge also happens to be over acquittal. In the aforesaid background, the decision so cited on behalf of appellants are applicable, as I.O. has already been examined, as well as considering the conduct of the appellant during course of trial.

26. The nature of injury over the person of PW-4 and the weapon so used for infliction and further location of the body speaks a lot. Consequent thereupon, the finding arrived at



by the learned lower court does not attract interference. Hence,
both the appeals are dismissed.

27. Appellants are under custody wherein they will
remain till saturation of the period of sentence.

(Aditya Kumar Trivedi, J)

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