

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.193 of 2014

Arising Out of PS. Case No.-101 Year-2010 Thana- MANIGACHI District- Darbhanga

1. Sushila Devi w/o- Shyam Prasad Chaupal
 2. Raj Kumar Chaupal S/O- Late Saryug Chaupal
 3. Binod Chaupal S/O- Jageshwar Chaupal
- All residents of Vill.- Bhasaur, P.S.-Manigachhi Distt.- Darbhanga (Bihar)
... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 187 of 2014

Arising Out of PS. Case No.-101 Year-2010 Thana- MANIGACHI District- Darbhanga

1. Shankar Chaupal Son of Raj Kumar Chaupal
2. Manoj Chaupal Son of Jageshwar Chaupal
3. Sheo Lal Chaupal Son of Raj Kumar Chaupal
4. Mano Devi Wife of Jageshwar Chaupal
5. Chanda Devi Wife of Binod Chaupal
6. Anita Devi Wife of Manoj Chaupal All resident of Village - Bhasaur, P.S. Manitgachhi, District Darbhanga (Bihar)

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 193 of 2014)

For the Appellant/s : Mr. Rakesh Kumar, Adv.
Mr. Vinay Kumar Mishra

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 187 of 2014)

For the Appellant/s : Mr. Rakesh Kumar, Adv.
Mr. Vinay Kumar Mishra, Adv.

For the Respondent/s : Mr. S.A.Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 25-10-2019

Vide judgment of conviction dated 27.3.2014 and order
of sentence dated 28.3.2014 passed by the FTC III, Darbhanga in
S.Tr.No. 585/2010 arising out of Manigachhi P.S.Case No.



101/2010 appellants Jageshwar Chaupal (since deceased), Raj Kumar Chaupal and Binod Chaupal have been found guilty for an offence punishable under section 307/34 I.P.C. and each one has been sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.1,000/- and in default thereof, S.I. for one year additionally, appellants Shankar Chaupal, Manoj Chaupal, Sheo Lal Chaupal, Mano Devi, Chanda Devi and Anita Devi have been found guilty for an offence punishable under section 323/34 I.P.C. and each one has been sentenced to undergo R.I. for six months.

Jaleshwar Chaupal (P.W.3) gave his Fard Beyan while he was admitted at Primary Health Centre, Manigachhi on 25.5.2010 at about 1 P.M. disclosing therein that on the same day at about 6 A.M. Binod Chaupal, son of Jageshwar Chaupal was throwing water which was accumulated near land-pipe towards his courtyard as well as road which was protested by his wife Ashiya Devi (P.W.5). On account thereof, Binod Chaupal and Jageshwar Chaupal, who happens to be his stepbrother began to abuse. They have also disclosed that no share will be given to them. During midst thereof, Raj Kumar Chaupal @ Bauku provoked them to assault, whereupon Jageshwar Chaupal, Binod Chaupal armed with Bhala and Manoj Chaupal armed with lathi came inside his



courtyard and then, with an intention to kill Jageshwar Chaupal gave Bhala blow to his wife which caused injury over her left hand, as a result of which, she became injured and fell down. They were joined by Maniya Devi, Chanda Devi, Anita Devi, Shankar Chaupal, Shivilal Chaupal armed with lathi and Danda, bricks and then they began to assault his wife with Danda as well as bricks, as a result of which his wife began to cry. Seeing this, he alongwith his son Satya Narain Chaupal came in rescue, whereupon Jageshwar Chaupal and Binod Chaupal gave Bhala blow, as a result of which he sustained injury over his head, stomach, knee and became injured, whereupon fell down. Then thereafter the other accused persons began to assault him with lathi, his son was assaulted with Bhala causing injury over left side of the back of shoulder, right hand, as a result of which he also became injured. The motive for the occurrence has been shown as his father had married twice. Jageshwar Chaupal happens to be son from his first wife while he happens to be the issue from the second wife and so, Jageshwar Chaupal is saying that he will not allow partition and in the aforesaid background he used to quarrel. Today also, under such nefarious design water was being thrown towards his house and then, having been protested at his end provoked them,



whereupon they have been severely injured. Saroj Devi, Shanti Devi, Bimla Devi and others have seen the occurrence.

After registration of Manigachhi P.S.Case No. 101/2010 investigation commenced and concluded by way of submission of charge sheet, facilitating the trial, meeting with the ultimate result, subject matter of the instant appeal.

Defence case as is evident from the mode of cross-examination as well as statement recorded under section 313 Cr.P.C. is that of complete denial. It has further been pleaded that no such kind of occurrence had ever taken place rather the prosecution party having been armed assaulted Binod Chaupal and for that, on the Fard Beyan of Jageshwar Chaupal, Manigachhi P.S.Case No. 102/2010 has been registered. Only to save their skin from the counter case, this false case has been instituted having false and frivolous allegation. Although, no oral evidence has been adduced but the F.I.R. as well as charge sheet of Manigachhi P.S.Case No. 102/2010 have been made Ext. A and B.

In order to substantiate its case prosecution has examined altogether 9 P.Ws., who are P.W.1 Sanjiv Chaupal, P.W.2 Shambhu Chaupal, P.W.3 Jaleshwar Chaupal, P.W.4 Rajendra Chaupal, P.W.5 Ashia Devi, P.W.6 Satya Narayan Chaupal, P.W.7 Bharti Prasad Yadav, P.W.8 Surendra Kumar and P.W.9 Raj Mohan



Singh as well as has also exhibited Ext.1 series injury report issued by P.W.7, Ext. 2 series injury report issued by P.W.9, Ext.3 formal F.I.R. As is evident defence has also exhibited Ext.A F.I.R. of Manigachhi P.S.Case No. 102/2010 and Ext.B CC of Manigachhi P.S.Case No. 102/2010.

Learned counsel for the appellants has confined his submission on the different aspect i.e. without challenging veracity of evidence of the witnesses much less hostility, it has been submitted that from the evidence of the injured witnesses it is apparent that there was no premeditation. The dispute arose on account of flow of drainage. It has also been submitted that the motive so assigned in the Fard Beyan that being the stepbrother and appellant no.1 Jageshwar Chaupal (since deceased) was not ready to partition the property, has been melted down at the end of the informant Jaleshwar Chaupal himself, who stated that Jageshwar Chaupal is his full brother and no land dispute survives since before. It could further be traced out from his evidence that when he fell down, no assault by Bhala was ever made and in likewise manner Binod was also assaulted and there was no intervening circumstance on account thereof it could be fairly inferred that there was neither knowledge nor intention to commit murder rather it is spur of moment during course of an altercation



which resulted in Mar Pit followed with brandishing of weapon and case and counter case suggest that it was misfortune which occurred. Also submitted that the occurrence is of the year 2010. It has also been submitted that none of the appellant has got criminal antecedent.

Apart from this, learned counsel for the appellant has also drew attention towards the medical evidence. Although there happens to be an allegation that all the injured that means to say Jaleshwar Chaupal (P.W.3), Ashia Devi (P.W.5) and Satya Narayan Chaupal (P.W.6) were given bhala blow but the injuries as per evidence of P.W.7 who had firstly examined all the injured, found lacerated wound without any finding that it was caused or it could be caused by means of sharp pointed weapon, that means bhala. On this score, he drew attention that all the injuries over the person of Jaleshwar Chauhan (para 6) has been found simple in nature and so, is found inconsistent with the finding of P.W.8, another doctor. In its continuity learned counsel for the appellants also drew attention toward the objective finding of the I.O. (P.W.9) Para-2, relating to place of occurrence wherein he specifically pointed out the place of occurrence to be bathan of accused Jageshwar Chaupal which is soil as well as thatched house. The Mar Pit took place in front of the aforesaid bathan. He also shown



boundary of the P.O. as North Jageshwar Chaupal, South Jageshwar Chaupal, East Gangai Chaupal and West Fekan Chaupal and on this very score, it has been submitted that absence of Jaleshwar Chaupal did justify counter version and further, even if discarding the same is suggestive of the fact that the prosecution party happens to be aggressor and so, presence of injuries over the person of the prosecution party, if any, allow the appellants to be let off as period having undergone and to justify the same, also referred to the case of **Illathody Beeran vs. State of Kerala & anr.**, reported in (2016)14 SCC 286, more particularly para-8.

Learned Addl. P.P. did not accede with the submission having made on behalf of the appellants on the score of presence of the injuries over the person of the injured. However, fairly concedes with regard to the finding of the doctor more particularly P.W.7 as well as objective finding of the I.O. (P.W.9).

From the record it is evident that both the parties, who are own kith and kin represent lower-strata of the society and further, are illiterate. It is further evident that the dispute arose with regard to flow of drainage and the allegation as levelled is presence of the appellants inside the courtyard of the informant (P.W.3) where assault was made at the end of the appellants but the finding of the I.O. (P.W.9) appears to be contrary to the same. Apart from this, there happens to be version and counter version and



more particularly from the evidence of P.W.3, para-4 he has specifically stated that just after falling he was not at all assaulted by bhala. There was no intervening circumstance, whereupon it could not be said that the appellants were actually possessing intention or knowledge to commit murder or the assault which were being given would cause murder irrespective of presence of the injuries, moreover, being lacerated one so designated by the doctor (P.W.7). Thus, considering the cumulative effect in consonance with the period of litigation which both the parties are fighting coupled with the principle laid down by the Apex Court as referred to hereinabove as well as having absence of the criminal antecedent, this justify acceptance of the submission having made on behalf of learned counsel for the appellants.

Consequent thereupon, maintaining the conviction having inflicted by learned lower court against all the appellants, sentence is modified as already undergone. In terms thereof, these two appeals are disposed of. The appellants are on bail, hence are discharged from the liability of their bail bonds.

(Aditya Kumar Trivedi, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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