IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.875 of 2016

Arising Out of PS. Case No.-70 Year-1990 Thana- PATEPUR District- Vaishali

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1. Hardeo Singh
2. Ramprit Singh, both are sons of Late Badri Singh

Both are residents of village-Maudah Chatur, P.S.-Patepur, District-Vaishali.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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with

CRIMINAL APPEAL (SJ) No. 1016 of 2016

Arising Out of PS. Case No.-70 Year-1990 Thana- PATEPUR District- Vaishali

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1. Suresh Prasad
2. Haresh Prasad Both are sons of Late Ramasray Prasad, Resident of Village-Maudah Chatur, P.O.- Maudah, P.S.- Patepur, District- Vaishali.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance :
(In CRIMINAL APPEAL (SJ) No. 875 of 2016)
For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Mr. Nilesh Kumar
Mr. Ritu Raj Raman
For the Respondent/s : Mr.Sri Zeyaul Hoda, APP
(In CRIMINAL APPEAL (SJ) No. 1016 of 2016)
For the Appellant/s : Mr. Madanjeet Kumar, Adv.
Mr. Kanchan Kumari
Mr. Anil Kumar
For the Respondent/s : Ms. Abha Singh, APP.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date : 25-10-2019

Cr. Appeal (SJ) No. 875/2016, wherein Hardeo Singh and Ramprit Singh are the appellants and Cr. Appeal. (SJ) No. 1016/2016, wherein Suresh Prasad and Haresh Prasad are the appellants, originate from common judgment of conviction dated

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19.09.2016 and order of sentence dated 23.09.2016 passed by the learned Addl. Sessions Judge IIIrd, Vaishali at Hajipur in Sessions Trial No. 350/1999, arising out of Patepur P.S. Case No. 70/1990, whereby and whereunder they all have been found guilty for an offence punishable under Section 323 of the Indian Penal Code and sentenced to undergo S.I. for six months as well as to pay fine appertaining to Rs. 500/-, in default thereof, to undergo S.I. for 20 days, under Section 341 of the Indian Penal Code and sentenced to undergo S.I. for 15 days as well as to pay fine appertaining to Rs. 200/-, in default thereof, to undergo S.I. for 10 days, under Section 307/34 of the Indian Penal Code and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs. 2,000/- each and in default thereof, to undergo S.I. for two months with further direction to run the sentences concurrently, on account thereof, have been heard together and are being decided by a common judgment.

Ravindra Singh (PW5) gave his Fardbeyan on 13.09.1990 at about 11:30 AM while he was present at State Dispensary, Mahua, disclosing therein that on the same day about 4 A.M. while his father, Pulkit Singh, was going to meet nature's call, and proceeded towards east to his house, Hardeo Singh, s/o Badri Singh, Suresh Prasad, s/o Ramasray Prasad, Haresh Prasad,

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s/o Ramasray Prasad, Ramprit Singh, s/o Badri Singh and Jhagru Singh, s/o Khublal Singh encircled him over road and then, began to assault with *lathi* and *danda*. After hearing hue and cry, he along with his mother Marni Devi rushed. As soon as they reached, Suresh gave *Bhala* blow over neck of his mother Marni Devi, as a result of which, she sustained injury over her neck and fell down. Blood has oozen out and spread over the ground. He rushed in rescue whereupon, Hardeo Singh gave blow with the back portion of axe over his head, as a result of which, he also sustained injury and blood has oozen out. On hue and cry, Rakesh Kumar, s/o Rajendra Pd. Singh and others, came in rescue. Land dispute has been shown to be motive of the occurrence.

After registration of Patepur P.S. Case No. 70/1990, investigation commenced and concluded by way of submission of charge-sheet, facilitating the trial, meeting with ultimate result, subject matter of instant appeal.

Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial. It has further been pleaded that the prosecution party were the aggressor and on the alleged date and time of occurrence, they had assaulted, whereupon on the *Fardbeyan* of Ramasray Prasad, Patepur P.S. Case No. 71/1990 has

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been registered and in order to save their skin, this case has been instituted levelling false and frivolous allegation.

In order to substantiate its case, prosecution has examined altogether 10 Pws, who are, PW1- Md. Saudik Alam, PW 2- Chandar Devi, PW 3- Marni Devi, PW 4- Pulkit Sahni, PW 5- Ravindra Singh, PW6- Ram Lagan Singh, PW 7- Rakesh Kumar Singh, PW8- Deepak Kumar, PW9- Dr. Subhash Jaiswal and PW10- Piyush Kant as well as has also exhibited Ext. 1 – F.I.R., Ext. 2- Signature of Ram Lagan Singh over the *fardbeyan,* Ext. 3 series- police requisition regarding injuries of respective injured, Ext. 4 series- injury report of respective injured and Ext. 5- endorsement over the *Fardbeyan*. On the other hand, though no oral evidence has been adduced at the end of defence, however, Ext. A- C.C. of F.I.R. of Patepur P.S. Case No. 71/1990 and Ext. B- C.C. of Charge-sheet of Patepur P.S. Case No. 71/1990 have been brought upon record.

So far as status of witnesses are concerned, PW 1 and PW 8 are formal in nature, while PW 6 and PW 7 have turned hostile. So, the prosecution rest its case over the shoulder of PW 2, PW3, PW4 and PW 5 corroborated by PW 9 and PW 10.

PW 9 is the doctor, who had examined the concerned injured on 13.09.1990, on which date, he was medical Officer-in-

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charge of the Mahua PHC and found the following:

(A) Ravindra Singh- (i) one bleeding wound measuring about 1 ½" x 1/2"x muscle deep over vault of head; simple in nature caused by hard cutting substance, such as *Farsa*. Time - within 6 hrs.

(B) Smt. Marni Devi- (i) one penetrating wound over base of neck; wound of entry-3"x1"x1/2". Wound of exit – 1 ½" x1"x1/2", length 2 ½", vein partially cut and bleeding; (ii) tenderness over front of chest; Injury no. (i) is caused by sharp cutting weapon, such as *Bhala*; Injury No. (i) might be considered dangerous to life, as there was chance of shock due to loss of blood, Injury No. (ii)- simple, age of injury - within 6 hrs.

(C) Pulkit Singh - (i) one bruise and swelling measuring about 3"x1" over right thigh, in the front and middle; simple caused by hard and blunt object, such as *Lathi*;

All the injury reports have been exhibited. During course of cross examination, at para 6, he has been cross-examined with regard to injury of Mohini Devi and, submitted that it was bleeding injury that means to say, red blood was being coming out therefrom but, there was no mention whether injury was moist or dry. In para 7 he has stated that wound of Ravindra Singh was muscle deep not to bone deep. In para 10 he has stated that he had

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not mentioned the injury might have caused by *Farsa*. Then, he denied the suggestion that the injury reports happen to be concocted.

PW 3 is Marni (Mohini) Devi, one of the injured. She has deposed that informant Ravindra Singh is her son. Occurrence is about 14 years ago. It was 4:00 A.M. She was at her *Bathan* situated at her *Darwaja* along with her son Ravindra Singh and husband Pulkit Singh. At that very time, Pulkit Singh was going to meet nature's call and during course thereof, Haresh, Suresh, Ramprit, Jhagru Singh and Hardeo apprehended him and began to assault. At that very time, Suresh was armed with *Bhala*, Hardeo was armed with axe, Haresh, Jhagru and Ramprit Singh were armed with *lathi*. Her husband had sustained *lathi* blow over his leg, back. While her husband was being assaulted, she along with her son rushed in rescue and during course thereof, Suresh gave *Bhala* blow over her neck causing injury, as a result of which, she fell down. Her son was about to lift her and at that very moment, Hardeo Singh gave blow with the back portion of axe over his head sustaining injury. Blood had oozen out. She has further disclosed that *mar-pit* took place at a distance of 3 *laggi* from her *Bathan*, on the road. Then thereafter, they were taken to hospital where, they were treated. Identified the accused.

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During cross-examination, she has stated at para 5 that *mar-pit* took place for three minutes only and then thereafter, the accused persons fled away. They were in semi-conscious state even after being assaulted. They raised alarm for about two minutes. On hue and cry, Lagan Singh, Rakesh Singh, Nageshwar Singh and others came, whom they had shown their injuries. Injuries had turned black and had swollen. In para 7, she has stated that she saw the assault over her husband. There was black, red spot. He had sustained severe injury. In para 8, she has stated that the injury having over the back of her husband was red and swollen. In para 9, she has stated that there was injury over head of her son. Blood had oozen out. There was blackness around the injury. In para 10, she has stated that at the time of *mar-pit*, she was at *Bathan*. Hardly one minute took in her presence at the place of occurrence. In para 11 and 12, she has stated that her son was conscious even after sustaining injury. She had not talked with regard to assault either with her husband or with her son. In para 14, she has stated that there happens to be local doctor in the village, namely, Kailash Thakur, who gave primary aid to them. In para 16, she has stated that Patepur happens to be at a distance of 3 miles, where police station, government hospital is situated but, they had gone to Mahua Hospital over Rickshaw. In para 17, she

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has stated that Suresh had pierced *Bhala* from a distance of two hands. *Bhala* was approximately four hands in length. In para 19, she has disclosed the boundary of the place of occurrence; North- field of Chanarik Singh, South- field of Chanarik Singh, East- Road and then field, West- her house and *Bathan*. In para 20, she has stated that she is unable to disclose in how many cases she happens to be prosecution, in how many cases she happens to be accused and in how many cases, she happens to be witness. In para 22, she has admitted presence of counter case. Then, she denied the suggestion that she along with her husband, son assaulted father of Haresh Prasad, namely, Ramashray Prasad and, only to escape themselves from the counter case, got this case filed.

PW4, Pulkit Singh, is another injured (husband of PW3). He has stated that informant Ravindra Singh happens to be his son. Occurrence is about 14 years ago. It was 4-4:15 AM. At that very time, he was going to meet nature's call. When he reached near the house of Jhagru Singh, lying East to his house, Suresh Prasad, Haresh Prasad, Jhagru Singh, Hardeo Singh, Ramprit Singh were there, out of whom, Haresh and Jhagru were armed with *lathi*. Hardeo was armed with axe. Suresh was armed with *Bhala* and Ramprit was armed with *lathi*. Just after his arrival, Ramprit and Jhagru began to assault him with *lathi*. His

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wife, who came in rescue, was given a *Bhala* blow by Suresh Prasad and his son was given axe blow by Hardeo. They had sustained injuries. Blood had oozen out from their injuries. Then the motive has been assigned as dispute having amongst his son as well as son of Suresh Prasad. They were taken to hospital where, they were treated. Identified the appellants. He has further stated that Bachcha Lal is not related with Jhagru. House of Bachcha Lal is lying adjacent to the house of Jhagru.

During course of cross-examination at para 6, he has stated that occurrence took place for ten minutes. He sustained severe injuries. At para 7, he has stated that he had not become unconscious after sustaining assault. After assault, accused persons fled away. He had raised alarm. He had raised alarm for five minutes over which, Marni Devi (PW3), Ravindra Singh (PW5) came. He had not shown his injuries to them. He had not disclosed regarding the occurrence. In para 8, he has stated about the location of body where he had sustained hurt, had not turned red in colour. In para 9, he has stated that due to hurt, he sustained fracture. There was no swelling. Again said that there was swelling and, the spot became black. In para 10, he has stated that they were not given primary treatment at the village. In para 14, he has stated that Mahua Thana lies 9 km away from his village. In para 17, he

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has stated that he was examined at *Mahua* Hospital. In para 20, he has stated that the place where he was assaulted, is *Darwaja*. In para 21, he has stated that *Darwaja* is 10 hands long and 8 hands breadth. He has further stated that his house is in the western side of his *Darwaja* and in the eastern side of his *Darwaja*, there is road. At the southern side of the *Darwaja*, there happens to be series of houses. In para 22, he has stated that blood had not fallen over his cloth. In para 23, he has stated that the house of Jhagru Singh lies at a distance of 5 *laggi* at eastern side. In para 24, he has stated that his village lies within the jurisdiction of Patepur P.S. It also happens to be at a distance of 9 km. There also happens to be police station as well as hospital at Patepur. In para 25, he has stated that he has no knowledge, in how many cases he is accused, prosecution or witness. In para 28, he has admitted presence of counter case instituted at the end of Ramashray Prasad, father of Haresh. In para 30, he has stated that he is unable to disclose the Khata number, khesra number and boundary of the P.O. Then has denied the suggestion that as informant happens to be his son, on account thereof, he has deposed falsely. He has also denied the suggestion that no such kind of occurrence has taken place.

PW5, Ravindra Singh (informant). He has deposed that the occurrence is about 18 years ago. It was 4:00 A.M. At that

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very time, his father was going to meet nature's call. He was going towards southern direction from his house. He was apprehended by Hardeo, Suresh, Ramprit, Haresh, Jhagru Singh, who assaulted his father with *lathi*, *Bhala* and axe. His father raised alarm whereupon, they also rushed. Suresh Prasad gave *Bhala* blow to his mother which, passed through and through. Blood had oozen out. He was assaulted by Hardeo Singh with axe over his head (shown the scar mark). There was bleeding. Ram Lagan Singh, Rakesh, Umesh and others came to rescue them. The dispute arose relating to passage. He had given his *Fardbeyan* before the police official of Mahua Police whereupon, he put his LTI. They were treated at Mahua Hospital. Identified the accused persons.

During course of cross-examination at para 2, he has stated that at the time of occurrence, he was at his *Darwaja*, which lies 15 laggi away from the place of occurrence. He has also disclosed that the occurrence took place for half an hour. At para 3, he has stated that there was *hulla* after the occurrence. In para 4, he has stated that just after hearing alarm, he reached at the spot within a minute. Till then none was injured. First of all, there was altercation in between his father with the accused. He had not enquired from his father. In para 5, he has stated that when he reached at the place of occurrence, he had seen all the five accused

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persons there. First of all, they abused and then assaulted. In para 6, he has stated that his father was assaulted with *lathi* over his leg by the accused persons. Suresh gave *Bhala* blow. They became injured on account of assault. He had seen the injuries over the person of other injured also. He had seen the injury over the neck (front side, rear side) of his mother. Blood was oozing out. He had not talked with regard to the currence. His mother had become unconscious. Father had not fallen unconscious. There was slight bleeding from the injury of his father. He also sustained injury. He had not tried to protect his mother as, father had sustained injury. He also became unconscious. Lalla, Umesh, Rakesh, Bachcha came and then he regained sense. Again said that he had not shown his injury to them, as he was unconscious. In para 10, he has stated that P.O. is road coming and going north to south. House of Lalu Sah lies at eastern side while house of Ramashray Prasad lies at western side. In para 11, he has stated that Mahua as well as Patepur both lie at the distance of 8 km from his village. His police station is Patepur where, Primary Health Centre is there. In para 12, he has not stated that he has not contested any case for the last 20 years. He has further stated that this case and the counter case having at the end of accused relate with land dispute. Then has stated at para 14 that he knew Narmadeshwar @ Bachcha Prasad.

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Suresh happens to be his *Gotia*. There happens to be dispute amongst Suresh and Narmadeshwar. He used to look after the affairs of Narmadeshwar. Then he denied that he has got no knowledge whether father of Suresh, namely, Ramashray had instituted a case against his family in the year 1990. Then has denied the suggestion that no such kind of occurrence has ever taken place rather, at the instance of Narmadeshwar, he filed instant case against Suresh with false and frivolous allegation.

PW 2, Chandar Devi, is aunt. She has deposed that she knew about the occurrence. Occurrence took place about 14 years ago. Altercation took place amongst Ramashray and Pulkit Singh at 4:00 AM over road. At that very time, Pulkit Singh (father of Ravindra) was going to meet nature's call. During course thereof, he was apprehended by Suresh Prasad, Haresh, Ramprit, Hardeo and Jhagru. Haresh was armed with lathi while Suresh was armed with *Bhala* and Hardeo was armed with axe. They assaulted Pulkit Singh, as a result of which, he became injured and fell down. When Marni Devi came in rescue, Suresh Prasad gave *Bhala* blow, as a result of which, blood oozen out. Ravindra Singh was assaulted with the back of axe by Hardeo Singh over his head causing injury thereupon. Identified the accused. During course of cross-examination at para 2, she has stated that her house is 3-4

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laggi away from the place of occurrence. At the time of occurrence, she was sleeping at her house. Hardly about three minutes, alarm was raised. She reached at the spot within the aforesaid period. Alarm was raised from southern-eastern corner of her house. First of all, Pulkit Singh was assaulted. She had seen injury over thigh of Pulkit Singh. There was swelling, which had turned black. At para 3, she has stated that she had not talked with Pulkit Singh. She had talked with the wife of Pulkit Singh and during course thereof, wife of Pulkit Singh detailed the occurrence. Wife of Pulkit Singh had not deposed on her behalf at any earlier time. At para 11, she has disclosed that she happens to be aunt of informant (Ravindra Singh). In para 12, she has stated that the father of Haresh and Suresh, namely, Ramashray had not lodged case against her as well as her husband. She was not knowing whether aforesaid case is pending before M.K. Singh, Judicial Magistrate, Hajipur. Then has denied the suggestion that on account of being aunt of Ravindra Singh, she has deposed falsely. It has also been denied that on account of case instituted by Ramashray Singh against her as well as her husband, she has falsely deposed intentionally.

PW 6, during course of his evidence, has simply exhibited his signature over an F.I.R. being attesting witness. Then,

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he has stated that he is not knowing with regard to the occurrence and so, he was declared hostile and then, he was confronted with his earlier statement. During cross-examination, he has stated that he had put signature over *Fardbeyan* as directed by police. On Court question, he has stated that he has signed over the *Fardbeyan* at the Mahua Hospital gate, where he had gone on account of some personal work. In likewise manner, PW 7 also became hostile. PW 8 is formal in nature as, till then doctor had not come, so, simply exhibited the injury report being in pen and signature of PW 9. PW 10 is the police official, who has conducted part investigation as well as submitted charge-sheet and so, their evidences also appear to be of no much reliance.

From the defence side, as is evident, no D.W. has been examined but, C.C. of F.I.R. of Patepur P.S. Case No. 71/1990 and C.C. of charge-sheet of Patepur P.S. Case No. 71/1990 have been made as Ext.-A and B respectively. How without examining even the formal witness, C.C. of F.I.R. has been exhibited, is a matter of concern. From the Lower Court record, it is abundantly clear that main I.O. has not been examined. However, due to non-examination of I.O. whether interest of accused/appellant has been prejudiced, learned counsel for appellants failed to explore. Muchless, from the evidence of PW 3,

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PW 4 and PW 5, it is evident that irrespective of the fact that there happens to be admission with regard to presence of counter case but, during course of cross-examination, the injured remained consistent over the place of occurrence and in likewise manner, there also happens to be absence of contradiction exaggeration in their evidences and so, certainly the non-examination of the I.O. is not at all found adverse to the interest of the appellants/accused.

Now coming to facts of the case, it is evident from the evidence of PW9 that on account of piercing *Bhala* injury over the person of PW 3 (Marni Devi), the vein of neck has cut and on account thereof, the aforesaid injury has been found dangerous to life. From the cross-examination of PW 9, it is evident that at that very score, he was not at all cross-examined. He was not at all cross-examined nor suggested that had there been no medical facility as was given to the PW 3, she would had died. Apart from this, the injuries over the person of PW 3 and PW 5 respectively are found out of controversy as never been challenged at the end of the appellants. Apart from this, from their evidences, it is evident that there happens to be consistency during course of identifying assailant as well as manner of occurrence.

Learned counsel for the appellants has submitted that from the evidence available on record it is crystal clear that none

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of the appellants were carrying intention to commit murder nor they have acted with any knowledge that their activity may ultimately cost life of the injured and so, no offence under Section 307 of the Indian Penal Code is made out. It has also been submitted that in the aforesaid background, appellant Hardeo, who is the assailant of PW 5 (Ravindra Singh) from the back of axe and Suresh Prasad, who pierced *Bhala* to PW 3 (Marni Devi) are under custody since the day of judgment and so, even if the court considers that they are found guilty, sentence should be modified as already undergone.

Considering the evidence of PW 5 that the dispute was on account of passage amongst the parties and further, considering the conduct of the appellants, who during course of assault over PW 4 (Pulkit Singh) have not used *Bhala* as well as axe, PW 5, Ravindra Singh (informant) was given single axe blow from its back side, however, PW 3 was given *Bhala* blow that too without any repetition even in absence of intervening circumstance.

So, considering the submission having at the end of learned counsel for the appellants, maintaining the conviction so inflicted by the learned lower court, sentence is modified as period having already undergone. So far major Section is concerned,

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which will also cover the sentence relating to other minor offences.

As such, appellants, Ramprit Singh and Haresh Prasad, who are on bail, are discharged from liability of bail bonds, while appellants, Hardeo Singh and Suresh Prasad, who are under custody, are directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Rakhi/-

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