

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.215 of 2003

Arising Out of PS. Case No.-34 Year-1996 Thana- VIDYAPATINAGAR District- Samastipur

1. Ram Udgar Mahto S/O Late Ram Balak Mahto Resident Of Village-
Marwa, P.S.- Vidyapatti Nagar, District- Samastipur.
2. Harihar Mahto son of Ram Bhagat Mahto, R/o- Vill- Pandav Pachhiyari
Tola, P.S. - Dalsingsarai, District – Samastipur.

... .. Appellants

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sujit Kumar Singh, Advocate
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 30-01-2023

The present criminal appeal has been filed by two appellants namely Ram Udgar Mahto and Harihar Mahto against the judgment of conviction and order of sentence dated 28th January, 2003 from which being aggrieved and dissatisfied, the instant appeal has been preferred by the appellants.

2. The judgment impugned has been passed by Shri Madhusudan Singh, then Sessions Judge, Samastipur in Sessions Trial No.433 of 1996 by which appellant No.1 has been convicted for the offence punishable under Section 324 of the Indian Penal Code (in short IPC) and he has been sentenced for the said offence to



undergo Rigorous Imprisonment for a period of six months. By the impugned judgment, the appellant No.2 has been convicted for the offence punishable under Section 325 of IPC and sentenced to undergo Rigorous Imprisonment for a period of six months in respect of the said offence. Here, it is relevant to mention that during the pendency of this appeal, the appellant No.2 namely Harihar Mahto died so vide order dated 10.01.2023 the present appeal stood abated in respect of the said appellant and accordingly the present appeal is now being decided in respect of appellant No.1. Further it is relevant to mention that other accused persons have been acquitted from all charges by the trial Court and the appellant No.1 has also been acquitted from the charges under Sections 341, 447, 504 and 307 of IPC.

3. The prosecution's case, in brief, is that the informant namely Basudeo Mahto (PW-3) recorded his fardbeyan before the Police Officer of police station concerned on 22.04.1996 with this allegation that on 22.04.1996 at 5:00 p.m. he was fixing pillars on his land for erecting *palani* and in the meantime the appellant Ram Udgar Mahto armed with *pagharia* (*Hasua*), accused Ram



Pravesh Mahto armed with *Chhura*, Kaushalya Devi having a piece of brick in her hand and Harihar Mahto armed with a *lathi* came there and started abusing him and thereafter appellant Ram Udgar Mahto assaulted him with *Pagharia* (*Hasua*) on his rib (*panjara*) as a result of which there was bleeding started from his body and during that course late appellant Harihar Mahto pushed the informant on the ground and he also assaulted the informant with fists, slaps and lathi causing injury at his mouth and thereafter on hearing *Hulla* his son namely Mithilesh Kumar came there to rescue him but both the appellants pushed him down on the ground and assaulted him with fists and slaps and thereafter on hearing *Hulla* his wife and co-villagers namely Sheo Kumar Mahto, Ram Pukar Mahto, Ram Bhorash Mahto alongwith other co-villagers came at the place of occurrence and then on seeing the co-villagers the accused Kaushalya Devi threw a piece of brick on informant's son which hit him on his back and then accused Ram Pravesh Mahto threatened them on the point of *Chhura* by saying that he would kill them but on account of the intervention of co-villagers all the accused persons fled away from the



place of occurrence.

4. On the basis of above-mentioned fardbeyan of informant Vidyapati Nagar P.S. Case No. 34 of 1996 was lodged under Sections 447, 307, 341, 504, 323, 324 and 337/34 of IPC against the appellants and others and after completing the investigation the police submitted charge-sheet against the appellants and others and thereafter cognizance of the alleged offences was taken by the Judicial Magistrate concerned who later on committed the case of the appellants to the Court of Sessions Judge and thereafter the trial of the appellants and others was started by the trial Court after framing charges against them. During the trial, the prosecution produced and examined altogether eight witnesses namely Ram Kumar Mahto (PW-1), Ram Naresh Mahto (PW-2), Basudeo Mahto (PW-3, Informant), Upendra Prasad (PW-4, retired police officer, Investigating Officer of the case), Alimuddin Ansari (PW-5, Doctor), Sumitra Devi (PW-6, wife of the informant), Mithilesh Kumar (PW-7, son of the informant) and Sitaram Mahto (PW-8). In documentary evidence, the prosecution proved the following documents and got them exhibited as under:



Exhibit 1 - Signature of Informant on Written Report.

Exhibit 2 – Written FIR.

5. After completion of prosecution's evidence, the statements of the accused persons including the appellants were recorded by the learned trial Court giving them an opportunity to explain the circumstances appearing against them from the prosecution evidences, in which the appellants and other co-accused persons denied the said circumstances but did not say anything specific in their defence while recording their statements under Section 313 of Criminal Procedure Code (in short Cr.P.C).

6. The appellants and other co-accused persons did not give any evidence in their defence.

7. After completion of the evidence of the prosecution and after hearing both the parties, the learned Trial Court acquitted the accused persons namely Kaushalya Devi and Ram Pravesh Mahto of all the offences charged upon them but convicted and sentenced the appellants mentioned above.

8. Learned counsel for the appellant No.1 has argued that all the private witnesses examined by the



prosecution during trial are interested witnesses, hence their statements are not at all reliable but even then the learned trial Court placed reliance upon them and moreover there are vital contradictions in their evidence and the impugned judgment and order of sentence are based on surmises and conjectures and the evidences adduced by the defence were not properly appreciated and the appellant No.1 was not given the benefit of Section 360 of Cr.P.C. while all the circumstances were in favour of the appellant in availing the said benefit. Further argument is that admittedly a land dispute between the appellants and the informant was running at the time of alleged occurrence and there were several cases in between them at that time and owing to said enmity the informant falsely prepared the instant case and on the basis of same evidences some of the accused persons were acquitted while appellant No.1 was convicted. Further argument is that PW-1 who claimed himself to be an eye witness of the alleged occurrence, deposed that he did not find any injuries on the person of anybody and he accepted that there was a dispute between both the parties regarding a land which was alleged to be the place of occurrence and



PW-2 also claimed himself to be an eye witness of the alleged occurrence but he deposed that on the alleged date and time of occurrence, he was at his home and on hearing *halla* he went to the place of occurrence and accordingly the evidence of both the said witnesses is not reliable but even then the learned trial Court placed reliance upon them. Further submission is that as per the statement of informant who was examined as PW-3, the place of occurrence belongs to the brother of the appellant No.1 and from the facts stated by the informant it can easily be inferred that the prosecution party wanted to capture the land of appellant's brother and other witnesses also accepted the fact of land dispute in between both the parties running at the time of alleged occurrence which was the main reason for lodging the instant case falsely by the informant with an intention to create a pressure on the accused persons.

9. Learned APP has vehemently opposed the appeal and submitted that the allegation made by the informant against the appellant No.1 has been completely established by the prosecution's witnesses including the informant himself and moreover the injury report of the



informant is also corroborative to the allegation made against the appellant No.1 and the learned trial Court rightly convicted the appellant No.1 and the deceased appellant No.2 for the offences punishable under Sections 324 and 325 of IPC. Further submission is that as per appellant's counsel, the appellant No.1 spent more than six months in jail during the trial and the maximum sentence of imprisonment awarded upon him by the impugned judgment is six months for the offence punishable under Section 324 of IPC and the said appellant was also given the benefit of the provisions of Section 428 of Cr.P.C. and accordingly the instant appeal has now become infructuous on account of the appellant No.1 having served the complete sentence.

10. Heard both the sides and perused the evidences available on the case record of the trial Court and also I have gone through the statement of the appellant No.1 recorded by the trial Court. From the facts of the FIR which was lodged on the fardbeyan of the informant, a land dispute is stated to be running in between both the parties when the alleged occurrence took place and the said dispute



was clearly accepted by the material prosecution witnesses in their evidence and in this regard the evidence of PW-1, PW-2 and the informant himself (PW-3) is very much relevant but merely on the basis of said land dispute the allegation made by the informant cannot be deemed to be unbelievable while on the other hand the land dispute can be deemed to be the genesis of the occurrence and here it is relevant to mention that informant in his evidence clearly stated that regarding the said land dispute preventive proceeding under Section 145 of Cr.P.C. had run in between both the parties and the same was decided in favour of him (informant). The informant was cross-examined at length by the defence but nothing going against the said statement came into light and the accused persons did not get success to elicit any fact from the prosecution witnesses in their cross-examination which can be said to going against the informant's claim as to the proceeding initiated under Section 145 of Cr.P.C. having ended in his favour. From these facts, one thing is quite clear that the alleged place of occurrence was validly in the possession of the informant when the alleged occurrence took place and the accused



persons including the appellant No.1 came there as aggressors and their presence in the said form was revealed by material prosecution witnesses.

11. As per the allegation made by the informant in his fardbeyan, the appellant No.1 allegedly inflicted *pagharia (hasua)* blow at the informant and that blow caused injury at rib (*panjara*) of the informant and thereafter bleeding started and the deceased appellant No.2 was alleged to have assaulted at the mouth of the informant by means of *lathi* and owing to that blow of *lathi* one teeth of informant got broken. The said allegations were fully supported by the informant himself during his examination-in-chief and nothing contrary to the said allegation was revealed by him in his cross-examination and similar evidence was given by other material prosecution witnesses who claimed themselves to have seen the commission of the alleged occurrence.

12. In the cross-examination of the material witnesses of the prosecution, the accused persons mainly focused their defence on the land dispute which was stated to be running in between both the parties. Though most of



the witnesses, including the informant, accepted the said land dispute but also revealed that the possession of the informant over the said land was validly declared in the proceeding initiated under Section 145 of Cr.P.C. and from their evidence one thing is quite clear that at the time of commission of the alleged occurrence, the informant was validly and legally present at the place of occurrence and the appellant No.1 was an aggressor over the land of the informant and the said land dispute was the genesis of the occurrence and the same can be deemed to be forming motive on the part of the appellant No.1 and others to commit the alleged occurrence of assaulting. The most important evidence going in favour of the prosecution is the evidence of medical officer examined as PW-5 who examined the informant and he proved the injury report of the informant and according to his evidence a sharp cut wound in the size of 5 inch*1/2 inch deep on right side of chest was found on the body of the informant when he examined him and the said injury was opined by him as a simple injury and caused by sharp cut weapon such as *pagharia* (*hasua*). The said medical expert's opinion is



completely corroborative to the allegation made by the informant against the appellant No.1 and the time when the said injury was caused to the informant as per his fardbeyan also gets support from the injury report of the informant which was proved by the said witness and accordingly the evidence of PW-5 makes the case of prosecution strong against the appellant No.1 and others.

13. Though some of the witnesses of the prosecution were interested in the informant when the alleged occurrence took place but merely by this fact the credibility of their testimony cannot be discarded and after having gone through their statements carefully, I do not find any cogent reason to disbelieve them and some contradictions which have been pressed by appellant's counsel in between statements of said witnesses and the prosecution story described in the fardbeyan of the informant are not of such a nature to make the testimony of these witnesses unreliable.

14. In the light of above discussed facts, I am of the considered view that the learned trial Court rightly convicted the appellant No.1 for the offence punishable



under Section 324 of IPC and rightly sentenced him for the said offence and I find no illegality in the conclusion reached by the learned trial Court in convicting and sentencing the appellant No.1 and also I find no merit in this appeal therefore, the instant appeal stands dismissed.

(Shailendra Singh, J.)

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CAV DATE	
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