

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 153 of 2019

Arising Out of PS. Case No.-61 Year-2009 Thana- SIWAIPATTI District- Muzaffarpur

1. Harendra Prasad, Son of Ganga Prasad, R/V- Tengrari Tole Jagarnath Pakri, P.S.- Siwaipatti, District- Muzaffarpur.
2. Kishore Prasad, Son of Ganga Prasad, R/V- Tengrari Tole Jagarnath Pakri, P.S.- Siwaipatti, District- Muzaffarpur.
3. Ajay Prasad, Son of Vishwanath Prasad, R/V- Tengrari Tole Jagarnath Pakri, P.S.- Siwaipatti, District- Muzaffarpur.
4. Ram Babu Prasad, Son of Vishwanath Prasad, R/V- Tengrari Tole Jagarnath Pakri, P.S.- Siwaipatti, District- Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Hari Kishore Thakur, Advocate

Mr. Aditya Dev, Advocate

For the Respondent/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 26-11-2024 Heard learned counsel for the appellants and learned
APP for the State.

2. The present appeal has been preferred against the judgment/order dated 7/12/2018 passed by the learned 13th Addl. Sessions Judge, Muzaffarpur in Sessions Trial No. 733/2012 by virtue of which the appellants have been found guilty for the offence punishable under section 341 of the I.P.C. and have been sentenced to undergo imprisonment of one month and fine of Rs. 500/- each and in default of payment of fine, they will suffer simple imprisonment of 10 days. The appellants have been further sentenced to undergo one year imprisonment under section 323 of the I.P.C. and fine of Rs. 1000/- each and in default of payment of fine, appellants will suffer 10 days



simple imprisonment. They have been further sentenced to undergo imprisonment of one year under section 504 of the IPC. The appellant no.4 Ram Babu Prasad has been separately sentenced to undergo imprisonment for 3 years and fine of Rs. 10,000/- and in default of payment of fine, he will suffer one month imprisonment. All the sentences are directed to run concurrently.

3. The prosecution case is that Ram Ekbal Sah gave his fardbeyan before the police officer stating therein that on 1/12/2009, Ram Babu Prasad had come at his door for taking water from the hand pipe and dropped water at his door. On account of the same, a quarrel took place between the informant and said Ram Babu Prasad. It is alleged that thereafter Ram Babu Prasad went to his house and came along with Kishore Prasad, Harendra Prasad and Ajay Prasad holding *lathi danda* and rod in their hands and started assaulting the informant. Ram Babu Prasad is said to have assaulted the informant with iron rod. Other accused persons are also said to have assaulted the informant with *lathi danda*. When other family members came to save him, they were also assaulted by the accused persons. Thereafter, the informant was taken to S.K.M.C.H. Muzaffarpur for treatment, from where he was referred to



P.M.C.H. Patna. After gaining consciousness, the informant gave his fardbeyan and accordingly, Siwaipatti P.S. Case No. 61/2009 was registered under sections 341, 323, 307, 504 and 34 of the I. P.C. against the accused persons.

4. After investigation charge-sheet was submitted against the accused persons on 31/7/2010. Cognizance was taken on 20/4/2011. Thereafter, the case was committed to the court of sessions on 22.11.2012 and vide order dated 31/7/2013 charge was framed U/s 447, 341, 323, 307, 504 and 34 of the I.P.C. against the accused persons and explained to the accused persons in Hindi, to which they pleaded not guilty and claimed to be tried.

5. Learned counsel for the appellants submits that the appellants are innocent and have falsely been implicated in this case out of enmity and due to the dirty village politics.

6. During trial, altogether six witnesses have been examined on behalf of prosecution to substantiate the allegation made in the F.I.R.

7. P.W.1- Rajendra Sah is the father of informant. P.W.-2 Ram Nath Sah is the nephew of informant and P.W.-6 is doctor of S.K.M.C.H. Muzaffarpur, who had first attended the informant. Some exhibits have been marked by the court below



of the document produced by the prosecution side. The appellants have been examined U/s 313 of the Code of Criminal Procedure, in which the accused persons have denied the entire allegation and stated that they are innocent.

8. PW-1- Rajendra Sah in his deposition has supported the prosecution case and has stated that the accused persons had assaulted the victim with stick and iron rod due to which he fell down and sustained head injury from which blood started oozing out. In cross examination, he has said that when he reached the place of occurrence, his son/the victim had already fallen down as he was hit on his head. He further stated that the accused persons assaulted the informant for two to three minutes and he cannot give the details as to how many blows were sustained by the victim. From the statement of PW-1, it appears that he is not an eye witness to the occurrence.

9. PW-2 Ramnath Sah in his deposition has also supported the prosecution case. In his deposition, he has said that the victim/injured was assaulted with stick and rod. He has said that the victim had suffered head injury.

10. PW-3- Asha Devi, who is the wife of the informant has also supported the prosecution case but in her cross examination, she has said that the occurrence continued



for half an hour.

11. PW-4 is the informant, who has been injured in the occurrence. He has also said that he was assaulted by the accused persons by *lathi danda* on his head.

12. PW-5 - Subhash Sah is not an eye witness to the occurrence.

13. PW-6 is Dr. Bhartendu Kumar, who has found one swelling on the scalp which was caused by hard and blunt substance. The doctor has opined that such injury can be caused due to fault but it has been contended by learned counsel for the appellant that all the accused persons were armed with stick and rod have assaulted the informant (PW-4) which hit him on his back & head causing injuries whereas only one swelling injury has been found upon the PW-4.

14. Mr. Jharkhandi Upadhyay, learned APP supported the prosecution case and has submitted that the judgment of conviction should be sustained.

15. I have considered the submissions of the parties and perused the materials on record.

16. From the record, it appears that PW-3, who is the wife of the informant has stated in her deposition that the occurrence continued for half an hour, whereas PW-1, who is



the father of the informant has stated in his deposition that the occurrence took place for two to three minutes. These witnesses have stated that PW-4 (informant) had sustained injury from which blood started oozing but the doctor has deposed that there was swelling on the head of the informant, which may have been caused by fault.

17. The medical evidence does not support the prosecution case. If the prosecution case is to be believed, then the informant ought to have received some bruises and cut injuries on the head but this is not the case.

18. In view of the above, I am of the view that the prosecution has not been able to prove the charges against the appellants. Therefore, the conviction of the appellants cannot be sustained. Accordingly, the impugned judgment and order of the trial court dated 07.12.2018 passed by the learned 13th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 733 of 2012 is set aside. The appellants are acquitted of all the charges.

19. The present appeal is accordingly allowed.

(Sandeep Kumar, J)

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