

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.568 of 2013**

Arising Out of PS. Case No.-155 Year-2009 Thana- MANJHAGARH District- Gopalganj

1. Paras Bhagat, Son of Late Garib Bhagat.
 2. Dharmnath Prasad, Son of Late Garib Bhagat.
 3. Mukesh Prasad, Son of Late Paras Prasad.
- All are resident of Village Devapur Sahabuddin Tola, Police Station-
Manjhagarh, District- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Lokesh Kumar Singh, Advocate
For the Respondent/s : Mr. Mukeshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT**

Date : 21-11-2024

Heard Mr. Lokesh Kumar Singh, learned counsel for
the appellants and Mr. Mukeshwar Dayal, learned APP for the
State.

2. The present appeal has been filed under Section
374 (2) of the Code of Criminal Procedure, 1973 (hereinafter
referred as 'Cr.P.C.') challenging the Judgment of conviction
and order of sentence dated 11.07.2013 passed by the learned
Adhoc Additional District and Sessions Judge-II, Gopalganj
(hereinafter referred to as the learned 'trial Court') in Sessions
Trial No. 364 of 2010 / 58 of 2012 arising out of Manjhagarh
P.S. Case No. 155 of 2009, G.R. No. 1868 of 2009 instituted for



an offence punishable under Sections 341, 323/34, 308 and 504 of the Indian Penal Code, whereby and whereunder the appellant no. 1 namely Paras Bhagat has been convicted for the offence punishable under Section 308 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years. The appellant nos. 2 and 3 namely Dharmnath Prasad and Mukesh Prasad have been convicted for the offence punishable under Sections 323/34 of the Indian Penal Code and have been sentenced to undergo simple imprisonment for one year and for the offence punishable under Section 504 of the Indian Penal Code and have been sentenced to undergo simple imprisonment for two years and further convicted for the offence punishable under Section 341 of the Indian Penal Code and have been sentenced to undergo simple imprisonment for one month with a direction that all sentence shall run concurrently. The appellant no.1 though has been found guilty for the offences punishable under sections 341, 323/34 and 504 of the Indian Penal Code also but no separate sentence has been imposed.

3. The prosecution case in brief is that the informant Tribhuwan Prasad, his brother Santosh Prasad and his wife had entered into altercation. The appellants and others



came to pacify them, but the same was protested by the informant, his brother and his wife. Upon this the appellant no.1 namely Paras Bhagat hurled a *Tangi* blow on the head of the informant. When his younger brother Santosh Prasad went to save him, the two appellants namely Dharmnath Prasad and Mukesh Prasad assaulted him by a piece of bamboo. They also assaulted the informant.

4. On the aforesaid information the case was instituted, charge sheet was submitted and cognizance was taken against the appellants under the aforesaid sections and after that the case was committed to the Court of Sessions. After commitment of the case, charges were framed for trial for the offence punishable under Sections 341, 323/34, 308/34 and 504 of the Indian Penal Code in Sessions Trial No. 364 of 2010 / 58 of 2012.

5. The prosecution examined altogether 7 witnesses in this case to substantiate the charges levelled against the appellants. Out of them PW-1 Dr. Shashi Kumar Singh, who has examined the injured. PW-2 Jagat Manjhi and PW-3 Kishore Manjhi (claim to be an eye witness to the occurrence), PW-4 Geeta Devi @ Reeta Devi (wife of the injured Santosh Prasad, who also claims to be an eye witness to the occurrence), PW-5



Santosh Prasad (injured and brother of the informant), PW-6 Tribhuwan Prasad (informant) and PW-7 Paras Nath Singh Investigating Officer. On the other hand, two witnesses have been examined on behalf of the defence to prove the plea of his false implication, who are the formal witnesses.

6. After closure of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C confronting him with incriminating circumstances which came in the prosecution evidence, so as to afford him opportunity to explain those circumstances. During this examination, he admitted that he had heard the evidence of the prosecution witnesses against them. But he did not explain any circumstance, though he claimed that the prosecution evidences are false and they are innocent and have been falsely implicated due to land dispute attributed between the parties.

7. PW-1 Dr. Shasi Kumar Singh stated that he has examined Tribhuwan Prasad and found following injuries on his person:

(1) Lacerated wound right parietal region 2 1/4" x 1/4" x scalp deep caused by HBS advised X-ray skull AP/Lateral opinion reserved.



(ii) Abrasion on left occipital parietal region 3" x ½" caused by HBS simple in nature.

(iii) Abrasion on left side of back over scapular region 3" x ½" caused by HBS simple in nature.

(iv) Abrasion on left side of back 5" x 1/6" caused by HBS simple in nature.

(v) Abrasion on right side of back 2" x 1/4" caused by HBS simple in nature.

M.I. Healed wound mark on right side of chest.

Age of injury within six hours.

This injury report is my pen and signature. It is marked as Ext. 1

He further stated that since the victim has not submitted x-ray report of skull AP/ lateral view till now, so no opinion can be given regarding injury no.(i). On the same day, he also examined Santosh Prasad and found following injuries on his person:

(i) Lacerated wound on vertex 1/2" x 1/4" x scalp deep caused by HBS



advised x-ray skull opinion reserved.

(ii) Abrasion on left side of cheek 3" x 1/4" caused by HBS simple in nature.

(iii) A bruise on front of chest 6" x 1/2" caused by HBS simple in nature.

(iv) Abrasion on left shoulder 1/2" x 1/4" caused by HBS simple in nature.

M.I. Til on right side of back.

Age of Injury: within six hours.

This injury report is in my pen and signature. It is marked as Ext. 1/2.

Since the victim has not submitted x-ray skull report, hence no opinion can be given regarding injury no.1. During cross examination, in the opinion of PW-1, no any sharp cut injury was found on the body of Tribhuwan Prasad. PW-1 further opined that injury no. (ii) to (v) of Tribhuwan Prasad and Santosh Prasad may be caused by fall on hard and blunt substance. The informant, Tribhuwan Prasad did not sustain any sharp cut injury as alleged in First Information Report.

8. Jagat Nath has been examined as P.W.2. He deposed that there was fight between Tribhuwan and Paras Nath. The other appellants Dharmanath and Mukesh prasad had



also assaulted Tribhuwan Prasad and Santosh Prasad. During cross examination, he deposed that his house is four house away from the house of the injured. He stated that he was at his door at the time of occurrence. On hulla, he came to know about the incident. He does not know who assaulted the injured persons. In view of the above, it can be said that he was not the eye witness of the occurrence.

9. Kishore Manjhi has been examined as PW-3. He deposed in similar terms as PW-2 in chief. During cross examination, he stated that on hulla, he came to know about the occurrence and at the time of occurrence, he was feeding the cattle at Bathan. In view of above, it can be stated that he is not the eye witness of the occurrence.

10. Further the prosecution examined Sita Devi @ Rita Devi as PW-4. She also deposed in similar terms as PW-2 and PW-3 in chief. During cross examination, she accepted that there is a land dispute attributed between the parties. There was case between the parties in Gram Kutchahry. She also stated that on the date of occurrence, her husband after taking meal, had gone to his shop and returned back at 9 P.M. and the occurrence took place at 4 P.M. in the evening. In view of above, it can be said that he is not the eye witness of the



occurrence.

11. Santosh Prasad has been examined as PW-5. He came out a different story by inserting names of other family members of the appellants. He stated that all came and started abusing and on protest, the informant and his brother (PW-5) were assaulted. During cross examination, he stated that he has not remember as to who assaulted to whom and how much.

12. The informant, Tribhuwan Prasad has been examined as PW-6. He reiterated the version of PW-5 in chief. He said that after assault, PW-6 and his brother PW-5 become unconscious and the villagers took them to police station and the police took them to hospital. After returning from hospital, the present case has been lodged. During cross examination, he stated that when he reached at the place of occurrence, his brother (PW-5) was in conscious state and no blood was found. At which time, he reached hospital, he did not know.

13. The Investigating Officer has been examined as PW-7. In his examination-in-chief, he stated that he has taken statements of witnesses during investigation. Except this, he said nothing in his deposition. During cross examination, he could not find anything at the place of occurrence. He has not taken statement of witnesses who were in the vicinity of the



place of occurrence. He had not taken any statement of the appellants and has no knowledge of filing the First Information Report by the appellants.

14. Learned counsel for the appellants, at the outset, submits that the trial Court erred in convicting the appellants for the charges, in spite of having no material available on record, except for the oral evidence of prosecution witnesses. He next argued that he has falsely been implicated by the informant in a criminal case. There is vital contradiction in manner of occurrence and genesis of the case has not been proved by the informant as the specific evidence of independent witness like PW-2 that the informant, his younger brother and his wife were assaulting each other (marpit kar rahe the), the entire case of the prosecution is fit to be rejected. It appears that two brothers assaulted each other but after the assault they got the opportunity to implicate the appellants and others due to land dispute or due to enmity between the parties. He further stated that the appellant no.2, namely Dharm Nath Prasad was the Ward Commissioner and used to object the sale of illicit liquor by Santosh Prasad, the possibility of the false implication of the appellants cannot be ruled out and blow for that the medical evidence gives a death blow to the case of the



prosecution. No *tangi* injury has been found on the person of the informant. The injuries on the injured are all simple and superficial in nature. With respect to injury no.1 of both the injured, which cannot be said that they were grievous injury as the Doctor has given definite opinion that both the injured sustained injury due to fall on a hard blunt substance. He also stated that no sharp cut injury has been found on the person of the informant. For that no offence punishable under section 308 of the Indian Penal Code is being made out. It cannot be said that appellant no.1, Paras Bhagat, who is alleged to have given a single Tangi blow on the head, had ever intended to commit culpable homicide. Learned counsel next submits that in view of the matter considering the age, nature of offence and antecedents of the appellants they should be granted benefit of doubt under Section 3 of the Probation of Offenders Act in the light of the principle as laid down by the Hon'ble Apex Court in the judgment of *Rajbir vs. State of Haryana* passed in *Cr. App. No. 449 of 1985*, reported in *AIR 1985 (SC) 1278*.

15. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved



its case against the appellants beyond all reasonable doubts. The learned APP has taken a plea that the defence is baseless because appellant no.1 namely Paras Bhagat hurled a Tangi blow on the head of the informant and younger brother Santosh Prasad went to save him, the two appellants namely Dharmnath Prasad and Mukesh Prasad assaulted him by a piece of bamboo and also assaulted the informant. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

16. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record and given thoughtful consideration to the submissions advanced by both the parties.

17. On deeply studied and scrutinized all evidences, it is evident to note here that PW-6 informant-cum-injured has substantially proved his First Information Report (Ext.2) and his testimony is corroborated by PW-1 (Dr. Shashi Kumar Singh) with medical evidences. Further, injured witness PW-5 Santosh Prasad has also supported the statement of PW-6 informant-cum-injured and consistent statement has been given



by PW-5. PW-5 ocular testimony has been corroborated by PW-1, who had examined the injury of the victim as there are no repeated blow on the vital parts of the victim. So, conviction under Sections 308/34 of the Indian Penal Code of the appellants is not safe and justified and nowhere offence is punishable under Section 504 of the Indian Penal Code is also not proved as the essential ingredients of Section 504 is not stated by the prosecution. So, the appellants are acquitted for the offence punishable under Sections 308/34 and 504 of the Indian Penal Code but conviction under Sections 323/34 and 341 of the Indian Penal Code is upheld.

18. After perusal of the trial Court record, there is no adverse report against them about their conduct and character otherwise the same would have been brought to our notice by learned counsel for the State and the age of appellants at the time of trial was 50 years and at present he would be about 61 years. In my opinion having regard to the circumstance of the case including the nature of the offence, and the character of the offenders, it is expedient so to do instead of sentencing him to any punishment or releasing him on probation of good conduct, release him after due admonition under Section 3 of the Probation of Offenders Act, 1958.



19. Accordingly, the appellants stand discharged
of the liabilities of their bail bonds, if any.

20. Accordingly, the appeal stands partly
allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
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