

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.61 of 2004

- 1. Ashok Koeri, Son of Babban Koeri, resident of Village Sato Awati, Tola Nai Kot, P.S. - Kudhani, District - Kaimur at Bhabua.
- 2. Radheshaym Koeri, Son of Babban Koeri, resident of Village Sato Awati, Tola Nai Kot, P.S. - Kudhani, District - Kaimur at Bhabua.
- 3. Nagina Koeri, Son of Babban Koeri, resident of Village Sato Awati, Tola Nai Kot, P.S. - Kudhani, District - Kaimur at Bhabua.
- 4. Babban Koeri, Son of Diwan Koeri, resident of Village Sato Awati, Tola Nai Kot, P.S. - Kudhani, District - Kaimur at Bhabua.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Tribhuwan Narayan, Advocate
For the Respondent : Mr. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 18-09-2024

1. This appeal is preferred against the judgment dated 20.12.2003 on the file of Addl. District & Sessions Judge, F.T.C. III of Kaimur at Bhabua in Sessions Trial No. 167/261 of 1998/2002, wherein the appellants were convicted under various Sections, which are as follows:

Penal Provision	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
Under Section 307 read with 34 of the Indian Penal Code	R.I. for 7 years	5,000/-	R.I. for 6 months
Under Section 452 of the Indian Penal Code	R.I. for 2 years	-	-
Under Section 380 of the Indian Penal Code	R.I. for 2 years	-	-
Under Section 323 of the Indian Penal Code	R.I. for 6 months	-	-
All the offences have been ordered to run concurrently.			



2. The case of the prosecution, in brief, is that on 08.06.1997, at about 09:00 AM, at the village Sato Wati Tola, Naikoti, P.S. Kudhani, Dist.- Kaimur at Bhabua, the complainant/P.W.-2, namely, Durgawati Devi was cooking breakfast in her courtyard. At that time, the appellants, namely, Ashok Koeri, Radheshaym Koeri, Nagina Koeri and Babban Koeri armed with *lathi*, *danta*, *baisakhi* (Rami) came into the courtyard of P.W.-2 and started abusing P.W.-4, father-in-law of P.W.-2. In turn, P.W.-4 objected. On that, the appellants pushed him down to earth and started assaulting him with *lathi*. Appellant No. 1, namely, Ashok Koeri assaulted P.W.-4 with the *Baisakhi* (Rami), which caused a cut injury to the right leg of P.W.-4. When P.W.-2 tried to save P.W.-4, then appellant No. 1, namely, Ashok Koeri gave a blow over her forehead with an intention to kill her and appellant No. 3, namely, Nagina Koeri also gave a *lathi* blow over the forehead of P.W.-2. Further, appellant Nos. 2 & 4, namely, Radheshaym Koeri and Babban Koeri assaulted P.W.-2 with *lathi* over her chest for which P.W.-2 fell down and appellant No. 4, namely, Babban Koeri with an intention to



kill her rode over her chest and started pressing the wound, due to which blood oozed out from her mouth. Thereafter, the appellants entered the house of P.W.-2 and committed theft of four boxes of ornaments, cloths, cash and steel utensils worth Rs. 15,000/- (Fifteen Thousand). The neighbouring person witnessed the occurrence. The cloths of P.W.-2 were stained with blood due to the injuries. The motive for the incident is that there was a land dispute, one day prior to the incident for which there were exchange of words between the appellants and the complainant/P.W.-2, and that all the appellants attacked the informant and her father-in-law/P.W.-4. Further case of the prosecution is that she went to Police Station and saw the appellants there, the then *Daroga Ji* of the concerned Police Station did not register her case and advised her to go and get treatment for her injuries.

3. Basing on the private complaint dated 10.06.1997, cognizance was taken and after committing the case for trial, it was transferred to the Court of IIIrd Addl. Sessions Judge, Bhabua and finally to the Court of Additional District and Sessions Judge, FTC No. III for trial. The trial Court framed charges against the appellants for the offences



punishable under Sections 307 r/w 34 of IPC and for the offences punishable under Sections 452, 323, 380 and 324 of the Indian Penal Code (hereinafter referred to as 'I.P.C.') read over and explained to the appellants, for which they pleaded not guilty and claimed to be tried.

4. In order to prove the case against the appellants beyond the reasonable doubt, six witnesses were examined on behalf of the complainant and later the appellants were examined under Section 313 of the CrPC. All the appellants denied the allegations levelled against them and on behalf of the appellants, DW – 1 was examined.

5. Learned counsel for the appellants contended that the trial Court did not consider the documents produced by the appellants which were marked as Exhibit A, B, C and D, which clearly disclose that there was land dispute between the appellants and the complainant and the Title Suit filed by the appellants was pending before the Munsif Court, Bhabua. An attack was made against the appellants, for which the appellants lodged a criminal case, one day prior to the alleged date of offence i.e., 08.06.1997 and in order to overcome the said fact, a private complaint was made against the appellants



on 10.06.1997. It is further contended by the Learned counsel for the appellants that there is a delay in preferring the private complaint against the appellants, which is not at all considered by the trial Court. It is further contended that the trial Court ought not have convicted the appellants as no independent witness were examined to support the version of the complainant. The other witnesses who were examined are closely related to the complainant/informant (P.W.-2). It is further contended that the complaint disclose that the incident was witnessed by many of them, but none of the independent witness was examined for the best reason known to the complainant.

6. On the other hand, Learned Additional Public Prosecutor for the State contended that there is no error or irregularity in the order passed by the trial Court. As the complainant proved the case against the appellants beyond reasonable doubt, the trial Court has rightly convicted the accused.

7. Heard Learned counsel for the appellants as well as Learned Additional Public Prosecutor for the State.



8. On perusal of records, it is evident that the alleged incident took place on 08.06.1997 and a private complaint was lodged on 10.06.1997. There is a delay of two days in preferring the private complaint. It is mentioned in the complaint that complainant approached the Police Station, but the Police refused to record *Fardbeyan* of the P.W.-2/informant and that she was directed to take medical treatment. Admittedly, there is no corroborating evidence to prove that she/P.W-2 approached the Police Station.

9. **Section 154** of the **CrPC** envisages that:

“Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in charge of the Police Station. Further, a copy of the information recorded under Section 154 shall be given to the informant free of cost forthwith.”

10. It is important to note that **Section 154, sub-section 3** of the **Cr.P.C.**, envisages:



“Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section 1 may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

11. As per Section 154 Sub-Section 3, if at all, there is refusal on the part of the Police Officer to take the information, the complainant/informant has the remedy to send the substance of information to the Superintendent of Police by Post. But in the present case, the complaint preferred by the complainant is very much silent about sending the substance of information to the Superintendent of Police.

12. On perusal of the evidences of the witnesses, it is evident that all the witnesses are related to each other. P.W. – 2 is the complainant, P.W.-1 is the uncle of P.W.-2. P.W.-3 is the nephew of P.W.-2 and P.W.-4 is said to be one of the injured



i.e. the father-in-law of P.W.-2. Admittedly, independent witnesses were not examined to corroborate the evidence of the P.Ws. – 1 to 4. P.W. – 5 is an Advocate Clerk and P.W.-6 is a retired staff of Sadar Hospital.

13. The evidence of P.W. – 1, namely, Rikhi Koeri disclose that about 2 years back, while he was at Laxman's Shop he heard the noise from the house of P.W.-2. In turn, he rushed to the house of P.W.-2 and saw P.W-4 and P.W-2 being assaulted by the appellants with *lathis* and *baisakis*. Further, he witnessed the appellants carrying four boxes from the house of P.W.-2. P.W. – 1 testified that there was a land dispute between P.W.-2 and the appellants.

14. In the cross-examination, it was specifically admitted by P.W. – 1 that the appellants attacked P.W.-4, but he did not saw any injury on his body but he saw injury on the forehead of P.W.-2. After the incident he stayed at the place of occurrence for about 15-20 minutes.

15. The evidences of P.W. – 2/informant disclose that while she was cooking food in the courtyard at about 09:00 AM, all the appellants arrived at her armed with weapons assaulted her father-in-law and when she tried



to intervene the appellants also attacked her. Later, the appellants broke into her house and took away 4 boxes of ornaments clothes, Cash and steel utensils worth Rs. 15,000/- (Fifteen Thousand), belonging to her mother-in-law and co-sister. Thereafter, she went to Nuaon Police Station. There, the Sub-Inspector of Police referred her to Bhabhua for treatment. The motive for the incident is the land dispute between them.

16. On perusal of her evidence, it is evident that she did not state that the Police has refused to register the FIR for complaint preferred by her rather, it is her evidence that the Police have referred her to Bhabua Hospital, where she took the treatment.

17. In her cross-examination, it is admitted by her that there was a land dispute between them and the house of the appellants is adjacent to her house. It is also admitted by her that the accused filed the case against her family members one day prior to the occurrence i.e. on 08.06.1997. Her evidence clearly disclose that the appellants attacked P.W.-4 at the first instance and when she tried to protect P.W.-4, they caused injuries to her as well.



18. It is pertinent to not that P.W.-2 at one stage deposed that she was hit by *Rami* (Iron Rod) and again she changed her version and stated that she was not hit with Iron rod. She also testified that she became unconscious and did not know what happened next. Her evidence further disclose that she fell on her back and due to the fall, no part of her body was injured.

19. If at all, the evidence of P.W.-2 has to be believed it can only be believed in part, till she becomes unconscious. If P.W.-2 fell unconscious, she cannot testify about subsequent events, i.e. the appellants making entry into her house or of committing of theft from the house and fleeing away from her house. P.W.-2 testified that her mother-in-law and co-sister also witnessed the incident. But the complaint copy is silent as to their presence at the place of occurrence. Further, it is testified by P.W.-2 that Nand Lal picked her up, thereafter, in the evening she went to Nuaon Police Station and from there to Bhabua in a Tractor and she went to the Police Station, during the day time and she reached the Hospital in the evening and she spent the night in the Government Hospital, Bhabua. Her evidence further discloses



that she was discharged from the Hospital, the next day at 10:00 AM.

20. There is no evidence on record about the injury sustained by P.W.-2 or about admission of P.W.-2 in the Hospital or about discharge.

21. Further, the evidence of P.W.-3, who is the nephew of P.W.-2 is same as that of P.W.-1. The evidence of P.W.-1 disclose that there was a verbal altercation one day prior to the incident between the appellants and the complainant. In the cross-examination, it is admitted by P.W.-3 that he was not present at the scene of offence, at the time of occurrence and later came to the scene of offence. Admittedly, the complaint copy is very much silent about the presence of P.W.-1 at the place of occurrence.

22. The evidence of P.W.-4 is also the same as that of P.W.-2. His evidence disclose that the accused came to his house and started abusing and assaulting him and on that his leg was injured and his forefoot toe was cut by one of the appellants, namely, Ashok Koeri. Later, when P.W.-2 came to defend him from the hands of the appellants they also assaulted P.W.-2 and later took away the ornaments and other



articles worth Rs. 15,000/- (Fifteen Thousand) from their house. The evidence of P.W.-4 also disclose that one day prior to the incident, there was heated arguments between the appellants and P.W.-4 with respect to the land dispute. After the incident, he along with P.W.-2 went to Kudhani Police Station and from there at the instances of the Police, he took P.W.-2 to Bhabua Government Hospital for treatment and thereafter, he lodged the complaint. The evidence of P.W.-4 further disclose that the appellant has also lodged a criminal complaint for which a case was registered against him, his father and his son.

23. On perusal of the entire evidence, it is evident that there are contradictions in the evidence of P.W.-2 and P.W.-4. On one hand, P.W.-2 testified that she went to the Police Station to lodge a complaint and on the other hand, P.W.-4 testified that he lodged a complaint before the Police Station against the appellants, but nothing was brought on record to show that the FIR was registered against the appellants, basing on the report of P.W.-4. P.W.-2's evidence is very much silent about the refusal of taking the complaint by the Police Officer when she approached the Police Station.



24. It is relevant to appreciate the evidence of P.W.-5 who is an Advocate Clerk. P.W.-5 testified that the Complaint Case No. 224c/97 was typed by one Ashok Kumar Singh, on which the counsel for the complainant put his signature, which is marked as Exhibit 1.

25. P.W.-6 is a retired staff of Sadar Hospital through him the injury report was marked as Exhibit – 2. Admittedly, neither P.W.-5 nor P.W.-6 have personal knowledge about the incident. Injury report was marked through retired employee of the Hospital. As to why the Doctor was not examined in this case is known for the best reasons of the complainant. Even in the absence of the Doctor, any employee of the Hospital can depose evidence, basing on the records available in the Hospital.

26. On perusal of the Injury Report, it is evident that P.W.-2 sustained four injuries, which are simple in nature. The Injury Report of P.W.-4 who testified about the cut injury of his fore toes was not brought on record. If at all, P.W.-4 also sustained injury in the same incident as to why the Injury Report of P.W.-4 was not brought on record was not at all explained either by P.W.-2 or by P.W.-4.



27. On behalf of the Defence, D.W.-1, namely, Satan Prasad Singh was examined, who is an Advocate Clerk. Further, the signature of ASI was marked as Exhibit – A. The *Fardbeyan* was marked as Exhibit – B, the Charge-sheet was marked as Exhibit – C and the Civil Suit Case No. 239/1995 was marked as Exhibit – D.

28. On perusal of the evidence on record it is evident that on 07.06.1999, a Criminal case was registered against the complainant and her family. A Civil Suit preferred by the appellants against P.W.-2 and her family members regarding the land dispute which is Exhibit – B and a charge-sheet is also filed against the complainant.

29. Admittedly, no independent witness were examined to corroborate the evidences of P.Ws.- 1 to 4 in any manner. The evidence of P.W.-2 is contradicting with that of the evidence of P.W.- 4 as to the manner of the incident and also about the injuries sustained by both of them. Furthermore, the complainant or the witnesses failed to speak about the intention of the appellant to commit attempt to murder of P.Ws.- 2 & 4 in order to attract the offence under Section 307 of the IPC.



30. The Injury Report also do not support the version of P.W.- 2 and 4 in any manner. If at all, the version of P.Ws. - 2 and 4 is said to be believable, the injuries inflicted by the appellants as per the oral evidence should be of grievous nature. Also, the Injury report/Exhibit – 2 do not support the oral evidence of P.W.-2.

31. Further, the trial Court out to have taken caution in marking of the documents. A document can only be marked by a person who has personal knowledge about the incident. The Injury Report was alleged to have been marked through P.W.-6, who had no personal knowledge about it.

32. It is evident that in order to have the documents marked by the Court as Exhibits, a party must satisfy the Court that there is sufficient material in order for the Court to arrive at a *prima facie* view that :

(a) The "contents" of the document are proved (i.e. the document exists).

(b) The signature or handwriting on the document, if any, are proved (i.e. the document is genuine).

(c) In some cases, the witness who seeks to tender the document in evidence has personal knowledge of the



document (i.e. that the witness is in a position to prove the accuracy or truth of the contents of the document);

(d) The document is not inherently or *ab initio* inadmissible on some other legal ground (e.g. irrelevance, privilege, non-registration) and

(e) The document has been appropriately stamped, if so required by law.

33. In order to prove contents of a document, the witness through whom the document is sought to be tendered must produce the document in court. The Evidence Act provides, in essence, that the "contents" of documents must ordinarily be proved by "primary" evidence. As the second step in getting a document marked, the witness who introduces the document must identify the signature or handwriting on the document, if there is any. The mere production of a document is not sufficient for the document to be marked as an exhibit. Thirdly, in order to lay a foundation for marking a document, if the document contains any statement(s) of fact, and the party propounding the document relies on the truth or accuracy of those statements, then the witness. who tenders the document must demonstrate personal



knowledge and the familiarity of the document. Fourthly, in some cases, irrespective of a party's ability to satisfy the criteria set out above, a law might prohibit some documents from being considered admissible in evidence. Such documents cannot be marked in evidence. Once a document is marked, it becomes the part of the record but has to be considered by the Court about its admissibility and relevancy of the such document. Marking of document alone will not give any right to read the contents of the documents or about the admissibility of the documents.

34. Therefore, this Court is of the considerable view that the case of the complainant was not proved beyond all reasonable doubts and the trial Court ought not to have convicted the appellants for the offences punishable under Sections 307 r/w 34, 452, 380 and 323 of the I.P.C..

35. With the aforesaid observation, the judgment of trial Court dated 20.12.2003 is liable to be set aside

36. In view of the aforesaid discussions, the conviction of the appellants for the offences punishable under Sections 307 r/w 34, 452, 380 and 323 of the I.P.C. is not sustainable and the judgment of the trial Court dated



20.12.2003 in Sessions Trial No. 167/261 of 1998/2002 on the file of Learned Addl. District & Sessions Judge, F.T.C. No. III, Kaimur at Bhabua is hereby set aside and the appellants are acquitted for the offences punishable under Sections 307 read with 34, 452, 380 and 323 of the I.P.C.

37. The bail bonds of the appellants shall stand cancelled.

38. *In result, the Criminal Appeal is allowed.*

(G. Anupama Chakravarthy, J)

Shanu/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.10.2024.
Transmission Date	08.10.2024.

