

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.278 of 2007

1. Kedar Singh, Son Of Late Gorakh Singh
2. Upendra Singh, son of Sri Rudal Singh
3. Yogendra Singh, son of Sri Rudal Singh
4. Rudal Singh, son of Late Nemdhar Singh
All are resident of Village Raipura, Tole Majoruon, P.S- Bheldi, Distt. Chapra (Saran)

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Rakesh Kumar Tiwary, Adv.
For the Respondent/s : Mr. M. Dayal, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 13-03-2024

Heard Mr. Rakesh Kumar Tiwari, learned counsel
appearing for the appellants as well as Ms. Mukeshwar
Dayal, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellants challenging the judgment of conviction and order of sentence dated 12th day of February, 2007 passed by learned Additional District & Sessions Judge, F.T.C.-5, Saran (Chapra) in Sessions Trial no. 1486 of 1994 arising out of Amnour P.S. Case No. 128 of 1986, (G.R. No. 1827 of 1986) whereby and whereunder appellants have been convicted for the offence punishable under Section 323 of



the Indian Penal Code. On the point of sentence, trial court instead of ordering them for imprisonment, giving them the benefit of Section 4/1 of Probation of Offenders Act, they have been released on furnishing a security bond for two years for maintaining peace and tranquility.

3. The FIR was registered on the basis of fardbeyan of injured/informant Dharmnath Singh recorded at Sadar Hospital, Chapra. On 25.07.1986 at about 3 P.M. the informant was planting paddy crops in his fields along with his wife Champa Devi and his son Sunil Singh. In the meantime, all the named accused persons came there laced with lathi and danda. Accused Gorakh Singh forbade the informant for planting the paddy crops in the field over which some altercation took place. Thereafter, on order of Gorakh Singh, accused persons started to assault the informant and his wife on their head. On hearing the hulla, villagers came there and their lives were saved.

4. On the basis of fardbeyan of the informant/injured, Amnaur P.S. Case No. 128 of 1986 was registered. After completing the investigation, I.O. has submitted chargesheet against five accused persons



including the appellants under Sections 307 and 149 of the Indian Penal Code. Thereafter cognizance has been taken and the case was committed to the court of Sessions for trial and disposal.

5. Charges have been framed u/s 307 and 149 I.P.C. on 4.11.2000 against the appellants. Trial court explained the charges to the accused persons in hindi to which they pleaded not guilty and claimed to be tried.

6. During trial accused Gorakh Singh died and his name was expunged.

7. To substantiate the charges leveled against the appellants, altogether six witnesses have been examined by the prosecution. P.W.-1, Sunil Singh (son of informant), P.W.-2 Dr. B.K. Gupta, P.W.-3 Dharmanath Singh (informant/injured), P.W. 4 Champa Devi (wife of the informant/injured), P.W.-5 Indra Deo Singh and P.W.-6 Ramchandra Prasad.

8. P.W. 1, Sunil Singh (son of informant) is an eye witness of the occurrence. He stated that while he along with his father and mother was planting paddy crops in their field, accused Rudal Singh and Kedar Singh assaulted



to his father by means of lathi and Yogendra Singh assaulted to his mother on her head. He also admitted that land in question was executed in his mother's name. In his cross-examination, he admitted that both parties are co-sharer and occurrence took place due to land dispute. In para 18 of his cross-examination he admitted the fact that both parties have compromised this case.

9. P.W. 2 Dr. B.K. Gupta, examined injured Dharmanath Singh and Champa Devi and he proved their injury reports, which are marked as Ext. 2 and 2/1. He found that both the injured have sustained simple injury caused by hard and blunt substance, which are not fatal and dangerous to their life.

10. P.W.-3 Dharmanath Singh is informant and P.W.-4 Champa Devi is his wife. Both have sustained injury on their head. They have supported the prosecution case in their examination-in-chief. Injured Champa Devi stated that her father-in-law executed the land in her favour in which they were planting the paddy crops at the time of occurrence. In their cross-examination they failed to prove the fact that accused persons had intention to kill them.



P.W.-3 also admitted in para-11 of her cross-examination that both parties have compromised the case with their sweet-will.

11. P.W.-5 Indradeo Sah and P.W.-6 Ramchandra Singh are independent witnesses. They have also supported the prosecution case and stated that on order of accused Gorakh Singh, accused Rudal Singh and Upendra Singh assaulted to Dhramnath Singh and accused Kedar Siungh and Yogendra Singh assaulted to his wife Champra Devi. In para-13 of cross examination of P.W.-5, he admitted that both parties have compromised the case.

12. Learned counsel appearing on behalf of the appellants has submitted that learned trial court wrongly drawn the inference that the prosecution has established the charge leveled against the appellants and illegally relied upon the evidences of witnesses. The court below acted illegally in relying upon the evidence of the prosecution witnesses in convicting the appellants and reasons given are entirely erroneous, unsound and illegal. It is further submitted that the alleged occurrence took place due to land dispute and both parties are co-sharer. Injury caused to



Dharmanath Singh and his wife Champa Devi is simple in nature and not deadly. In evidence of all the prosecution witnesses, it has come that the matter has been compromised between the parties and the same fact is also mentioned in para-7 of the judgment. Investigation Officer of the case was not examined and due to his non-examination the defense cause prejudice. It is desirable that prosecution has to examine the Investigation Officer. Defense has lost the opportunity to raise the question in respect of contradictions elicited in the prosecution evidence. The learned trial Court's findings lack material evidences, reasoning and merit. Therefore, the impugned judgment of conviction and order of sentence should be set aside.

13. Learned APP appearing for the state argued that the impugned judgment in question is based on cogent and consistent evidence, which is adduced by the prosecution judgment of conviction and order of sentence is fit and proper and there is no need for interference in it. The prosecution has been able to prove its case beyond all reasonable doubts, and therefore, learned trial court has



rightly convicted the appellants by relying upon the evidence brought on record by the prosecution during trial.

14. I have gone through the entire prosecution evidence, documents and exhibits. Though there is no contradiction in respect of manner of occurrence and place of occurrence but learned trial court has not considered the fact that both parties are co-sharer and the alleged occurrence is the outcome of land dispute for which compromise took place between the parties. Learned court below has failed to appreciate that as per section 320 of the Code of Criminal Procedure the offence u/s 323 is compoundable offence. Investigating Officer of the case was not examined by the prosecution, whose evidence was vital for determination of the case. The prosecution has failed to prove the charges levelled against the appellants by the consistent and cogent evidence.

15. The ordeal of trial faced by the appellants since beginning of the case and considering the fact that matter has been compromised between the parties with their own sweet will. The impugned judgment of conviction is hereby set aside.



16. The appellants are acquitted. They are discharged from the liabilities of the bail bonds.

18. Accordingly, the instant appeal is hereby allowed.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
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