

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3580 of 2022

Arising Out of PS. Case No.-41 Year-2010 Thana- PHULWARIA District- Begusarai

1. VIJAY YADAV @ VIJAY KUMAR YADAV Son of Ram Sewak Yadav Resident of Baro, Munsii Tola, P.S.- Phulwariya, District - Begusarai.
2. Sanjay Yadav @ Sanjay Kumar Yadav Son of Ram Sewak Yadav Resident of Baro, Munsii Tola, P.S.- Phulwariya, District - Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 3593 of 2022

Arising Out of PS. Case No.-41 Year-2010 Thana- PHULWARIA District- Begusarai

AJAY YADAV @ AJAY KUMAR YADAV Son of Ram Sewak Yadav Resident of Baro, Munsii Tola, P.S.- Phulwariya, District- Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 3580 of 2022)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.

Mr. Mithilesh Kumar Singh, adv.

For the Respondent/s : Mr. Anand Mohan Prasad Mehta, APP

(In CRIMINAL APPEAL (SJ) No. 3593 of 2022)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.

Mr. Mithilesh Kumar Singh, adv.

For the Respondent/s : Mr. Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 04-03-2024

1. As both the appeals have arisen out of the same judgement, hence they are being decided by this common judgement.



2. Heard Mr. Krishna Prasad Singh, learned senior counsel for the appellants and Mr. A.M.P. Mehta and Mr. Mukeshwar Dayal learned APPs for the State.

3. This appeal has been filed against the judgement of conviction dated 05.09.2022 and order of sentence dated 07.09.2022 passed in Sessions Trial case No. 989 of 2010 by learned Additional Sessions Judge-V, Begusarai, whereby the appellants have been convicted for the offence punishable under Section 307 read with section 34 of the IPC and sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs. 20,000/- and in default of payment of fine they shall have to undergo simple imprisonment for two months. The appellants have been further convicted for the offence punishable under section 324 read with section 34 of the IPC and sentenced to undergo rigorous imprisonment for three years with a fine of Rs. 5,000/- and in default of payment of fine, to further undergo simple imprisonment for one month and they have also been convicted for the offence punishable under Section 323 read with section 34 of the IPC and sentenced to undergo rigorous imprisonment for one year.



4. All the appellants stood charged for the offences punishable under sections 323, 341, 324, 307 and 504 of the Indian Penal Code (in short 'IPC').

5. The prosecution's story in brief is that on 29.05.2010 at about 10 AM, the appellants and co-accused Ram Sewak Yadav armed with an iron rod and *Katta* came and thereafter the appellant Vijay Yadav assaulted at the head of informant's son by means of *Katta*, owing to that assault his son fell down and then appellant Sanjay Yadav inflicted an iron rod blow at his son which caused a cut injury to the nose of the informant's son and thereafter other accused persons indiscriminately assaulted the informant's son by means of iron rod which resulted in injuries to his left arm, left hand and back and the informant's son became unconscious. It was further alleged that after the occurrence of assault, co-accused Ram Sewak Yadav entered into the house of informant and took away ornaments and cash kept in a box and when wife of the informant resisted to the act of the accused persons she was also abused and assaulted by the accused persons and cause of occurrence was a land dispute in between the informant and the accused persons.

6. Learned senior counsel for the appellants submits that at the time of alleged occurrence a land dispute was running in



between both the parties. As per allegation, the appellant Vijay Yadav inflicted a blow by means of *Katta* at the head of informant's son but only simple injuries were found on the head of informant's son and against the appellant Vijay Yadav, there is no allegation of having assaulted the informant's son repeatedly by means of *Katta*. It is further submitted that as per allegation, the appellant Sanjay Yadav assaulted the informant's son by means of an iron rod which resulted in a cut injury to the nose of the said victim but no cut injury was found at the nose of the informant's son and the allegation levelled against the appellant Vijay Yadav does not get corroboration from his injury report. Though, a grievous injury to the left shoulder of the informant's son was found but the appellants were not alleged to have assaulted the informant's son at his shoulder rather as per allegation they assaulted at hand, forearm and back, so this allegation is completely contradictory with respect to the injuries caused at different body parts of the victim and moreover, no specific role of any of the appellants was revealed by the informant in the F.I.R. regarding the injury which was found at his shoulder. It has further been submitted that both the parties are agnates and in between them there was a land dispute at the time of commission of the alleged offences. PW 1 and PW 2 are not eye witnesses of the



occurrence. PW 3, PW 4 and PW 5 are relatives and interested witnesses and PW 6 is victim himself. Learned senior counsel further submits that the alleged offence of 307 of the IPC is completely not made out in this matter and in view of the nature of allegation the alleged matter comes in the purview of simple *mar-pit* for which the appellants have been sufficiently punished as they have been languishing in jail since 05.09.2022.

7. On the contrary, learned APPs have vehemently opposed the appeal and submitted that there is serious allegation against the appellants as they assaulted the informant's son by *Katta* which is considered as a deadly weapon and on account of the assault, the victim sustained three injuries on vital parts of his body and one injury found on the shoulder of the victim was opined to be grievous in nature and the appellants have rightly been convicted for the offences punishable under Sections 323, 341, 324, 307 and 504 of the IPC and there is no force in this appeal, hence it is liable to be dismissed.

8. I have heard both the sides and perused the impugned judgement, evidences available on the record and statements of the accused.

9. The prosecution examined altogether nine witnesses in support of its case. Among these witnesses, the most important



witnesses are the victim (the informant's son) and the informant himself, who were examined as PW 6 and PW 5 respectively. PW 5 deposed that on the alleged day and time of the occurrence the appellants equipped with iron rod, *Lathi* and *Katta* came at the door of his house and thereafter appellants, Ajay Yadav, Sanjay Yadav, Vijay Yadav and co-accused Ram Sewak Yadav together assaulted his son and at that time appellant Sanjay Yadav was having an iron rod, appellant Ajay Yadav was having a Lathi and both assaulted the victim. He further deposed that appellant Vijay Yadav imparted a blow by means of *Katta* on the head of Pankaj Yadav (victim) due to which he fell down and suffered bleeding and thereafter all the accused persons entered into his house and fled away from back side of his house. In respect of allegation of assault, the witness remained firm and consistent to his stand in the cross-examination. PW 1, Ganesh Yadav deposed that at the time of alleged occurrence he was at his home then a scuffle took place and the appellants and Ram Sewak Yadav together assaulted Pankaj Yadav (victim) by *Katta* and as per this witness, appellant Vijay Yadav assaulted the victim by means of *Katta* and rest appellants also assaulted him. In cross-examination, he stated that both the parties are distant relatives having their houses adjacent to each other and he came out of his house when he heard the noise



of scuffle and saw Pankaj Yadav (victim) in injured condition. The witness denied to have recorded his statement before the police. The evidence of this witness does not much help the prosecution as he does not appear to be an eye witness of the alleged occurrence and he denied to have recorded his statement before the police. PW 2, Mukesh Yadav deposed that at the time of occurrence he was at his house then a scuffle took place between Pankaj Yadav and Vijay Yadav. Vijay Yadav imparted a *Katta* blow on the head of Pankaj Yadav and at the time of occurrence the parents of the victim came and took him for medical treatment and cause of occurrence was a land dispute. In cross-examination, he stated that he was at his house when *Hulla* of *mar-pit* started coming out from the house of Ram Balak Yadav (informant) and local villagers also heard the noise but none of them came out of his house. He further deposed that he went to the house of Ram Balak Yadav but he did not find anyone except the injured Pankaj Yadav, who was in unconscious condition and bleeding was oozing out from his head. The evidence of this witness shows that he was also not an eye witness of the occurrence but however his evidence is sufficient to prove that at the relevant time an occurrence of scuffle and *mar-pit* took place in between both the parties and the informant's son sustained injuries. The evidence of this witness



helps the prosecution to some extent to prove the occurrence of *mar-pit*. PW 3, Sushila Devi, is mother of the victim. She deposed that after hearing noise she came out and saw that the appellants and Ram Sewak Yadav were assaulting her son. Appellant Vijay Yadav imparted a blow on the head of her son with a *Katta* and rest accused persons also assaulted her son. In cross-examination, she deposed that when she came out on hearing noise she saw her son being in an injured and unconscious condition. This witness also does not appear to be an eye witness of the occurrence but her evidence is sufficient to prove that at the time of alleged occurrence the victim, son of this witness, sustained injuries. PW 4 is stated to be the wife of Pankaj Yadav (victim) and her evidence is similar to PW 2 and PW 3. The most important witness of the prosecution is informant's son, Pankaj Yadav, who is stated to be the victim of the present matter and he was examined as PW 6. He deposed that on 29.05.2010 at about 10 AM, he was at his house when appellants and co-accused, Ram Sewak Yadav came there. Appellant Vijay Yadav imparted a blow on his head by means of *Katta* and he sustained a cut wound over his head on the right side and on account of that blow bleeding started, thereafter appellant Sanjay Yadav inflicted an iron rod blow causing a cut injury on his nose and thereafter appellant Ajay Yadav and co-accused Ram



Sewak Yadav also assaulted him at his arm and back. The witness was cross-examined at length by the appellants regarding the occurrence but this witness did not say anything adverse to disprove the occurrence of assault which was alleged to have been committed with him by the appellants. PW 8 deposed that he saw a crowd being gathered near the house of the victim and at that time a noise was coming out from the victim's house and victim Pankaj Yadav was bleeding heavily. The evidence of this witness is relevant but he does not appear to be an eye witness of the alleged occurrence as he did not claim to have seen the appellants assaulting the victim.

10. PW 7 is the doctor who examined the victim Pankaj Yadav and he found the following injuries:-

(I) A lacerated wound in the size of 1/2"x1/4"x skin-deep on left side of face below left eye.

(II) A lacerated wound in the size of 1/2"x1/6"x skin-deep on left parietal region.

(III) Pain and tenderness on left shoulder.

11. As per medical opinion and evidence given by this witness, all these three injuries were caused by hard and blunt object, out of them, two injuries were simple and third injury which was found on left shoulder was grievous in nature.



12. In view of the evidence of the prosecution witnesses discussed above, it is clearly evident that an occurrence of *mar-pit* was committed with informant's son and most important witnesses of the prosecution are PW 5 and PW 6 and their evidence inspires confidence of this court but only to the extent that a simple *mar-pit* took place which resulted in two simple injuries and one grievous injury to the informant's son. As per allegation, the appellant Vijay Yadav assaulted at the head of informant's son with *Katta*. The main portion of *Katta* is considered to be sharp edged while the other portion is considered to be heavy hard and blunt object. On the left parietal region of the victim, only one injury being lacerated wound in the size of 1/2"x 1/6" skin deep was found and such injury was not possible by either side of the alleged weapon *Katta* which was allegedly used by appellant Vijay Yadav. As per allegation, appellant Sanjay Yadav imparted a blow by means of an iron rod on the informant's son which resulted in a cut wound on the victim's nose. As per medical opinion given by PW 7, no any type of cut wound was found on the informant's son though a lacerated wound in the size of 1/2"x 1/4" skin deep on the left side of face below left eye was found on the person of the victim and this injury was opined to be simple in nature. Such type of injury was not possible if the victim had been



assaulted by means of an iron rod. Both the injuries are possible when *Lathi* or *Danda* is used in assaulting someone. As per evidence of informant, PW 5, the appellant Ajay Yadav was having *Danda* with him when the alleged occurrence was being committed. In the light of the nature of injuries described in the victim's injury report (Exhibit-2), which was proved by PW 7 and in view of the evidence given by the prosecution witnesses, it appears that an incident of *mar-pit* was committed by the appellants with the informant's son by means of hard and blunt object that resulted in two simple injuries and one grievous injury to the informant's son and the prosecution's evidence is not sufficient to substantiate the use of a fatal weapon by the appellants in assaulting the victim and further against the appellants Vijay Yadav and Sanjay Yadav, who were carrying specific allegation of having assaulted the victim by means of *Katta* and iron rod, there is no allegation of having assaulted the victim repeatedly. It has come out in the evidence of prosecution witnesses that the victim and the appellants are agnates, in between them a land dispute was running at the time of alleged occurrence.

13. In view of above discussed circumstances, the main ingredients of sections 307 and 324 of the IPC do not attract in this



matter and the conclusion of trial court in holding the appellants guilty of the said offences does not appear to be proper and the same warrants interference from this court. However, there is sufficient evidence to prove the offences punishable under section 325 read with section 34 of the IPC and under section 323 read with 34 of the IPC. As such, the trial court's finding in holding the appellants guilty of the offence punishable under section 307 read with section 34 of the IPC is altered into conviction under section 325 read with section 34 of the IPC and the trial court's finding as to holding the appellants guilty of the offence punishable under section 323 read with 34 of the IPC is upheld. The appellants have been languishing in jail since 05.09.2022 and they have served more than one year in jail, so the punishment awarded under section 323 read with 34 of the IPC by the trial court has been served by them and so far as the required punishment under section 325 read with 34 of the IPC is concerned, the period of custody which the appellants have undergone till date is sufficient to serve the ends of justice. Hence, the period of rigorous imprisonment which the appellants have undergone till date is awarded as punishment to them for the offence punishable under section 325 read with section 34 of the IPC.



14. In the result, the instant appeals are partly allowed and the appellants’ conviction for the offence punishable under section 307 read with 34 of the IPC is altered into conviction of the offence punishable under section 325 read with section 34 of the IPC. The appellants are acquitted of the offence punishable under section 324 read with section 34 of the IPC for which they were charged and convicted.

15. The appellants are in jail, so they are directed to be released forthwith if their custody is not required in any other case.

16. Let the trial court’s record be sent back to the learned trial court.

(Shailendra Singh, J)

BKS/-

AFR/NAFR	AFR
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