

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.370 of 2013

Arising Out of PS. Case No.-38 Year-2009 Thana- PHULWARIYA District- Gopalganj

1. Munna Singh @ Baital Singh and Ors. S/O Ram Chandra Singh R/O Village- Koyla Deva, P.S.- Phulwariya, District- Gopalganj
2. Bullet Singh S/O Ram Chandra Singh R/O Village- Koyla Deva, P.S.- Phulwariya, District- Gopalganj
3. Ram Chandra Singh S/O Late Raja Singh R/O Village- Koyla Deva, P.S.- Phulwariya, District- Gopalganj
4. Sachhin Singh S/O Laxman Singh R/O Village- Koyla Deva, P.S.- Phulwariya, District- Gopalganj

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent/s : Mr. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date: 26-11-2024

Heard Mr. Ranjeet Kumar Pandey, learned counsel for the appellants and Ms. Anita Kumari Singh, learned A.P.P for the Respondent-State.

2. This appeal has been filed on behalf of the appellants under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 against the judgment of conviction dated 11.04.2013 and order of sentence dated 12.04.2013 rendered by the learned 2nd Additional and Sessions Judge, Gopalganj in Sessions Trial No. 469 of 2010 and 250 of



2011 arising out of Fulwaria P.S. Case No. 38 of 2009, whereby the appellants have been convicted for the offences punishable under Section 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months, for the offence punishable under Section 325 of the Indian Penal Code and sentenced to undergo three years of rigorous imprisonment, for the offence punishable under Section 341 of the Indian Penal Code and sentenced to undergo one month of rigorous imprisonment, for the offence punishable under Section 342 of the Indian Penal Code sentenced to undergo six months of rigorous imprisonment and all sentences are directed to run concurrently.

3. The brief facts leading to the filing of the present appeal is that on the basis of *ferdbeyan* by the informant (Bhola Nath Gupta), recorded on 21.04.2009 at about 8:30 AM, at Hathua Sub-divisional, Hospital that on 20.4.2009 at about 4 PM an altercation took place between the cousin of the informant Gorakh Nath Gupta and Munna Singh of village Koyaladeva at Koyaladeva Bazar for a vehicle. Thereafter, at 5.30 PM as soon as the informant reached the road at Koyaladeva village in front of the house of Munna Singh, suddenly Munna Singh and his brother Bullet Singh, Ram



Chandra Singh, Sachin Singh and 3 to 4 unknown persons armed with *lathi*, *danda* and *farsa* came on the road and abused the informant and stopped his motor cycle and assaulted him. The informant fell down. Then they dragged the informant and took him into the front room of his house and confined him into the room. Due to the assault, the informant was injured and his right hand became fractured and he also received injury in the head. He was raising alarm, meanwhile his cousin Dharmendra Kumar Gupta and Manoj Kumar Gupta and villagers including Birendra Chauhan were passing through the road, then the above named accused persons surrounded them and assaulted them. Munna Singh gave a *farsa* blow on the head of Birendra Chauhan. He received injury and fell down. Thereafter, they assaulted Dharmendra Kumar Gupta and Manoj Kumar Gupta with *lathi*, *danda* and *farsa*. After hearing the alarm, other villagers assembled there. Then the accused persons came into their house and Munna Singh released the informant from the room. He took his mobile phone bearing Sim No. 9801770056 and Cash of Rs 2000/-. The villagers brought the victims to Hathua Hospital where they were treated and the statement of the informant was recorded.

4. On the basis of the statement, a formal FIR



was registered in Fulwaria P.S Case no. 38 of 2009 under Sections 341, 342, 323, 324, 307, 379/34, and 504 of I.P.C. After investigation, the Investigating Officer submitted the charge sheet against the accused persons in the Court of Chief Judicial Magistrate, Gopalganj, who took cognizance of the offence and transferred the case to the Court of Judicial Magistrate-1st class, Gopalganj, who committed the case to the Court of Sessions as the case was exclusively triable by the Court of Sessions. Thereafter this case had been transferred to the trial court for trial and disposal.

5. In order to substantiate the charge altogether nine witnesses have been examined on behalf of the prosecution who are PW-1 Dharmendra Kumar Gupta, PW-2 Gorakh Nath Gupta, PW-3 Dinesh Singh, PW-4 Ramesh Sah, PW-5 Manoj Kumar Gupta. PW-6 Bhola Nath Gupta (Informant), PW-7 Birendra Chauhan, PW-8 Bhuvneshwar Singh and PW-9 Dr. Arun Kumar Rai. Further Signature of Dharmendra Kumar Gupta and informant Bhola Nath Gupta are marked as Ext. 1 and 1/1 and injuries of Supplementary Report of injuries of Bhola Nath Gupta, Dharmendra Gupta and Manoj Kumar Gupta and final opinion of Bhola Nath Gupta, Final opinion of Dharmendra Nath Gupta and Final opinion of Armendra



Chauhan has been marked as Ext. 4, 4/1 ,4/2, 4/3, 4/4, 4/5 and 4/6 respectively.

6. PW-1 Dharmendra Kumar Gupta has stated that the occurrence of incident took place about 1/2 year ago and before the alleged occurrence, at about 4 PM some altercation took place between Munna Singh and Gorakh Nath Gupta for a vehicle and this fact has been settled. Thereafter when his cousin brother was going to his house from Koyaladeva Bazar and he reached the front of the house of Munna Singh then Munna Singh along with Ram Chandra Singh, Bullet Singh and Sachin Singh surrounded him and started assaulting him. Since he was coming from behind him, he saw that accused persons were dragging his cousin Bhola Nath Gupta towards his house and confined him in the room and after being asked, they assaulted them. Ram Chandra Singh and Bullet Singh assaulted him because of which his left hand became fractured and he also received injury on his head. Ram Chandra Singh assaulted him with iron rod. Accused persons also assaulted Birendra Chauhan and Manoj Gupta. Munna Singh assaulted Birendra Chauhan with *farsa* on his head and Manoj Gupta also received injury on his hand. On the alarm, several persons came there and then accused persons released



the informant. He also stated that he was treated at Hathua Hospital. He also supported the alleged occurrence in paras 5 and 6 of his cross-examination.

7. Besides the injured witnesses, PW-2 has also supported the occurrence but he is not an eye witness of the occurrence. Before the alleged occurrence an altercation took place between Munna Singh with PW-2 with respect to booking of vehicle. He also stated that accused persons assaulted Bhola Nath Gupta and others and confined Bhola Nath Gupta in the room.

8. PW-3 claimed himself to be an independent witness and stated the occurrence happened on 20.4.2009 and at that time he was coming to his house from Koyaladeva market. He reached near the house of Ram Chandra Singh, he saw 2/4 persons standing there and Bhola Nath Gupta was confined in the room of Ram Chandra Singh and he was crying. He had sustained injuries on his head and other body parts. Thereafter Dharmendra, Birendra and Manoj and others came to rescue him and then Munna Singh, Ram Chandra Singh and his family members abused them and thereafter he went away. As such being an independent witness he supported the occurrence that informant Bhola Nath Gupta was confined in the room of Ram



Chandra Singh and he had received injury. As such he supported the part of occurrence of incident.

9. Witness PW-4 also claimed himself as independent and supported the entire occurrence of incident. But he has stated in para 2 of his cross-examination that the police has not recorded his statement. He further stated that he had not just heard about the occurrence of incident but rather he saw the incident take place. He also proved injury of the injured in para 4 of his cross-examination. In para 5 of the cross-examination he has also stated the description of the room in which informant Bhola Nath Gupta was confined. As such being independent witness, he has also supported the occurrence of the incident.

10. PW-5 has also supported the occurrence and stated that he was assaulted by accused persons with rod and lathi. Bullet Singh assaulted him with rod. Dharmendra Gupta received injuries on his head and right hand. His right hand became fractured. Munna Singh assaulted Birendra Chauhan on his head with *farsa*. He received injury on his head. He also supported the occurrence that the appellants confined Bhola Nath Gupta in the room after assaulting him. He has also been cross-examined by the defence. In cross-examination he has



also stated that occurrence happened due to booking of commander jeep. He is owner of commander jeep. He has supported the occurrence of assault in cross-examination also.

11. PW-6 (Informant) has stated that the occurrence happened on 19.7.2009, at about, 5.30 p.m. and at that time he was returning from Koyaladeva Bazar to his house. As soon as he reached the road in front of the house of Munna Singh, then appellants Ram Chandra Singh, Munna Singh @ Baital Singh, Sachin Singh and Bullet Singh surrounded and assaulted him. They took him away and confined him in the room. Accused persons assaulted him with *lathi*, *rod* and *farsa*. Accused Munna Singh assaulted him with the back side of *farsa* on his head and hand which resulted in his hand becoming fractured. After hearing his alarm from the room Dharmendra Kumar Gupta, Manoj Kumar Gupta and other villagers including Birendra Chauhan came there and then the appellants assaulted them also. Accused Munna Singh assaulted Birendra Chauhan with *farsa* and others assaulted him with *lathi*. When the villagers came then Munna Singh opened the door and informant came out from the room. Munna Singh had taken his mobile and Rs. 2000/- from him. The villagers brought the injured persons at Hathua Hospital where they were treated and police had



recorded their statements. He proved his signature on the *fardbeyan* which is marked as Ext.1/1. He has been cross-examined by the defence at length. In para 6 of his cross-examination he has stated that the road situated in front side of the house of Munna Singh, leads to his village. He supported the occurrence of assault in para 8 of his cross-examination also. He stated in para 10 of his cross-examination that after 10-15 minutes he was confined in the room by the appellants . Dharmendra, Manoj and Birendra came there. He also supported the prosecution case in para 12 of his cross-examination. He also stated that Munna Singh assaulted Birendra Chauhan. He further stated he can not say who assaulted to others. In para 14 of his cross-examination he also supported the injury sustained by the injured. In para 17 he has also stated that before this occurrence there was no dispute between Munna Singh and the informant. He has suggested that Munna Singh was driver of his brother and Munna Singh demanded wages due to which Dharmendra assaulted Munna Singh but he has denied the same. Further he has suggested that they sustained injury due to falling from the motor cycle but he has denied the same. As such by giving this suggestion, the defence side has admitted the injuries sustained by the injured and others.



12. PW-7 has also supported the alleged occurrence and stated that he was also assaulted by Munna Singh with an intention to kill him. Munna Singh gave *farsa* blow on his head due to which he got injury on his head. He was cross-examined by the defence about when he had got knowledge about the occurrence and he admitted that at that time he was at his house. Thereafter, he went into the market with Dharmendra and Manoj. Bhola Nath Gupta went to the market with motor cycle and at the time of returning from the market Bhola Nath Gupta reached first near the house of Munna Singh. Thereafter PW -7 reached with Bolero vehicle at the place of occurrence. PW-7 further stated in para 9 of his cross-examination that he had not become unconscious at the time of the occurrence. They were treated at Hathua Hospital and discharged from the Hospital on the next day of the occurrence.

13. PW-8 is the Investigating Officer, who investigated the case and proved the formal F.I.R., i.e. Ext. 2 and *fardbeyan*, i.e. Ext. 3 and he inspected the place of occurrence and described the place of occurrence in paras 5 and 6. In para 9 of his cross-examination he stated all the witnesses are residents of Bania Chhapar village and village Bania Chhapar is at the distance of 1-1½ K.M. from Koyaladeva



village.

14. PW-9 Dr. Arjun Kumar Rai examined the injured on 20.4.2009 and found following injuries on the person of Bhol Nath Gupta-

(i) One lacerated wound on the skull of the size 1/2"x 1/2" skin deep.

(ii) Swelling and tenderness on the right forearm. The nature of injury no. (i) is simple in nature. Opinion with regard to injury no. (ii) got reserved for want of X-Ray report. After X-Ray examination, radiologist reported fracture of lower 1/3rd shaft of ulna. Hence injury no. (ii) is grievous in nature.

He has proved the injury report and Supplementary injury report which have been marked as Exts. 4 and 4/1.

14.1 On the same day he also examined injured Dharmendra Gupta at 9.50 PM and found following injuries on his person:

(i) One lacerated wound 1/2"x 1/2"x skin deep on the right parietal region of skull.

(ii) swelling and tenderness on the right hand. The nature of injury no. (i) is simple in nature caused by hard and blunt substance. Opinion with respect to injury no. (ii) got reserved for want of X-Ray report after X-Ray



examination. The radiologist reported fracture of proximal end of 1st metacarpal bone. Hence injury no (ii) is grievous in nature. He has proved the injury report and Supplementary injury report which have been marked as Exts. 4/2 and 4/3 respectively.

14.2 On the same day he also examined injured Manoj Kumar Gupta at 10.10 p.m. and found injury on his persons:-

(1) Swelling and tenderness on left forearm.

*(11) Complain of pain left shoulder
Opinion with referred to injury no.*

(1) reserved for want of X-Ray The injury no. (11) is simple in nature. The age of injury within 4 to 5 hours.

The X-Ray examination shows no bony sion to injury no. (1) is simple in nature caused by hard and blunt substance. Doctor has proved injury report and Supplementary injury report which have been marked as Exts. 4/4 and 4/5 respectively.

14.3 On the same day at about 9.45 PM he examined Birendra Chauhan and found the following injury on his persons: -

(1) One lacerated wound 1/2"x2" x bone deep on the skull left parietal region

The nature of injury is simple in



nature caused by hard and blunt substance The age of injury was within 4 to 5 hours. He has proved the injury which has been marked as Ext. 4/6.

He has been cross-examined by the defence in cross-examination he has stated in his cross- -examination all the injuries can be possible by fall on hard substance He has not cross-examined on other parts of the injuries.

15. After closure of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C. in which they denied the allegations made against them.

16. Learned counsel for the appellants, at the outset, submits that none of the evidence presented by the prosecution has been corroborated. He also submits that the place of occurrence of the incident has not been established as the prosecution witnesses have mentioned three different places of occurrence. The Counsel also submits that the manner and genesis of occurrence of the incident is not established and that there were no independent witnesses who were examined. Moreover, from the report of the Investigating Officer none of the witnesses actually saw the incident take place. Further, the learned Counsel for the Appellants have submitted that the accused are first-time offenders and that all the accused persons have been held guilty of the same set of offences and hence they



should be dealt with under Section 4 of Probation of Offenders Act,1958.

17. On the other hand, learned Additional Public Prosecutor has vehemently opposed these appeals. It was submitted that the prosecution had established and proved that the appellants assaulted the informant PW-6 and other injured PW's 1, 5 and 7 with a common intention to assault. In view of the aforesaid statements and the evidence on record, learned trial Court has convicted the appellants and the present appeals should not be entertained.

18. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

19. On deeply studied and scrutinized all the materials on record, it is evident that when a number of people are involved in the occurrence of an assault there are some differences in the narration of facts. It is a human nature that when different people narrates the same incident in their own words then some difference and inconsistency occurred. That in itself however, does not prove that the incident had not occurred. The trial court has rightly found that the appellants had assaulted the informant PW- 6 (Bhola Nath Gupta) and



other injured PWs. 1, 5 and 7 with common intention and that the ulna of PW-6 and the proximal end of 1st metacarpal bone of PW-1 was fractured which proves a case under Sections 323 and 325/34 Indian Penal Code beyond a shadow of reasonable doubt and which is also supported by several witnesses like PW-1 (Dharmendra Kumar Gupta), P.W-5 (Manoj Kumar Gupta), PW-7 (Birendra Chauhan) and the same has also been supported by the injury report. It has also been proved that the accused persons restrained the informant and others injured and confined the informant into the room of the Appellant No. 1, Munna Singh and hence the charges under Section 342 Indian Penal Code have also been proved against the accused beyond a shadow of all reasonable doubt.

20. Further, the learned Counsel for the Appellants have submitted that the accused are first-time offenders and that all the accused persons have been held guilty of the same set of offences and hence they should be dealt with under Section 4 of Probation of Offenders Act, 1958. Before dealing with this submission, it would be appropriate to have a look at Section 4(1) of the Probation of Offenders Act, 1958 which provides as follows: -

“4. Power of court to release certain



offenders on probation of good conduct.—

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behavior.

Provided that the court shall not direct such release of an offender unless it is satisfied



that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.”

21. Section 4(1) of the Probation of Offenders Act, 1958 comes into play only when a person has been held guilty of committing an offence. The fact that the appellants have been found guilty of committing the offences under Sections 323, 325, 341 and 342 Indian Penal Code, has given rise to an occasion for claiming the benefit of Section 4(1) of the Probation of Offenders Act, 1958.

22. In view of the aforesaid facts, this Court is of the view that the trial court's order dated 12.04.2013 is affirmed to the extent of finding the accused' guilty under Sections 323, 325/34, 341 and 342 of Indian Penal Code. However, it is directed that in light of Section 4(1) of the Probation of Offenders Act, 1958 considering the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct instead of sentencing him at once to any punishment,



direct that they shall be released on entering into a bond of Rs. 5000 without sureties for 1 year to appear and receive sentence when called upon during such period and in the meantime to keep the peace and be of good behavior.

23. Accordingly, this appeal is partly allowed.

(Ramesh Chand Malviya, J)

Mayank/-

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