

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.522 of 2013**

Arising Out of PS. Case No.-12 Year-2009 Thana- BACHHWARA District- Begusarai

1. Jalo Yadav S/O Sahdeo Ayadav Resident Of Village- Narepur, P.S.- Bachchwara, Distt.- Begusarai
2. Mohan Yadav S/O Sahdeo Yadav Resident Of Village- Narepur, P.S.- Bachchwara, Distt.- Begusarai
3. Birendra Yadav S/O Butai Yadav Resident Of Village- Merka, P.S.- Teghra, Distt.- Begusarai
4. Sahdeo Yadav S/O Late Chaudhary Yadav Resident Of Village- Narepur, P.S.- Bachchwara, Distt.- Begusarai

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Deepak Kumar, Advocate
For the Respondent/s : Mr. Z. Hoda, APP

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

ORAL JUDGMENT

Date : 14-11-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') challenging the judgment of conviction dated 10.07.2013 and order of sentence dated 12.07.2013 passed in Sessions Trial No. 834 of 2009, arising out of Bachhwara P.S. Case No.12 of 2009 (G.R. No. 287 of 2009), by learned Additional Sessions Judge-V, Begusarai by which the



appellants/convicts have been convicted for the offence under Sections 447 and 307/34 of I.P.C., where, Appellant Nos. 1, 2 and 3 have been sentenced to undergo R.I. for 4 years and a fine of Rs.500/- each for the offence under Section 307/34 and in default of payment of fine they are to undergo S.I. for one month. Appellant No.4 has been sentenced to R.I. for seven years and a fine of Rs.1000/- and in default of payment of fine he has to undergo S.I. for one month for the offence under Section 307/34 of the Indian Penal Code and further all the appellants have been sentenced to undergo R.I. for one month for the offences under Section 447 of the Indian Penal Code and both sentences shall run concurrently.

2. Heard Mr. Deepak Kumar, learned counsel for the appellant, and Z. Hoda, learned APP for the respondent-State.

3. The the brief facts of the case are that one Wakil Yadav gave a written statement to the police on 02.02.2009 stating therein that he was repairing his wall which was damaged and in the meantime the appellant Sahdeo Yadav armed with *lathi* and Jalo Yadav and Mohan Yadav with *Hasua* came there and asked the informant not to repair the wall. The informant did not heed to their command. It was also stated that that Birendra Yadav brought the informant to the ground and Sahdeo Yadav assaulted



with *Hasua* on the head of the informant. Mohan Yadav assaulted with *lathi* on left leg and Jalo Yadav assaulted with *Khanti* on left hand.

4. On the basis of the *Fardbeyan* of the informant, Bachhwara P.S. Case No.12 of 2009 dated 02.02.2009 was lodged under sections 341, 323, 324, 447, 307, 504/34 of the IPC. The investigation was assigned to Nagendra Kumar Singh, who, upon completion, filed chargesheet no. 22 of 2009 on 24.02.2009 against accused persons. On 02.04.2009, the Chief Judicial Magistrate took cognizance of the case, and by order dated 13.08.2009, the matter was transferred to the Judicial Magistrate, 1st Class, for trial commencement.

5. During the course of the trial, the prosecution examined altogether Six witnesses, namely, PW-1 Upendra Yadav, PW-2 Shambhu Yadav, PW-3 Ram Bilas Yadav, PW-4 Wakil Yadav (informant), PW-5 Nagendra Kumar Singh (IO), PW-6 Dr. Binay Kumar Jha.

6. PW-1 Upendra Yadav has stated on shouting he came to the house of Wakil Yadav and found altercation between Wakil Yadav and Sahdeo Yadav in connection with erecting the wall. Wakil Yadav was as repairing his old wall and Sahdeo Yadav was making protest thereon. Two sons for Sahdeo



Yadav namely Jalo Yadav and Mohan Yadav and his nephew Birendra Yadav also came there. Jalo Yadav was armed with *Khanti* Mohan with *lathi* and Sahdeo Yadav cut caused to put him on the ground armed with *Pagharia*. He further stated that Birendra Yadava and Sahdeo Yadav, gave *Pagharia* blow on his head giving cut injury thereafter Jalo Yadav gave *Khanti* blow on his left hand and Mohan assaulted by lathi below his knee-joint. The informant was brought to Govt. hospital by this witness and other persons. He has further stated that accused persons assaulted the informant with intention to cause his death. He has further stated that Shambhu, Ram Bilash Yadav and others saw the occurrence. In his cross examination, he has stated that his house is adjacent to the house of the informant. There is dispute between the parties with respect to wall in question. Old wall was in possession of Wakil Yadav. He has further stated that Sahdeo Yadav lives in his *Sasural* and is neighbour of the informant. He has further stated that place of occurrence lies at the distance of 50-feet from his house. He has explained that, only one blow given by *Pagharia* and three blow of *lathi*.

7. PW-2, has stated at the time of occurrence, he was at Narepur-Chowk and on shouting he came on the spot and



he found that Wakil Yadav was repairing his wall and Sahdeo Yadav armed with Pagharia and Jalo with Khanti, Mohan with lathi were making protest. Wakil Yadav was asserting assaulting his claim over the land and consequently Sahdeo Yadav began to abuse him and Birendra Yadav over- threw the informant and Sahdeo Yadav gave *Pagharia* blow on the head of the informant giving cut injury with oozing of blood Jalo Yadav gave Khanti blow on the hand of the informant, where as Mohan Yadav assaulted by lathi on his leg. Ram Bilash Yadav and Upendra Yadav and others are said to have witnessed of the occurrence. He has stated in his cross examination that due to demolish of the wall it was the informant who sustained the loss. He has further stated that the wall was damaged watt. He has further stated that his statement was recorded by the police at 5.00 P.M. on the same day.

8. PW-3 Ram Bilash Yadav has stated that at the time of occurrence he was at the shop of Raj Kumar for processing of the milk and heard the shouting at the house of Wakil Yadav, he went there, where he found Wakil Yadav repairing his old wall, accused persons came there and they assaulted the informant. He has stated that Jalo Yadav was armed with *Khanti* , Sahdeo with Pagharia, Mohan with *Lathi*.



The nephew of Sahdeo Yadav over threw the informant on the ground and Sahdeo Yadav assaulted him by Pagharia on his head. Jalo Yadav gave *Khanti* blow whereas Mohan Yadav assaulted by him by lathi on his leg. He along with other brought the informant to the concern P.S, where police sent to Doctor and therefore, the injured was brought to the Doctor where he was treated. He has further stated that at the time of occurrence, Upendra Yadav and Shambhu Yadav came and saw the occurrence. He has further stated that Sahdeo Yadav has deposed against him in title suit no.04/07 in the court of Sub-Judge, Begusarai.

9. PW-4 is Wakil Yadav, the informant in this case. He has stated that on 02.02.09 at 9:30 A.M. He was repairing his old wall, in the meantime above named accused persons came and made, the accused persons began to abuse him. The accused persons thereafter with intention to cause his death assaulted him by *Hasua* aiming his neck, which gave cut injury on his head. He has A further stated that Jalo Yadav assaulted him by handle of the *Khanti* on his hand and Mohan Yadav assaulted him by *lathi* on his leg. On his shouting other witnesses came in rescue and accused persons ran away. He was brought to the police by his villagers, where he got written report prepared by



police officials. He was sent to Bachhwara Govt. hospital, where he was treated by doctor. In his cross examination he has stated that wall in question belongs to him and accused persons are not concerned with it in any way. He has further stated that the wall in question was not the common the wall of the parties, rather it lies western side of the informant and the accused. He has further stated that he was alone working to erect the wall. In his cross examination he has stated that at the time of occurrence the witnesses came after arrival of the accused persons on the P.O. Accused persons made protest and after 15 minutes, the *Hasua* injury was given. He has stated that accused persons did not repeatedly gave the blow. He has further stated that accused Sahdeo Yadav instituted a case against the informant and the witnesses with respect to the same day of occurrence for kidnapping and ransom. He has also admitted that there is three cases are pending between the parties.

10. PW-5 Nagendra Kumar Singh the I.O. in this case and he has stated the facts with regards to the investigation carried out by him.

11. PW-6 Dr. Binay Kumar Jha. He has deposed that on 02.02.09 he was posted at Bachhwara as In charge-Medical officer and on the same date, he examined Wakil Yadav



and found following injuries: (i) Incised wound of size 24" x 2" bone deep cutting the periosteum in 12% 1" x 2" in middle right side of the head. (ii) one bruise 3" x 2" on flexor part of left forearm with swelling. (iii) One bruise of size 3" x 2"/ on right forearm with swelling. (iv) Abrasion of size %" x 2" below left knee. Age of injury was within 24 hours caused by Hard blunt weapon and except injury no. (i) which may be caused by sharp cutting weapon found Injury no.(i) is to be grievous in nature. while rest injuries are simple in nature. He has further stated that he examined the injured on the basis of the requisition sent by the police.

12. The learned counsel for the appellants argued that the witnesses examined are not independent rather they have falsely implicated the informant in a criminal case of kidnapping and ransom instituted by the appellants. There is vital contradiction in manner of occurrence and genesis of the case has not been proved by the informant. There is land dispute between the parties and admittedly, accused persons who are alleged to have assaulted the informant has given single blow which is indicative of the fact that there was no intention on the part of the accused persons to cause death of the informant. In this way, there is nothing on the record to render the prosecution



case convincing and probable and this is a fit case for acquittal of appellants as they have already undergone sufficient judicial custody of more than two years.

13. Learned APP for the state vehemently, oppose the contention of the learned counsel for the applicant and has submitted that the witnesses are eye witness and it cannot be discarded. All the witnesses have deposed that they have seen the occurrence but according to the deposition of the prosecution witnesses it appears that they are hearsay witnesses and the injury report of the doctor and also substantiates the prosecution case and both exhibits along with other witnesses and evidence is available on record are conclusive in nature and of the accused persons/applicants is proved beyond all reasonable doubt.

14. From the perusal of the entire evidences and materials available and record, it appears that there is a land dispute regarding repairing of the wall by the infer and altercation occurred on the pretext of the same fact, thereafter a fight ensued and the appellant Sahdev Yadav gave a single blow on the head of the informant by means of *Paghariya* and rest accused persons/appellants also assaulted the victim on his hand and leg by means of *lathi*. The witnesses examined before the



trial court have seen the occurrence and they have taken the injured/informant to the hospital, but before going to the hospital, they also took him to the police station at the hospital. The informant was being treated. From perusal of the injury report and the examination of the doctor, it appears that the victim was given a single blow with a sharp cutting edged weapon i.e. *Pagharia*, and the doctor has given opinion that it is a grievous injury and other injuries were also mentioned by the doctor in his examination-in-chief. It has also been mentioned that there is case and counter case between the parties. Considering the facts and circumstances in the materials available on record, it is proved that the accused persons assaulted the victim.

15. This court is of the view that specific allegation as regards to assault by means of sharp edged weapon has been levelled against appellant no.4 in furtherance of common intention of all but as per the injury report there is only single blow and same was not repeated from such weapon is evident. It is also necessary to mention the PW-6, Dr. Binay Kumar Jha, Medical witness has stated regarding injury no.1 that the same is grievous in nature but what kind of grievous nature is not clarified, as defined in Section 320 of the Indian Penal Code, so



in this circumstances it is not a fit case of Section 326 of the Indian Penal Code for conviction in lieu of Section 307 of Indian Penal Code. It is a fit case of Sections 324/34 of the Indian Penal Code and it is proper to convict the accused persons / appellants under Sections 324/34 and 447 of the Indian Penal Code in lieu of offence under Section 307. It is proper to convict the accused persons on the basis of materials available on record.

16. In view of the above, the judgment of conviction dated 10.07.2013 and order of sentence dated 12.07.2013 passed in Sessions Trial No. 834 of 2009, arising out of Bachhwara P.S. Case No.12 of 2009 (G.R. No. 287 of 2009), by learned Additional Sessions Judge-Vth, is further modified in accordance with law and the charges against accused persons/appellants is confirmed under Section 324/34 and 447 of the Indian Penal Code. Further, it is evident that the appellants has got sufficient judicial custody of more than two years. There is no adverse report against the appellants about their conduct otherwise the same would have been brought to our notice by learned counsel for the State. and the sentence of the appellants is reduced to period undergone and the appellant stands discharged of the liabilities of his bail bonds, if any.



18. Accordingly, appeal is partly allowed.

(Ramesh Chand Malviya, J)

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