

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1376 of 2019

Arising Out of PS. Case No.-137 Year-1999 Thana- SABAUR District- Bhagalpur

1. Putul Devi W/O Bhikho Yadav R/O Village- Chaudharidih, P.S.- Lodipur, District- Bhagalpur
2. Meena Devi D/O Bhikho Yadav R/O Village- Chaudharidih, P.S.- Lodipur, District- Bhagalpur
3. Mofil Yadav S/O Bhikho Yadav R/O Village- Chaudharidih, P.S.- Lodipur, District- Bhagalpur
4. Anil Yadav S/O Bhikho Yadav R/O Village- Chaudharidih, P.S.- Lodipur, District- Bhagalpur
5. Lucho Yadav S/O Bhikho Yadav R/O Village- Chaudharidih, P.S.- Lodipur, District- Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pankaj Kumar, Advocate
For the Respondent/s : Mr. Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 23-01-2025 Heard the learned counsel for the appellants and the learned APP for the State.

2. This appeal has been filed on behalf of the appellants for setting aside the judgment of conviction and order of sentence dated 08.03.2019 passed by learned 7th Additional District and Sessions Judge, Bhagalpur passed in Sessions Trial No. 1085 of 2004/ Trial No. 147 of 2017 arising out of Sabour P.S. Case No. 137 of 1999 by which the Court below held the appellants guilty under Sections 147, 148, 323, 341, 448 of the



Indian Penal Code and they all were convicted and sentenced for 1 year R.I. and a fine of Rs. 1000/- each and on failure to pay the fine, further one month in addition of original sentence. The appellant no. 05/Lucho Yadav further held guilty of the offence under Section 324 of Indian Penal Code and sentenced to undergo 2 years of R.I. and a fine of Rs. 2000/- and in default of payment of fine, 3 months S.I. in addition to original sentence.

3. As per the prosecution case, the victim/Rudo Devi was getting palm leaf cut and in the meantime, the appellants namely Anil Yadav, Lucho Yadav, Mofil Yadav Meena Devi, and Putul Devi came near the tree and Anil Yadav raised objection about cutting of palm leaf and claimed over the palm tree and thereupon the victim/Rudo Devi claimed the tree and asked them about the reason of objection. Thereupon, Anil Yadav abused her and ordered to kill her. On this, Putul Devi caught her waist and Meena Devi caught her right hand and Lucho Yadav assaulted her over her neck with sickle and the assault was stopped by her left hand which caused cutting of her wrist and when her husband came to rescue her, he was also assaulted by Putul Devi, Anil Yadav and Mofil Yadav with Lathi.

4. It has been submitted by the learned counsel for the appellants that after institution of the F.I.R, the police started



investigation and recorded statements of witnesses and after completion of investigation, submitted the charge sheet Under Sections 147, 148, 149, 324, 341, 448, 323 and 504 of the Indian Penal Code and accordingly the cognizance was taken under Sections 147, 148, 149, 324, 448, 323, 504, 307 of the Indian Penal Code.

5. Learned counsel for the appellants next submitted that as a matter of fact no such occurrence was ever happened, rather the fact is that the informant/prosecutrix without having any right and title over the palm tree, tried to cut the leaf by engaging some persons which were objected by the appellants and in course of hot talk, the person climbed on the tree, accidentally his sickle slipped from his hand and fell down on the prosecutrix and she sustained injury on her hand, but since there was litigation going on between the parties for land dispute over claiming some lands including the said palm tree in question, the prosecutrix lodged this false case against all the accused persons (appellants).

6. 5 prosecution witnesses were examined in this case by the prosecution which are:-

(I). P.W.1- Thakur Yadav (husband of the Informant / prosecutrix);

(ii). P.W.2-Balram Yadav (the



brother of Informant / prosecutrix);

(iii). P.W.3- Rudo Devi (Informant/ Prosecutrix);

(iv). P.W.4- Hardayal Yadav (declared hostile);

(v). P.W.5-Nirmal Kumar (the I.O of the case);

7. The defense also examined its Defense Witness i.e., D.W-1/Sushil Yadav.

8. The learned counsel for the appellants further submitted that the prosecution had not exhibited any documents including the F.I.R or charge sheet. The injury report was also not brought on record and exhibited in this case. The prosecution failed to examine the witness named in the FIR. After closing the evidences, statements of the accused /appellants were recorded under section 313 Cr.P.C., in which the appellants denied the charges from the evidence of prosecution and claimed to be innocent. During trial, the independent witness/P.W.4/Hardayal Yadav has not supported the prosecution case and was declared hostile. During examination, P.W.3/Informant/prosecutrix also failed to establish the injury received by her in the manner for want of any medical evidence when she claimed that she got treatment from two government hospital. The prosecution witnesses given



contradictory statements and not supported the prosecution version and from their evidence, it is not established that they are eyewitness to the occurrence. Neither the Doctor who treated the informant was examined nor any injury report was brought on record and exhibited in this case.

9. The learned counsel for the appellants further submitted that the defense also examined one witness but the learned trial court not given emphasis on the evidence. After hearing the parties and perusal of the record, the Court below convicted the appellants under Section 147/148/341/448/323 of the Indian Penal Code and accordingly sentenced them One Years R.I under the aforesaid sections and a fine of Rs 1000/- each and in default One month's simple imprisonment in addition and accused Lucho Yadav apart from the aforesaid sentence is also separately held guilty under section 324 of I.P.C and he is sentenced 2 years R.I with fine of Rs 2000/- and in default 2 months simple imprisonment in addition to that sentences have been passed.

10. Learned APP for the State has vehemently opposed the prayer of the appellants and has supported the impugned judgment by submitting that the appellants have rightly been convicted by the impugned order.



11. I have considered the submissions of the parties and have gone through the records of the case.

12. P.W-3/Rudo Devi is the victim of the case who said to have sustained injuries by a sharp-edged weapon and is said to have been examined at Bhagalpur Medical College and Patna Medical College, but the prosecution has not been able to prove the injury report. In fact the prosecution has not even produced the injury report. The weapon, which has been used by the accused persons has also not been seized and produced by the IO of the case but the witnesses have said that it is Lucho Yadav/Appellant No. 05 who had assaulted the victim/Rudo Devi with a sharp-edged weapon and caused injury. Other witnesses have also supported the fact of Lucho Yadav having caused the injury with sharp-edged weapon.

13. So far as the other accused-appellants are concerned i.e., Appellant No. 01/Putul Devi, Appellant No. 02/Meena Devi, Appellant No. 03/Mofil Yadav and Appellant No. 04/Anil Yadav, P.W-1/Thakur Yadav says that Putul Devi and Meena Devi had caught Rudo Devi/victim and thereafter Lucho Yadav assaulted her with sickle.

14. P.W-2/Balram Yadav says that on the orders of Anil Yadav, P.W-3/Rudo Devi was caught by Putul Devi and



Meena Devi, and they assaulted the P.W-3/Rudo Devi with slaps and thereafter, P.W-3/Rudo Devi was assaulted by Lucho Yadav by sickle.

15. P.W-3/Rudo Yadav/the victim has again said that Anil Yadav was the order giver and on the instruction of Anil Yadav, Putul Devi and Meena Devi caught her and Lucho Yadav assaulted her with sharp-edged weapon and all the accused persons assaulted her husband also.

16. P.W-4/Hardayal Yadav has turned hostile.

17. P.W-5/Nirmal Kumar is the IO of the case. In his evidence, he has not said anything about recording the statement of the witnesses.

18. Considering the fact that the witnesses including the injured witness i.e., P.W-3/Rudo Devi are consistent in the deposition that Lucho Yadav has assaulted the victim/P.W-3 with a sharp-edged weapon and the fact that the injury report has not been produced and proved by the prosecution and also the fact that the weapon was never seized by the IO of the case, I am of the view that the assault by Lucho Yadav upon P.W-3/Rudo Yadav is proved beyond reasonable doubt.

19. In absence of injury report, the appellant Lucho Yadav is convicted under Section 323 of the Indian Penal Code



and is sentenced to undergo R.I. for one year and is directed to pay a fine of Rs. 1000/-. In default of payment of fine, the appellant Lucho Yadav will undergo S.I. for one month. Both the sentences shall be consecutive.

20. So far as the other appellants i.e., Appellant No. 01/Putul Devi, Appellant No. 02/Meena Devi, Appellant No. 03/Mofil Yadav and Appellant No. 04/Anil Yadav are concerned, the witnesses have not been consistent with regard to role of the appellants and there is no allegation of any overt act against them, and it appears that their participation in the crime may not be there.

21. In view of the discussions above, the appeal is partly allowed.

22. Accordingly, the judgment of conviction and order of sentence dated 08.03.2019 passed by learned 7th Additional District and Sessions Judge, Bhagalpur passed in Sessions Trial No. 1085 of 2004/ Trial No. 147 of 2017 arising out of Sabour P.S. Case No. 137 of 1999 against the Appellant No. 01/Putul Devi, Appellant No. 02/Meena Devi, Appellant No. 03/Mofil Yadav and Appellant No. 04/Anil Yadav is hereby set aside.

23. The Appellant No. 01/Putul Devi, Appellant No. 02/Meena Devi, Appellant No. 03/Mofil Yadav and Appellant



No. 04/Anil Yadav are acquitted of all charges levelled against them.

24. The Appellant no. 05/Lucho Yadav will serve his sentence.

25. Let the LCR be sent back to the concerned Court below forthwith.

26. Interlocutory application/s, if any, shall also stand disposed of accordingly.

(Sandeep Kumar, J)

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