
(2018) 05 PAT CK 0010

In the Patna High Court

Case No : Criminal Appeal (SJ) No.509 of 2015

LALITA DEVI & ANR.

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 307, 323
Code Of Criminal Procedure, 1973 — Section 313
Probation of Offenders Act 1907 — Section 3

Citation : (2018) 05 PAT CK 0010

Hon'ble Judges : ADITYA KUMAR TRIVEDI

Bench : Single Bench

Advocate : Shashi Chandra Pandey, S. A. Ahmad

Final Decision : Allowed

Judgement

1. As the learned counsel for the appellants has not turned up in spite of repeated call on account thereof, Mr. Shashi Chandra Pandey, learned

advocate has been requested to assist the Court as an Amicus Curiae.

2. Appellants Lalita Devi and Niranjana Kumar @ Niranjana Mahto @ Niju Bhagat @ Niru Bhagat have been found guilty for an offence punishable

under Section 307 of the I.P.C. and each one has been sentenced to undergo R.I. for four years, under Section 323 of the I.P.C. and each one has

been sentenced to undergo R.I. for six months with a further direction to run the sentences concurrently, vide judgment of conviction dated 28.07.2015

and order of sentence dated 30.07.2015 passed by the Additional Sessions Judge-3rd, Barh, Patna in Sessions Trial No.1167 of 2011.

3. PW-5, Ravindra Kumar while was admitted at Sub-divisional Hospital, Barh on 12.05.2010 at about 2.15 p.m. gave his fard-bayan alleging inter alia

that his uncle Niranjan Kumar @ Niranjan Mahto @ Niju Bhagat @ Niru Bhagat and his wife Lalita Devi, cousin brother (Mausera) of Niranjan

Kumar @ Niranjan Mahto @ Niju Bhagat @ Niru Bhagat namely Ghantu were quarreling on account of domestic affair. He was standing there.

During course thereof, all of them began to assault Manohar, son of Ghantu, who escaped there from. Then wife of Niju Bhagat namely Lalita Devi

spoken that he happens to be responsible for the quarrel, whereupon she began to abuse him as well as his mother, which was resisted by him as a

result of which, Niranjan Kumar @ Niranjan Mahto @ Niju Bhagat @ Niru Bhagat gave a blow of brick particle over his head on account of which,

he sustained injury. Blood oozed out. He fell down, whereupon wife of Niju Bhagat namely Lalita Devi gave brick blow over different parts of body as

a result of which, he became injured. On hue and cry, the neighbours came, rescued him. Then thereafter, his family members lifted him to hospital

where he is being treated.

4. On the basis of the aforesaid fard-bayan, Barh P.S. Case No.156 of 2010 was registered followed with an investigation as well as submission of

chargesheet which happens to be the basis of trial which ultimately concluded in a manner, subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete

denial. However, neither oral nor documentary evidence has been adduced in defence.

6. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, Sitaram Mahto, PW-2, Ritipal Kumar, PW-3,

Jitendra Mahto, PW-4, Lalita Devi @ Shanti Devi, PW-5, Ravindra Kumar, PW-6, Raj Kishore Ram and PW-7, Dr. Anand Kumar Jha. Side by side,

had also exhibited the documents as Exhibit-1, signature of informant over fard-bayan, Exhibit-1/1, fard-bayan, Exhibit-2, injury report. As disclosed

hereinabove, defence had not adduced oral as well as documentary evidence.

7. From the nature of the evidence, it is evident that PW-1 and PW-2 have not supported the case of the prosecution, on account thereof, they were

declared hostile. PW-3 is elder brother of the PW-5, informant while PW-4 is mother. So, PW-3, PW-4 and PW-5 are own mother and sons. PW-6 is

the I.O. and PW-7 is the doctor, who had examined PW-5/ informant.

8. PW-7, during course of examination of PW-5 on 12.05.2010 at about 12.30 hours found the following:-

I) Lacerated wound about 1 ½" x ¼" x scalp deep over left parietal scalp.

II) A bruise about 3" long over left deltoid region.

Both the injuries were caused by hard blunt substance and were simple in nature. Age of the injury within six hours. However, as suggested by the

prosecution, he replied that this injury may be dangerous to life. On that very score, in Para-2, he had categorically stated that he had not mentioned

the same in his injury report. Apart from this, there happens to be no finding at his end how the injury would be dangerous to life.

9. Now, coming to oral evidence, PW-3 is the elder brother of informant Ravindra Kumar, who was not at all present at his house during course of

commission of the alleged occurrence. He had stated that while he was at his shop, he received telephonic information from his house that his brother

and mother has been assaulted by his uncle and aunt, whereupon, he inquired from his brother, who elaborately detailed while Niju Bhagat, Lalita Devi

and Ghantu were quarreling over domestic affair and during course thereof, have assaulted Manohar, son of Ghantu, who escaped. Furthermore, they

have identified him to be responsible for initiation of the domestic dispute, which was resisted by him and then, giving threatening to kill, Niju Bhagat

assaulted him with brick particle. Lalita Devi had also assaulted and then thereafter, accused persons fled away. Then, he came to his house and took

away his brother to the hospital for treatment where police came and recorded fard-bayan of his brother in his presence. Identified his signature.

During cross - examination, he had stated that shop lies at Barh Court. His house lies approximately at a distance of half kilometer. He had further

stated that he had not seen the occurrence. In Para-5, he had stated that he had not found blood oozing from the injury of his brother. Then thereafter,

happens to be contradiction at Para-8 and is found corroborated with the evidence of PW-6, I.O. under Para-5.

10. PW-4 is the mother, who had deposed that she along with her son Ravindra Kumar was seeing the quarrel, which was going on in between Niju

Bhagat, his wife Lalita Devi, Ghantu and his son Manohar. Manohar escaped there from. Lalita Devi began to abuse her alleging that she happens to

be responsible for the whole episode. Then thereafter, Niranjana Kumar @

Niranjan Mahto @ Niju Bhagat @ Niru Bhagat gave brick blow over head

of her son causing injury thereupon. He hurled another blow causing injury over his upper part of back. Her son fell down, whereupon Lalita Devi

gave 2-4 brick blows. Thereafter, accused persons fled away, identified the accused. At Para-2, there happens to be contradiction and from PW-6

Para-6 the same is found duly substantiated. At Para-4, she had stated that first of all, she had seen quarreling at the P.O. and then thereafter, marpit

took place, oozing out blood from injury. She had seen blood coming out from the injury of Ravindra Kumar. Ravindra was lying, people have

surrounded him from all sides. She had identified some of them viz. Sitaram Mahto, Mithilesh, Nitish Kumar Ritipal and others. They lifted Ravindra.

Later on, they have taken him away to hospital. At Para-6, she had stated that at one place blood had fallen. Blood had fallen over his body, also over

his cloth. Then, they returned back at 7.00 p.m. In Para-7, she had stated that accused persons are uncle-aunt of Ravindra Kumar. There happens to

be no domestic dispute amongst them since before.

11. PW-5 is the informant of the alleged occurrence. He had deposed that on the alleged date and time of occurrence, he along with his mother Shanti

Devi @ Lalita Devi was over the land of Mishri Mahto and were seeing quarreling of Lalita Devi, Niju Mahto. They were 3-4 in number. They were

quarreling with Manohar. They assaulted him, whereupon Manohar escaped. Then Lalita, Niju began to abuse his mother. During course thereof, Niju

gave brick particle blow over his head. He repeated the blow over his upper part of back, when he fell down, Lalita Devi gave 2-4 blows, he became

unconscious. He regained sense at Barh Hospital where police came and recorded his fard-bayan (exhibited). In Para-3, he had stated that they were

present over the land of Mishri Mahto since before ten minutes. He had gone followed by his mother. In Para-4, he had stated that he is unable to say

since when Lalita and Ghantu were quarreling. Then had said that other co-villagers were also present. They were also present. Manohar happens to

be Mausera brother of her husband. Manohar escaped there from. At Para-5, he had admitted that accused persons came to know that they have

abetted the quarrel, whereupon accused persons began to abuse. None of the villagers intervened. At Para-6, he had stated that accused persons

have assaulted with brick particle, two brick blows were given. In Para-7, he had

stated that from his side only he along with his mother was present.

After assault, accused persons fled away. In Para-8, he had stated that accused persons happen to be uncle and aunt. Brick particle remained at the

P.O. At Para-10, there happens to be contradiction.

12. PW-6 is the I.O., who had deposed that after registration of Barh P. S. Case No.156 of 2010, investigation was entrusted to him, whereupon he

proceeded therewith. He had gone to Barh Hospital and recorded further statement of the informant. Seen the injury and then, issued injury report.

Reached at the P.O. village. As pointed out by the witnesses, inspected the P.O. which happens to be Sahan in front of house of accused Niju Bhagat

as well as adjoining sahan land belonging to Mishri Mahto. He had identified the boundary as East-ditch, West-Niju Bhagat, North-Ram Sewak Prasad

and South-Mishri Mahto. Then thereafter, he had recorded statement of the witnesses, procured injury report and then, submitted chargesheet against

the accused persons. During cross-examination at Para-4, he had stated that there was land dispute amongst both the parties. Then at Para-5, 6, there

happens to be contradiction relating to witnesses Jitendra and Lalita. In Para-7, he had stated that he had not seized brick particles from the P.O. He

had not seized the blood stain earth. But volunteered that brick particle and blood were present. He had seen the injury report. Then denied the

suggestion that he had investigated the case in collusive manner.

13. The conduct of the I.O. is found very much surprising, who in spite of absence of his finding relating to presence of brick particle as well as blood

over the P.O. had volunteered during course of cross-examination after so many years of alleged offence. However, admitted that he had not seized

the same. Furthermore, from the evidence of the doctor, it is apparent that only two injuries have been found over the person of the injured caused by

hard and blunt weapon, simple in nature. From the evidence of the doctor, it is further evident that akin to I.O. (PW-6), he had also gone a step

forward while on a suggestion given by the prosecution had said that these injuries may be dangerous to life. Although, injury report lacks the same. It

is also evident from the evidence of the PW-5 including the I.O. (PW-6) that prosecution party hadnot disclosed that they are commonly residing along

with accused persons in the same house or not as I.O. had found house of the accused at West of the P.O. without having presence of house of the

prosecution. That means to say, the prosecution party came from their house with some ulterior motive as they were found responsible for the domestic problem and in likewise manner, when the accused persons were indulged in verbal dual among themselves then there was no justification for the prosecution party to come over the land of Mishri Mahto, to see the game. In any view of the matter, the conduct of the prosecution party is not found above board and that happens to be reason behind admission at the end of the PW-5 under Para-5 that they were responsible for the aforesaid dispute. Furthermore, it is evident from the evidence of PW-4 and PW-5 that the occurrence took place in spur of moment without any premeditation, without having any preparation as the prosecution failed to bring on record from where the accused persons have procured the brick particle and further, in spite of absence of intervening circumstance, the nature of injury itself depict ruling out of severity of blows whereupon, so far application of Section 307 of the I.P.C. is concerned, is found not at all justifiable.

14. Furthermore, considering the nature of evidence and further, non-presence of any sort of injury over the person of the victim (PW-5) in consonance with the allegation having attributed against the appellant Lalita Devi, her conviction and sentence is also found non-maintainable even considering the ambit and scope of Section 34 of the Cr.P.C. in the facts and circumstance of the case. Admittedly, the action whatever been alleged was in spur of moment for the activity, which PW-5 under Para-5 had himself admitted and so, there would not be a common intention. Therefore, the conviction and sentence recorded against the appellant Lalita Devi is hereby set aside.

15. Now, coming to appellant no.2 Niranjana Kumar @ Niranjana Mahto @ Niju Bhagat @ Niru Bhagat as indicated above, the whole episode was not at all premeditated and on account thereof, he is found and held guilty for an offence punishable under Section 323 of the I.P.C. and is accordingly, convicted. So far sentence is concerned, considering the nature of the dispute and further, considering the overall situation instead of inflicting substantial sentence, he is directed to be released on due admonition in terms of Section 3 of the Probation of Offenders Act and for that, the learned lower Court is directed to notice him to hear on admonition.

16. Accordingly, appeal filed on behalf of appellant no.1 is allowed and so far

appellant no.2 Niranjan Kumar @ Niranjan Mahto @ Niju Bhagat @

Niru Bhagat is concerned, same is partly allowed in terms as indicated hereinabove. Appellant no.1 is discharged from the liability of the bail bond

while appellant no.2, who is on bail, is allowed to avail for four weeks. During midst thereof, he shall appear before the learned lower Court to hear

the admonition on being noticed, otherwise the learned lower Court will be at liberty to proceed against him in accordance with law. The first and last

page of the judgment be handed over to the learned Amicus Curiae for needful.