

CRIMINAL APPEAL No.164 OF 1993

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Against the judgment of conviction and sentence dated 23.4.1993 passed by Sri Anwar Ahmad, the then 3<sup>rd</sup> Addl.Sessions Judge,Nawadah in Sessions Trial No.277/92 of 1981/86.

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1. Sundar Sing
2. Jairam Sin
3. Balamukund Singh
4. Panan Singh
5. Latemar Singh
6. Murari Singh

Appellants

.....  
Versus

The State of Bihar

.....

Respondent

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For the appellants : Mr.Awadhesh Kumar Singh,Adv.

For the State : Mr. R.B.S.Pahepuri,Addl.P.P.

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**P R E S E N T**

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

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S.K.Sharma,J

This appeal has been filed by the above six appellants against the judgment dated 23.4.1993 passed by 3<sup>rd</sup> Additional Sessions Judge, Nawadah in Sessions Trial No. 277/92 of 1981/86 by which appellants Sundar Singh, Jairam Singh and Balamukund Singh have been convicted under Section 324 of the Indian Penal Code and have been sentenced thereunder to undergo rigorous imprisonment for one year each. Other appellants namely, Panam Singh, Latehra Singh and Murari Singh were also convicted under Section 323 of the Indian Penal Code but they have been released on probation bonds instead of sentence on furnishing probation bonds of Rs.5000/- with two sureties of the like amount each for a period of two years.

The prosecution case is that on 7.5.1981 at 8.00 A.M., the informant Bachu Singh (P.W.9) gave his fardbeyan alleging therein that while he along with his brother Mahendra Singh and his sons Umesh Singha, Nand Kishore Singh and Nawalesh Singh and and his labourer Jothan Mushar was breaking his palm tree in Mushari of his village, his Gotia Kishun Singh along with Jai Ram Singh armed with a saif, Sunder Singh with a Bhala, Balmukund Singh armed with a Garasa, Panan Singh, Murari Singh and Latember Singh all armed with lathi came there and at the behest of Kishun Singh, Jai Ram Singh gave a saif blow on his head, Sunder Singh gave a Bhala blow in the stomach of his borther Mahendra Singh and Balmukund Singh gave a garasa balow on the left hand of Mahendra Singh. Thereafter, Panan Singh, Murari Singh and Latembar Singh assaulted the informant with lathis who fell down. When Umesh Singh wanted to rescue the informant, he was also assaulted by the accused persons. The villagers came and thereafter the accused persons escaped. The injured were brought to Nawadah Hospital for treatment. The fardbeyan of Bachu Singh was recorded by S.I. Balmiki Sharma on 7.5.1981 at 4.30 P.M. in Sadar hospital, Nawadah which resulted in Muffasil P.S.Case No. 15 of 1981 under Sections 147,148,323,324 and 307 of the Indian Penal Code. The matter was investigated into and after completion of investigation, charge sheet was submitted under the

aforesaid sections against all the accused persons. Thereafter cognizance was taken and the case was committed to the court of Sessions. In the trial court, charges were framed and the same was explained to the accused persons who pleaded innocence and faced trial.

The defence of the accused persons from very beginning was that no such occurrence took place and they have been falsely implicated in this case because the informant party wanted to take away their palm tree after breaking the same.

The prosecution in order to prove its case has examined 11 witnesses. They are Sarju Singh (P.W.1), Ashok Kumar Sharma (P.W.2), Umesh Singh (P.W.3), Nawlesh Singh (P.W.4), Ganeshi Mishtri (P.W.5), Mahendra Singh, (P.W.6), Nand Kishore Singh (P.W.7), Dr.Ram Chandra Singh (P.W.8), Bachu Singh, informant (P.W.9), Ram Pratap Prasad (P.W.10) and Md. Islam (P.W.11).

Out of above 11 prosecution witnesses, P.Ws. 2 and 11 are formal witnesses. P.W.5 who was an independent witness has been declared hostile. P.W.7 has been tendered. The informant is P.W.9. Besides him, the injured witnesses are P.W.6 Mahendra Singh and P.W.3 Umesh Singh. Doctor is P.W.8.

According to P.W.8, at the relevant time, he was posted as Civil Assistant Surgeon in Sadar Hospital Nawadah and on 7.5.1981 at 9.15 A.M. he examined injured

Mahendra Singh (P.W.6) and found following injuries on his person:

- (i) Incised wound 5"x1/4"x 1/3" on the left palm extending from web space between left middle and ring finger to the thenar eminence.
- (ii) Incised wound 1 1/2"x1/2"x1/3" on the left side of abdomen 2 1/2" below and lateral to umbilicus.
- (iii) Bruise 3 1/2"x 3/4" left scapular region on the upper part.

In the opinion of the doctor, all the above three injuries were simple in nature.

Doctor (P.W.8) also examined injured Bachu Singh (informant) on the same day at 9.14 A.M. and found following injuries on his person:

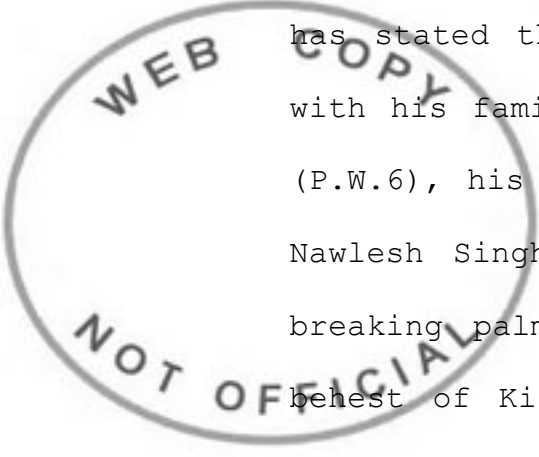
- (i) Incised wound 2 1/2"x1/4"x1/4" right parietal region of scalp.
- (ii) Abrasion 1/2"x1/3" right arm 3" above right elbow post part.
- (iii) Bruise 3"x1 1/4" on the left arm lateral part.
- (iv) Bruise 3"x1/2" on the right supra scapular region.

According to opinion of the doctor, all the above four injuries were simple in nature.

On the same day at 10.00 A.M. this doctor also examined injured Umesh Singh and following injuries on his person:

- (i) Bruise 4"x3/4" on the right scapular region.
- (ii) Bruise 3 1/2"x 3/4" on the right arm lateral side.
- (iii) Bruise 1"x1" on the lateral side of left knee.

According to opinion of the doctor, all the injuries were simple in nature. All the three injury reports were marked as Exts.2 to 2/2.



P.W.9, the informant Bachu Singh in his evidence has stated that on the date of occurrence, when he along with his family members namely, his brother Mahendra Singh (P.W.6), his sons Umesh Singh (P.W.3), Nand Kishore Singh, Nawlesh Singh and labourer Jethan Mushar were engaged in breaking palm tree, the accused persons came and at the behest of Kishun Singh, Jai Ram Singh assaulted him with saif on his head and when his brother Mahendra Singh came to rescue him, Sundar Singh gave a bhala blow in his stomach and Balmukund Singh assaulted him with garasa. His son Umesh singh and his brother Maahendra Singh were also assaulted with lathi by Panan Singh, Latember Singh and Murari Singh. After assault, they were brought to Nawada Sadar Hospital for treatment where his fardbeyan was recorded by Police. Fardbeyan has been marked as Ext.3 and formal F.I.R. was drawn which has been marked as Ext.1.

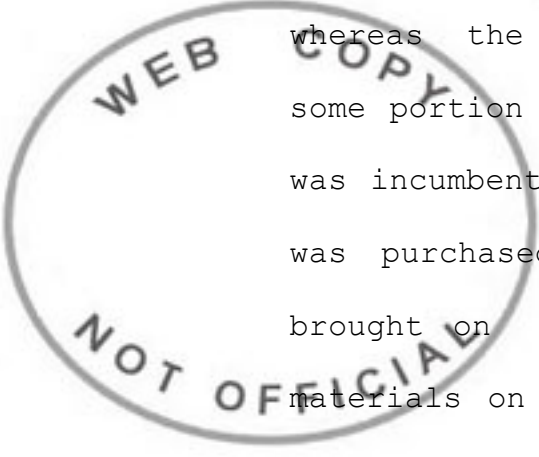
P.w.1 Sarju Singh has tried to support the prosecution case saying that he has seen the occurrence but in paragraph 12 in his cross-examination has stated that by the time he reached at the place of occurrence he saw both Mahendra Singh and Bachu Singh in injured condition. It means that this witness is not an eye witness and his motive to depose against the appellants has come in paragraph 20 of the evidence that appellant Kishun Singh had filed a case against P.W.1. Therefore, this witness is not an eye witness.

P.W.3 Umesh Singh is the son of the informant. He has supported the occurrence but he in his cross-examination has stated that accused persons were claiming the tree as their own. He further stated that though the land was purchased from Puna Manjhi but he was not knowing as to how Puna Manjhi came in possession of the land which was **Belagan** land.

P.W.4 Nawlesh Singh has supported the factum of assault but he has stated that the occurrence was on account of the fact that there was dispute with regard to tree and the accused persons were also claiming the tree. The informant and the accused persons belong to one family.

The defence of the accused persons was that the disputed land was their own as they were the bona fide owner of the land and the prosecution party tried to take away the tree from the said land and when they could not succeed, there was scuffle and they found proper opportunity to implicate the accused persons. Further submission is that the injuries received by the members of prosecution party were simple in nature which could easily be manufactured and they have accordingly manufactured the same.

From the trend of the evidence it appears that the land was being claimed by the defence also. From the evidence of the witnesses it appears that the plot in question had an area of ten decimals and the informant had



claimed that he purchased 5 decimals of land with palm tree whereas the accused persons also claimed to have purchased some portion of land with palm tree. In that situation, it was incumbent upon the prosecution to prove that the land was purchased with palm tree but no such document was brought on record. Taking into consideration the entire materials on record I am of the view that the prosecution has not been able to prove the charges against the appellants beyond shadow of all reasonable doubts.

Another illegality appears from the judgment is that the occurrence took place on 7.5.1981 and the judgment was delivered on 23.4.1993. The court has assessed the age of accused Balmukund Singh about 28 years. So he on the date occurrence was 16 years old. Accused Murari Singh was assessed about 24 years of age. So he on the date of occurrence was 12 years of age. Accused Latember Singh was assessed about 25 years. So he on the date of occurrence was 13 years of age. It appears that fifty per cent accused persons were juvenile on the date of occurrence. This important fact was not taken notice of by the trial court.

On merit also, the prosecution has not been able to prove the charges against the appellants beyond all reasonable doubts. Fifty per cent accused were juvenile on the dater of occurrence. In that circumstances, I am of the view that the conviction and sentence of the appellants are fit to be set aside.

Accordingly, this appeal is allowed and the impugned judgment of conviction and sentence is set aside. The appellants are also discharged from the liabilities of their bail bonds.

( **Shyam Kishore Sharma, J.**  )

Patna High Court, Patna  
The 18<sup>th</sup> January, 2008  
Tahir/- (NAFR)