

CRIMINAL APPEAL No.156 OF 1993

Against the judgment of conviction and sentence dated 25.5.1993 passed by Sri Pashan Xaxa, Ist Addl.Sessions Judge, Munger in Sessions Case No. 665 of 1983.

1. Nepali Singh		
2. Mithilesh Singh		
3. Subodh Singh	Appellants
	Versus	
The State of Bihar	Respondent
For the appellants:	Mr.Rma Briksh Singh "Pahepuri"	
For the State	:	Mr.A.Rahman, Addl.P.P.

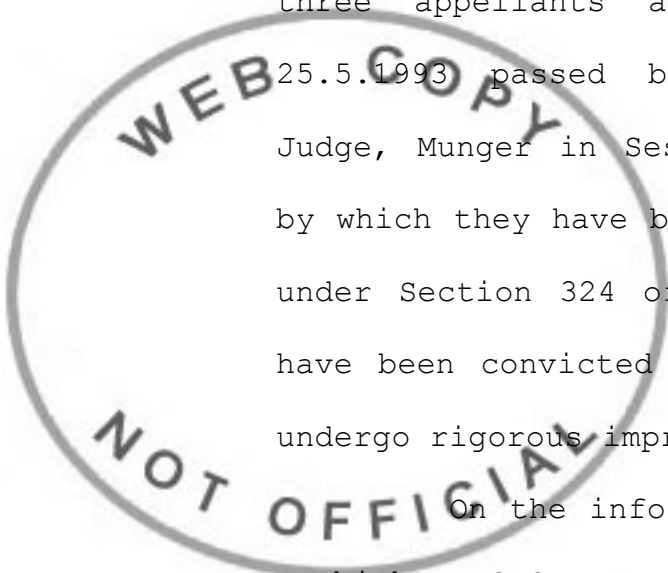
P R E S E N T

THE HON'BLE MR. JUSTICE SHYAM KISHORE SHARMA

S.K.Sharma, J.

This appeal has been filed by the above three appellants against the judgment dated 25.5.1993 passed by Ist Additional Sessions Judge, Munger in Sessions Case No. 665 of 1983 by which they have been found guilty for offence under Section 324 of the Indian Penal Code and have been convicted and sentenced thereunder to undergo rigorous imprisonment for three years.

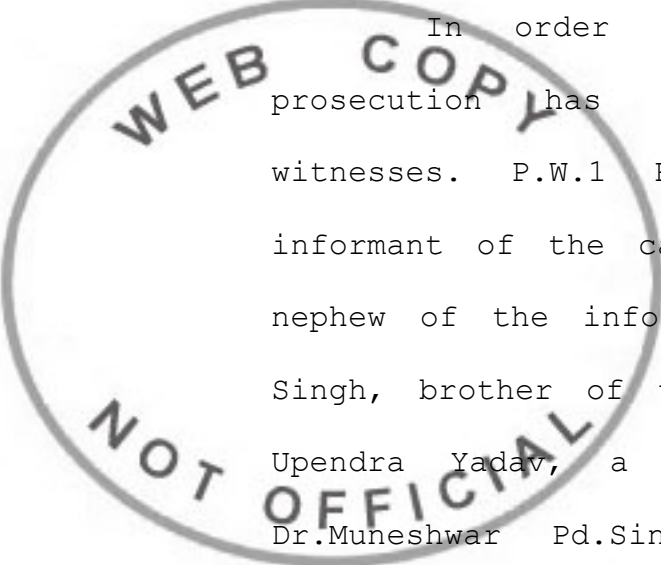
On the information of Ram Naresh Singh, Barbiga P.S.Case No. 17 of 1981 was instituted relating to an occurrence of 7th February, 1981 at village Samaskhurd. At that time, according to allegation, the informant Ram Naresh Singh had gone to attend the call of nature at about 8.00 A.M. and when he was sitting on a **Aal** for that



purpose, the appellants along with a number of villagers arrived there and started assaulting. Appellant Subodh Singh was having saif whereas appellant Mithilesh Singh was having farsa in their hands. Appellant Nepali Singh was having lathi in his hand. The other accused persons who have not faced trial, namely, Jarardan Singh was having armed with pistol, Masusan Singh was having armed with farsa and Ishwari Singh was having armed with lathi and all the accused persons were raising alarm '**Maro- Maro**'. Accused Ishwari Singh ordered to assault whereupon accused Janardan Singh assaulted with garasa on the left thigh of the informant. When brother of the informant Arjun Singh and nephew Ashok Singh who were nearing the boring came for rescue, they were also assaulted by the accused persons. Thereafter informant's aunt, wife of Dhandeshwar Singh, came for rescue, she was also assaulted by appellant Subodh Singh causing injuries on her finger. All the injured were taken to Barbigaha hospital for treatment. The matter was investigated into and charge sheet was submitted on against these appellant. Cognizance was taken and thereafter the case was

committed to the court of sessions. The trial proceeded.

The defence denied the entire occurrence and also submitted that they are the victims of assault by the informant and his men. The informant and his men were cutting the mango tree of the appellants and on protest, prosecution party has assaulted them which resulted in Barbiga P.S. Case No. 18 of 1981 (S.T.No. 656 of 1983) under Sections 307, 326, 324 and 323 of the Indian Penal Code and 27 of the Arms Act.



In order to prove its case, the prosecution has examined altogether five witnesses. P.W.1 Ram Naresh Singh is the informant of the case. P.W.3 is Ashok Kumar, nephew of the informant. P.W.4 is Arjun Singh, brother of the informant and P.W.5 is Upendra Yadav, a chance witness. P.W.2 is Dr. Muneshwar Pd. Singh who has treated the injured.

P.W.2 in his evidence has stated that on 7.2.1981 he was posted as Incharge Medical Officer, in Barbiga State Dispensary and on that date at 9.45 A.M. he examined Ashok Kumar

and found one injury i.e. incised wound 3"x1/2"x bone cut on the dorsom of the right hand. According to the doctor, injury was caused by sharp cutting instrument and was also grievous in nature.

The doctor on the same date and time also examined Ram Naresh Singh and found following injuries:

- (i) Incised wound 3"x1/4"x1" on the lateral aspect of the left thigh.
- (ii) Incised wound 1"x1/2"x1 on the left side of the forehead.
- (iii) Swelling 3"x1" on the left leg front side.

According to doctor, the injuries were caused by sharp cutting weapon such as garasa and farsa and also by hard and blunt substance. All the injuries were simple in nature.

On the same day, doctor also examined Arjun Singh and found following injuries:

- (i) Incised wound 1"x1/2"x bone deep on the right side of the scalp.
- (ii) Abrasion 1/2"x1/2" between the left

index fingers and thumb.

According to opinion of the doctor, injury no.1 was caused by sharp cutting weapon such as saif and injury no.2 was caused by some hard and blunt substance such as lathi. Both the injuries were simple in nature.

On the same day at 9.55 A.M., the doctor also examined Nepali Singh, who is also one of the appellants of this appeal, and found following injuries:

(i) Incised wound 2 ½"x1/2"x1/4"on the right side of scalp caused by sharp cutting weapons such as garasa.

(ii) Lacerated wound ½"x1/4"x depth not probed on right leg six inches below the knee joint on radial aspect.

Both the injuries, according to opinion of the doctor, were simple in nature.

On the same date and time, doctor also examined Mithilesh Kumar Singh, who is also one of the appellants in this appeal and found following injury:

(i) Incised wound 6"x 1"bone cut on the

right side of scalp caused by sharp cutting weapon which was found grievous in nature.

On the same day, the doctor also examined Subodh Kr.Singh, who is also one of the appellants in this appeal, and found following injuries:

- (i) Abrasion $\frac{1}{2}$ "x $\frac{1}{8}$ " on the palmar surface of the left thumb.
- (ii) Abrasion $\frac{1}{2}$ "x $\frac{1}{2}$ " on the palmar surface of the left index finger.
- (iii) Abrasion $\frac{1}{2}$ "x $\frac{1}{4}$ " on the palmar surface of the left middle finger.
- (iv) Abrasion $\frac{1}{2}$ "x $\frac{1}{4}$ " on palmar surface of left ring finger.
- (v) Abrasion $\frac{1}{4}$ "x $\frac{1}{2}$ " on the palmar surface of the left little finger.

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

The defence has also examined two witnesses on their behalf. They are D.W.1 Surendra Mandal who has been examined as formal witness and has proved F.I.R.(Ext.B) which bears signatures of S.I. D.P.Mishra of Barbiga police station and also Subodh Singh. D.W.2 is

Mathura Singh who has proved registered sale deed (Ext.C) executed by Muneshwari Kumari in favour of Ishwari Singh scribed by Munshi Basudeo Prasad.

The informant in his evidence has stated that on the date and time of occurrence, the accused persons variously armed came and committed various overt act as a result of which he and others of his family received injuries. Thereafter, he and his family members were treated at Barbigaha State Dispensary by P.W.2 of this case Dr.Muneshwar Prasad Singh.

The trial court after considering the entire evidence found the accused persons not guilty under Sections 307 and 326 of the Indian Penal Code and found them guilty only under Section 324 of the Indian Penal Code and convicted and sentenced them under the said section, as stated above.

Learned counsel for the appellants have submitted the prosecution witnesses have supported the fact that on the date and time of occurrence, there was assault as a result of which the injuries were caused to the informant and others but the prosecution has not

explained the circumstances in which other side also received injuries on their persons. The injuries of the other side has also been brought on record by the same very doctor who has examined the injured of prosecution side. Learned counsel for the appellants submits that non-explanation of the injuries of other side suggests that the informant and his persons have not come with true version and have suppressed some material facts and on this assumption, some doubt is created in the prosecution version and once doubt is created, the same will be benefited to the appellants.

It appears that there is case and counter case and not only this, due to lapses of time, the appellants and the prosecution party have arrived at some amicable settlement of the genesis of the occurrence which is a land dispute. Today, a compromise petition has been filed mentioning therein that out of the disputed land of 31 decimals, a plot of 22 decimals in plot no. 760 from south has been given to Subodh Singh and others (appellants of this appeal i.e. Cr.Appeal No.156 of 1993) and 11 decimals of land in the said plot from north

has been given to Ram Naresh Singh and others (appellants of Cr.Appeal No.177 of 1993).

Though the case is not of compoundable nature, the same has been compromised between the parties out side the court and as such the genesis of the occurrence has vanished. It also appears that the prosecution has not come with correct and true version of the occurrence.

Taking into consideration all the facts and circumstances of the case, I am of the view that the prosecution has not been able to prove the charge beyond all reasonable doubts against the appellants and the judgment of conviction and sentence of the appellants is fit to be set aside..

In the result, this appeal is allowed and the 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 30th January, 2008
Tahir/- (NAFR)