

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4802 of 2018**

Arising Out of PS. Case No.-261 Year-2005 Thana- CHANAN District- Lakhisarai

Mohan Yadav Son of Late Sakal Yadav, Resident of Village- Ithari, Police Station - Chanan, District- Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 4817 of 2018

Arising Out of PS. Case No.-261 Year-2005 Thana- LAKHISARAI District- Lakhisarai

Arvind Yadav Son of Late Anandi Yadav Resident of Village - Mohanpur, P.S.- Chanan, District- Lakhisarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 195 of 2019

Arising Out of PS. Case No.-261 Year-2005 Thana- LAKHISARAI District- Lakhisarai

1. Harihar Yadav S/o- Late Mahabir Yadav Resident of Village- Ithari, P.S.- Chanan, District -Lakhisarai
2. Pyare Yadav @ Pyare Lal Yadav S/o- Late Babu Lal Yadav Resident of Village- Ithari, P.S.- Chanan, District- Lakhisarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 1843 of 2019

Arising Out of PS. Case No.-261 Year-2005 Thana- LAKHISARAI District- Lakhisarai

SOHAN YADAV Son of Late Sakal Yadav Resident of Village - Ithari, P.S.- Chanan, Distt - Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 4802 of 2018)

For the Appellant/s : Mr. Md. Irshad, Advocate



Mr. Ansul, Advocate
For the State : Mrs. Anita Kumari Singh, APP
(In CRIMINAL APPEAL (SJ) No. 4817 of 2018)
For the Appellant/s : Mr. Karandeep Kumar, Advocate
For the State : Mr. Syed Ashfaque Ahmad, APP
(In CRIMINAL APPEAL (SJ) No. 195 of 2019)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate
For the State : Mr. A.M.P. Mehta, APP
For the Informant : Mr. Sachidanand Chaudhary, Advocate
Mr. Parmanand PD. NR. Sahi, Advocate
(In CRIMINAL APPEAL (SJ) No. 1843 of 2019)
For the Appellant/s : Mr. Md. Irshad, Advocate
Mr. Amit Kumar Singh, Advocate
For the State : Mr. Zeyaul Hoda, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 18-03-2024

All the appellants faced trial jointly but at the time of pronouncement of judgment the appellant Sohan Yadav became absent so, trial court separated his case and separate judgment was passed in his case but however, evidences as well as result of the judgment remained same, hence, all these appeals are being decided together by a common judgment.

2. Heard learned counsels appearing for the Appellants and learned APPs for the State.

3. These appeals have been filed against the judgments of conviction and order of sentence dated 03.12.2018 and 05.04.2019 passed by the learned Fast Track Court-II, Lakhisarai in Sessions Trial Case No. 191/2011/Trial No. 367/2018 and Sessions Trial Case No. 191A/2011/Trial No. 422 of 2019 arising out of Lakhisarai (Chanan) P.S. Case No. 261 of 2005 whereby



and whereunder the appellants have been convicted for the offences punishable under Sections 147, 148, 323, 324, 341 and 307 read with Section 149 of the Indian Penal Code (in short 'IPC') and sentenced to undergo rigorous imprisonment for a period of two years under Section 147 of IPC each, three years under Section 148 of IPC each, one year under Section 323 of IPC each, three years under Section 324 of IPC each, one month under Section 341 of IPC each and five years under Section 307 read with Section 149 of IPC along with a fine of Rs. 2,000/- each and in default of payment of fine they have been directed to undergo simple imprisonment of fifteen days.

Prosecution's Story:-

4. The substance of the prosecution story is that on 19.08.2005 the informant namely, Mukesh Kumar and his co-villagers Raghunandan Singh, Vyas Singh, Shambhu Singh, Rambaran Singh, Bhutkan Singh, Salai Singh and Paramhans Singh were returning from 'Jalappa Asthan' place after performing Bhagwati Puja and when they reached near Morbey River, they saw that more than hundred persons led by Ex- MLA Prahlad Yadav were putting bags of sand at Morbey River and thereafter, he and his co-villagers were asked by one Prahlad Yadav to inform about their village then it was informed by them that they were of



Rampur village and were returning from 'Jalappa Asthan' after performing Puja. Thereafter, as per informant, an order was given by said Prahlad Yadav to kill the informant and his companions and considering the said situation he and his co-villagers tried to run away but they were chased by the assembled persons who belonged to Ithari and Mohanpur village and they were carrying Gun, *Lathi*, Spear, *Garasa* and Pistol with them and they started chasing them. Thereafter, the accused persons surrounded the informant and his co-villagers at '*Sitarampur Bahiyar*' and started assaulting them. It was further alleged by the informant that the accused/appellant Harihar Yadav assaulted on the head of Raghunandan Singh by means of *Garasa* and snatched his golden chain and cash and the accused/appellant, Pyarelal Yadav, assaulted on his head with a *Garasa* as a result of which he fell down and the accused Shivnath Yadav assaulted on the shoulder of one namely, Nawal Kishore Singh with butt portion of a gun as a result of which a bone of his shoulder got fractured. The informant further alleged that accused Bhagat Yadav armed with gun, assaulted on the head of Shambhu Singh with the butt portion of said gun and the accused Banarsi Yadav armed with *Bhala*, assaulted on the leg of Parashnath Singh with *lathi* portion of said *Bhala* and accused/appellants Bhola Yadav and Mohan Yadav,



assaulted Vyas Singh by means of *lathi*. The informant further alleged that there were other accused persons who were hundred in number and armed with gun they also assaulted the victims and on hulla several persons namely, Sharda Singh, Somnuj Sharma Kariyanand Sharma, Ram Bilash Singh, Basul Singh, Balkrishna Singh and several other villagers who witnessed the commission of the alleged occurrence came there and saved them.

5. The informant filed a written application (Exhibit-1) narrating the above allegations, on that basis, the formal FIR bearing Lakhisarai (Chanan) P.S. Case No. 261 of 2005 dated 19.08.2005 was registered under Sections 147, 148, 149, 341, 323, 324, 325, 307 and 379 of the Indian Penal Code which set the criminal law in motion.

6. After the completion of investigation the appellants were chargesheeted.

7. The appellants stood charged for the offences under Sections 148, 147, 323, 324, 341 and 307 read with Section 149 of IPC.

8. To substantiate the charges levelled against the appellants the prosecution examined as many as 9 witnesses who are as follows:-

PW-1:- Nawal Kishore Singh



PW-2:- Salai Kumar

PW-3:- Shambhu Singh

PW-4:- Bhutkan Singh @ Parmanand Singh

PW-5:- Vyas Singh

PW-6:- Paramhansh Singh

PW-7:- Raghunandan Singh @ Raghavendra Kumar
Singh

PW-8:- Mukesh Kumar (Informant)

PW-9:- Dr. Himkar

9. Besides the oral evidence the prosecution proved the following documents and got them exhibited as follows:-

Ext.1:- Signature of the Informant on FIR

Ext.2, 2/1, 2/2, 2/3, 2/4, 2/5, 2/6, 2/7 & 2/8:- Injury reports of Mukesh Kumar, Paramhans Singh, Salai Singh, Bhutkan Singh @ Parmanand Singh, Nawal Kishore Singh, Shambhu Singh, Vyas Singh, Raghunandan Singh and Rambaran Singh respectively.

10. After completion of prosecution's evidence the statements of the appellants were recorded by the trial court and they were given an opportunity to explain the incriminating evidences and circumstances coming out against them from the prosecution's evidences in which they denied the said



incriminating evidences and circumstances but they did not take any specific defence in their statements.

11. The appellants did not give any evidence in their defence.

12. While convicting the appellants the learned trial court considered the evidence of the prosecution witnesses to be consistent on the points of date of occurrence, motive of appellants/accused, manner of assault and type of weapons and took into account the medical evidence given by PW-9 as a corroborative piece of evidence and according to the trial court, the manner in which the victims were assaulted by the appellants and others a common object to kill them was clearly evident on the part of the appellants.

Arguments on behalf of the appellants:-

13. Mr. Ansul, learned counsel, appearing for the appellants Mohan Yadav and Sohan Yadav submits that the main accused namely, Prahlad Yadav who led the appellants and co-accused persons, was not sent up by the police and in the last paragraph of the FIR there is details of several persons who are said to have witnessed the alleged occurrence but none of them was produced and examined by the prosecution and the attention of the material witnesses of the prosecution was drawn to their



earlier statements which had been reduced in writing by the investigating officer during investigation then they made improvements which could not have been explained by the prosecution on account of non-examination of the I.O which seriously prejudiced the appellants. It has been further argued that in view of the manner and genesis of the occurrence a general scuffle might have taken place in between two groups and the same was not a case of assault to nine persons by hundreds of persons and all the injured persons sustained superficial injuries which falsifies the allegation of using fatal weapons in assaulting them. As per FIR, the informant was assaulted with *Garasa* on his head by the appellant Pyarelal Yadav but the injury found on his person was opined as a lacerated wound on scalp. He further submits that the prosecution witnesses initially did not name the accused persons as assailants but later on they made their new version during course of trial and the same has to be treated as a material improvement in terms of the judgment rendered by Hon'ble Supreme Court in **Tahsildar Singh & Another vs. The State of Uttar Pradesh** reported in **AIR 1959 SC 1012**. It has been further argued that there is overwriting in the FIR regarding the time of receiving of information at the police station and the injured persons were not examined by a government doctor rather



they are said to have been treated by a private doctor PW-9, who issued their injury reports and the prosecution failed to prove the common object of the appellants to commit an offence and the evidence of the prosecution witnesses is not sufficient to prove the alleged individuals acts of the appellants.

14. Mr. Ajay Kumar Thakur, learned counsel appearing for the appellants Harihar Yadav and Pyare Yadav @ Pyarelal Yadav submits that while convicting the appellants the learned trial Court ignored this fact that medical evidence does not corroborate the ocular evidence and as per prosecution story, the alleged occurrence was committed by a mob consisting of more than hundred persons and the appellant, Harihar Yadav is 80 years old and appellant Pyarelal Yadav is 84 years old, so, it was not possible for them to play a specific role in the alleged occurrence and as per allegation both the appellants inflicted *Garasa* blow to the so-called injured persons but the injuries found on their person were opined to be simple in nature which do not corroborate the allegations levelled against the said appellants and there are serious contradictions among the testimonies of PW-1 to PW-8 regarding the time, place and manner of occurrence.

15. Mr. Karandeep Kumar, learned counsel appearing for the appellant Arvind Yadav, submits that the learned trial court



did not appreciate the evidence of PW-8 who happens to be informant, in right manner as according to this witness, a mob of two hundred persons committed the alleged occurrence but only twelve persons are said to have been identified by the informant and other witnesses and among them only five faced trial and against this appellant no any specific allegation was made and the main accused Prahlad Yadav, who was the order giver as per FIR, was not put on trial. The learned counsel further adopts the above arguments submitted by other learned counsels.

16. On the contrary, learned APPs appearing for the State have vehemently opposed these appeals and submitted that PW-1 to PW-8, who were material witnesses of the prosecution, fully proved the prosecution's case and they remained consistent to the time and manner of occurrence as well as the identity of the appellants and their role in the commission of the alleged occurrence and these witnesses identified them also and the injury reports of the injured persons which were proved by PW-9 are quite corroborative evidence to the allegations levelled against the appellants and there is sufficient evidence to justify the conclusion of the trial court and there is no reason to interfere in the judgment of the trial court, hence, all these appeals are liable to be dismissed.



17. Mr. Sachidanand Choudhary, learned counsel appearing for the informant submits that the evidence of prosecution witnesses PW-1 to PW-8 is completely reliable as they are injured and they witnessed the entire incident and the contradictions among their statements are minor and natural. Learned counsel further submits that the evidence of PW-9 who medically examined the injured persons, corroborates the allegations levelled against the appellants and regarding the time and manner of occurrence as well as the weapons which were used by the appellants in assaulting the victims the evidence of PW-1 to PW-8 is completely trustworthy hence, their conviction for the alleged offences is proper and there is no merit in their appeals.

18. Heard both the sides and perused the evidences available on the case record and also gone through the statements of the appellants.

19. In the instant matter, all the appellants have been convicted for the offences under Sections 147, 148, 323, 324, 341 and 307 read with Section 149 of IPC. Now this Court has to find out whether the prosecution succeeded to prove its allegation that the appellants formed an unlawful assembly with deadly weapons and having a common object to kill the victims and also has to find out whether the prosecution succeeded to prove the alleged



individual acts of the appellants for which they have been convicted for the offences under Sections 323, 324 and 341 of IPC. To attract the offences punishable under Sections 147 and 148 of IPC the prosecution is bound to prove that five or more persons have formed an assembly having a common object to commit an offence or act which comes in the purview of, at least, one of the five categories described in the Section 141 of IPC and if such assembly or any member thereof uses force or violence with deadly weapons in prosecution of the common object of such assembly then the offences under Sections 147 and 148 of IPC may also attract. If prosecution fails to prove the formation of such assembly or fails to prove the assembly's common object falling under any of the categories described under Section 141 of IPC then in such a situation the members of such assembly can only be held liable for their individual acts.

20. In the present matter, as per allegation, the victims including the informant were returning from a place namely, Jalappa after worshiping of goddess Bhagwati on 19.08.2005 and on the way they saw that the accused persons who were being led by one namely, Prahlad Yadav, were putting sacks filled with sand at the bank of Morbey River and thereafter, the accused asked them about their home and then the informant and his companions



told them that they were returning from 'Jalappa place' after worshipping and just on that revealment at the instigation of Prahlad Yadav, the accused persons firstly chased them and thereafter, attacked them with *lathi, Garasa, Pistol, Spear, Gun* etc. From this story, it is clearly evident that the accused persons assembled at the alleged place to put sacks filled with sand at the bank of Morbey river and till that time they had no any intention to commit any offence or act described in the five categories of Section 141 of IPC and the FIR clearly goes to show that the alleged occurrence took place in the spur of moment and the manner of occurrence does not show that the accused formed a common object on the spot to commit an offence as they allegedly committed the alleged occurrence in following with the order given by Prahlad Yadav. So, in such a situation the accused/appellants ought to have been held liable for their individual acts only. Now, I have to see whether the evidence of prosecution witnesses is sufficient and reliable to substantiate and prove the individual acts of the appellants which have been alleged in the FIR.

Analysis of the evidence of Prosecution Witnesses:-

21. PW-1, Nawal Kishore Singh, deposed that around 100 to 150 persons were building an embankment at Morbey river



by putting sacks filled with sand. Regarding the number of the said persons the prosecution witnesses made contradictory statements but one thing is quite clear that more than hundred persons were present at the place of occurrence, so, in the presence of such large crowd, it was not easy for the victims to notice the individual acts of the appellants. PW-1 deposed that the accused surrounded them and thereafter, started assaulting and he was assaulted by the butt portion of a gun and he could identify the assailant upon seeing him. He further stated that he was assaulted by one namely, Vishwanath but as per FIR, this witness was assaulted by one namely, Shivnath Yadav. He further deposed in the cross-examination that 50 persons from the crowd were having, *Spear*, *Garasa* and *Pistol* and 150 persons were filling sand. Accordingly, the evidence of this witness is not sufficient to prove the individual acts of the appellants which have been revealed in the FIR.

22. PW-2, Salai Kumar, stated in the chief-examination that about 100 to 125 persons were building an embankment at the river and they started running on seeing the accused but they were surrounded at '*Sitrampur Bahiyar*' place and thereafter, the accused started assaulting them by using *Bhala*, *Garasa*, *Lathi* and *Pistol*. When the witness was being examined, one co-convict namely, Mohan Yadav was present in the courtroom but this



witness could not have identified him. The witness did not reveal the specific role or individual act of all the appellants in his evidence.

23. PW-3, Shambhu Singh, deposed that 150 persons were building an embankment at the river at the time of alleged occurrence. Though, this witness claimed to be able to identify the accused upon seeing them and also identified the accused who were present in the courtroom at the time of his examination but he could not have revealed the names of said accused. He stated in the cross-examination that he was assaulted by the sharp portion of the *Khanti* and he sustained injury at his right thigh. The witness did not reveal the names of any of the appellants as being involved in assaulting him and as per the injury report of this witness (Ext.2/6), he sustained bruise only over his left and right thigh which was opined to have been caused by hard and blunt object by the doctor concerned. The said medical opinion does not corroborate the alleged weapon of assault which was used by the accused in assaulting him.

24. PW-4, Bhutkan Singh @ Parmanand Singh deposed in the examination-in-chief that he and other injured persons, Nawal Kumar, Rambaran Singh, Mukesh Kumar, Shalinder, Vyas Singh and Shambhu Singh were assaulted by 50-100 persons by



means of *lathi* and butt portion of pistol and gun. In the cross-examination he stated that he could not reveal the number of the persons who assaulted him. He further stated that he did not remember whether he had recorded his statement before the police or not. So, the evidence of this witness is also not sufficient to prove the presence as well as individual acts of the appellants which have been alleged in the FIR.

25. PW-5, Vyas Singh, deposed that 100-200 persons were building an embankment at Morbey river with one namely, Prahlad Yadav but the number of the persons who formed the crowd as revealed by this witness is contradictory to the figure stated by other witnesses and here it is important to mention that as per prosecution story, the accused were being led by Prahlad Yadav but he was not sent up by the police for trial. The witness further stated that he and other eight persons were surrounded by the accused and thereafter they were assaulted by them by means of *Spear*, *Garasa* and *Paina*. The witness stated in the cross-examination that he did not record his *beyan* (statement) before the police. Accordingly, the evidence of this witness also does not inspire confidence of this Court and his evidence is not sufficient to substantiate the allegations levelled against the appellants.



26. PW-6, Paramhans Singh, stated that the accused persons who were present in the courtroom at the time of his examination, were involved in assaulting him and others, according to him, the appellant Harihar Yadav was present at that time in the courtroom. He stated in the cross-examination that he was assaulted by *lathi* portion of Spear(Bhala). But he further stated in paragraph no. '7' of his cross-examination that he could not reveal about the accused who assaulted him by the *lathi* portion of the Spear. The evidence of this witness is contradictory and not consistent so, his evidence is also not sufficient to prove the alleged acts of the appellants.

27. PW-7, Raghunandan Singh @ Raghavendra Kumar Singh, deposed in the chief-examination that he and one Sitaram were assaulted by the accused and he was assaulted at his head by means of *garasa*. He further stated that the appellant Harihar Yadav was the person who assaulted him. He stated in paragraph no.'13' of his cross-examination that he knew the name of appellant Harihar Yadav as co-accused/appellant Arvind Yadav was calling him by his name. As, admittedly, a crowd consisting of more than 100 persons was involved in the commission of the alleged occurrence so, merely this fact that one co-accused was calling the name of the appellant Harihar Yadav cannot be deemed



to be a sufficient source of identification of the appellant. Moreover, as per the injury report of the said witness on his person three injuries in the form of bruise, pain and body-ache were found and the same were opined to have been caused by hard and blunt object. The said medical opinion does not corroborate the nature of the weapon which was allegedly used by the appellant Harihar Yadav in assaulting this witness. So, the evidence of this witness is also not sufficient to prove the presence of the appellants as well as specific alleged acts of them.

28. PW-8, Mukesh Kumar who is informant of this case, deposed that the accused firstly started chasing them and thereafter surrounded them and after that started assaulting them. He further deposed that he was assaulted by the appellant Pyarelal Yadav who assaulted at his head by means of *garasa*. He stated in the cross-examination that 200 persons were involved in the alleged occurrence. But he further stated that he could not reveal the name of the specific person from the crowd of 100 to 150 persons who assaulted the specific injured. As per injury report of this witness, he sustained one lacerated wound over his scalp and second injury was found in the form of body-ache. As per allegation made by this witness, he was assaulted by means of *garasa*. But the medical opinion coming out of the injury report of this witness regarding



the nature of the weapon does not corroborate the allegation made by this witness and moreover, as per this witness, the age of the appellant Pyare Yadav @ Pyare Lal Yadav might be near sixty years but this appellant's age has been disclosed as 84 years in his appeal when it was filed in the year 2019 so, in view of this fact, he might be about 70 years old at the time of commission of the alleged occurrence and the witness stated that he could not state the specific person from the crowd of more than 100 persons who had assaulted the specific injured. So, in view of this fact as well as considering the contradictions appearing regarding the nature of the weapon which was allegedly used by the appellant Pyare Yadav @ Pyare Lal Yadav and regarding the age of the said appellant and also taking into account the fact that a large crowd consisting of more than 100 persons was involved in the commission of the alleged occurrence and this witness was not in a clear position to identify the assailants, it will not be proper to place reliance upon this witness regarding the alleged act of the appellant Pyare Lal Yadav. Hence, I do not find the evidence of this witness to be sufficient to prove the specific alleged acts of the appellants.

29. In the instant matter several persons sustained injuries but none of them was treated at a government hospital



rather they were treated by a private Doctor who was examined as PW-9 and the prosecution did not give any explanation about the reason as to why the injured persons were not treated at a government hospital and this fact casts a serious doubt in the allegations levelled in the FIR. In the present matter, the prosecution failed to produce and examine the investigating officer before the trial court, so, the appellants could not have got a chance to cross-examine the investigating officer regarding the material contradictions which have come out between the allegations levelled in the FIR and the evidence of the material witnesses of the prosecution and it seriously prejudiced the appellants and the same can be deemed to be fatal to prosecution's case.

Conclusion:-

30. In view of above discussed facts and evidences of the prosecution, this Court forms the opinion that though the prosecution succeeded to prove an occurrence of *Marpit* committed by a large crowd consisting of more than 100 persons but did not succeed to prove the presence of the appellants at the alleged place in the said crowd and also not succeed to prove the alleged individual acts of the appellants which were specifically attributed against them by the informant and furthermore, the



alleged occurrence took place in the spur of moment. So all the appellants are entitled to get the benefit of doubt and this Court does not find sufficient material and evidence to justify the conviction of the appellants for the alleged offences. As such, the judgment and order impugned by which the appellants have been convicted and sentenced are hereby set aside and these appeals stand allowed.

31. All the appellants are on bail, hence, they as well as their sureties are hereby discharged from their respective liabilities arising out of their respective bonds and the bail bonds are cancelled.

32. Let the judgment's copy be sent immediately to the trial court concerned for needful.

33. Let the LCR be sent back to the trial court concerned forthwith.

(Shailendra Singh, J)

maynaz/-

AFR/NAFR	AFR
CAV DATE	N.A.
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