

District – Rohtas

**In The Court of 3rd Additional Sessions Judge,
Rohtas at Sasaram**

Criminal Appeal 01/18

C.I.S Registration No- 01/18

Sasaram, Dated-- 22/01/19

1. Bandhoo Rajwar s/o Late Sakal Rajwar

2. Rita Devi w/o Laloo Rajwar

3. Lallu Rajwar s/o Bandho Rajwar

4. Jitendra Rajwar s/o Bandhoo Rajwar

-----Appellants

Versus

1. The State of Bihar

2. Shrawan Kumar Soni s/o Late Bharat Soni

----- Respondents.

Counsel for the Appellants – Sri Anup Kumar Rai, Advocate

Counsel for the Respondent – Sri Laxman Singh, Addl. P.P

Present: Dilip Kumar Verma

Addl. Sessions Judge-III

Rohtas at Sasaram

J U D G M E N T

1. This Criminal Appeal has been preferred against impugned judgment and order dated 12.12.2017 passed by Sri Himanshu Pandey, S.D.J.M, Dehri in complaint case no. 90/2012, Tr. No 620/2017 by which and whereunder appellants were sentenced for six months S.I for offence u/s 323 I.P.C and a sentence of one months S.I for offence u/s 341 and a sentence of three years S.I for offence u/s 379 I.P.C and also ordered that all the sentences shall run concurrently.

2. Being aggrieved and dissatisfied with the impugned judgment and order passed by the Id. Court below this appeal has been preferred by the appellants.

3. As per the case of prosecution the necessary facts related to the present case are as under.

As per complaint petition the case of complainant Sharavan Kumar Soni is that on 19.05.2012 at 8 A.M aforesaid appellants were digging foundation on the land of the complainant which was purchased in the name of the complainant which khata no. was 57 and plot no. was 398. When the complainant forbade them from digging foundation then all the appellants started assaulting him and appellant Lalu Rajwar striked at the left hand of the complainant with lathi due to which his

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hand became fractured and the complainant also sustained hurt at right hand and left leg. When the wife of the complainant came there to rescue her husband appellant Jitendra Rajwar striked with Lota due to which she became unconscious and she also sustained hurt at her both arms. Appellant Sunita Devi snatched a gold chain and ear ring worth rupees 25 thousand and 12 thousand respectively. Thereafter villagers took both the injured persons to Nauhatta Hospital where the doctor referred them for treatment at Varanasi. The police had recorded the statement of the complainant at Nauhatta but no F.I.R was registered so the complainant filed this complaint case.

4. On the basis of aforesaid complaint petition complaint case No- 90/2012 was registered, after inquiry a prima facie case was found u/s 341, 323, 379, 34 I.P.C and accused persons were summoned to face trial and charges u/s 341, 323, 379/34 I.P.C were framed and trial concluded in the manner indicated above hence this appeal.

5. While assailing the judgment of conviction it has been submitted on behalf of the appellant that the judgment of learned lower court is bad in law and facts also. The impugned judgment and order is ultra vires and based on erroneous appreciation of facts and material evidence and conclusion arrived at is based on wrong appreciation of material evidence. He further submitted that the present case is of civil nature and the occurrence is said to be of 19.05.2012 but his complaint petition was filed on 20.06.2012 and this delay has not been properly explained as none of the witnesses in course of their deposition has explained this delay and no evidence has been brought on record to establish the title over the land on which foundation was being dug as alleged in the complaint petition and contradictory statements have been given by the prosecution witnesses due to which the prosecution has failed to prove the genesis of this case. He further submitted that in this case no medical evidence was produced so section 323 I.P.C also not proved because the witnesses have stated that injured persons were examined by the doctor has not been examined nor any injury report was brought in evidence. He further submitted that there is no allegation of overt act against appellant no. 1, 3 & 4 but the ld. Lower court has convicted all the accused persons for offence u/s 379/34 I.P.C also there

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is no evidence that who wrongfully restrained whom and so conviction u/s 341 I.P.C is illegal. In this case not a single independent witness has turned up to support the case of the complainant and both the witnesses of the complaint case are wife and son of complainant who are interested witnesses and there is no mention of son of complainant in complaint petition that he was present at the time at place of occurrence. Prosecution has not produced any purchase slip of ornaments alleged to be stolen and the Id. Lower court below has not assigned any specific vision for conviction of the appellants and prayed to set aside the judgment dated 12.12.2017 passed by Id. S.D.J.M, Dehri.

6. On the other hand learned P.P while supporting the finding recorded by the Ld. Lower Court submitted that Ld. Lower Court has rightly passed the order of conviction as the prosecution has been able to bring home the charges to the hilt and witnesses examined have proved the case of prosecution and the finding of Id. Lower court is in accordance with law.

7. Now the point for consideration is

(a) whether the judgment passed by court below is sustainable in the eye of law or not.

(b) Whether the court below has properly appreciated and evaluated the evidence produced by prosecution.

(c) Whether there is any need to make any interference in the judgment delivered by the Ld. Lower Court or not.

FINDINGS

8. From perusal of lower court case record as well as judgment it transpires that prosecution has examined three witnesses in support of this case and they are:-

PW 1 – Abhimanu Kumar Soni

PW 2 – Shravan Kumar Soni

PW 3 – Urmila Devi

9. The prosecution has brought in evidence the following documents in support of its case :-

Ext 1 – Complaint petition.

10. PW 1 is Abhimanu Kumar Soni. He has stated in his examination-in-chief that the occurrence took place some ten months ago

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from the date of his examination in the morning and at that time he was at his house. He has further stated that there is a land in the name of his father pertaining to khata no. 57, plot no. 398, area 5 decimal and on this land accused Lalu Rajwar, Jitendra Rajwar, Bandhoo Rajwar, Rita Devi and Fekni were digging foundation and when they were prevented from doing so then accused Lallu Rajwar assaulted at left hand of his father and his left hand became fractured then Jitendra stricked at the head of her mother with a brass Lota. Accused Rita Devi snatched her gold ear ring. Thereafter his father and mother were treated at Referral Hospital, Nauhatta from where they were referred to Varanasi and they were treated at Varanasi. He has claimed to identify the accused persons.

In his cross-examination he has stated that when accused persons were digging foundation his father prevented them then Lallu Rajwar assaulted with him lathi and at that time he was at his house and after 5 minutes he came out of his house. He has further stated that his father had purchased disputed land from Raghunath Chandravanshi. In para 6 of his cross-examination he has stated that after occurrence his father had gone to Referral Hospital and from there he had gone to Varanasi and her mother was also taken to Varanasi. He has further stated that before his arrival at the P.O accused persons had committed the offence. His father had gone to the police station and Daroga had come to the hospital and had inquired from his mother and police had also recorded her statement at the hospital.

11. PW 2 is Shravan Kumar Soni who has stated in his examination-in-chief that the occurrence took place on 19.05.2012 at 8 A.M and at that time accused persons Lallu Rajwar, Fekni, Bandhu and Rita Devi came to his land and when he prevented them then accused persons assaulted him on his both arms, left leg and Lallu assaulted him at his knee due to which his knee became fractured and when his wife Urmila Devi came there then accused persons assaulted her and snatched a gold chain from her neck and accused Rita Devi snatched her gold ear ring. Accused Jitendra Rajwar assaulted on the head of his wife with a Lota due to which she became faint. Thereafter they went to Referral Hospital, Nauhatta from where doctor referred her for C.T Scan to Varanasi then he went to Varanasi. He has further stated in his

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examination-in-chief that he had gone to police station where Daroga chided him and drove him away. He has proved his complaint petition which was marked Ext-1. He has also claimed to identify all accused persons.

In his cross-examination he has stated that when he arrived at the place of occurrence he had seen that two accused persons were digging foundation on his purchased land and from whom he had purchased said land he can not say. In para 10 of his cross-examination he has stated that he had arrived at 8 A.M and at that time there was no body at the P.O excepting accused persons . His wife was treated at B.H.U, Varanasi..

12. PW 3 is Urmila Devi who has stated in her examination-in-chief that the occurrence took place on 19.05.2012 at 8 A.M. Her one decimal land was taken by Bandhu Rajwar and there was an order from Thana that after measuring the land he should leave the land. In the meantime all the accused persons including Kallu Rajwar started digging foundation and when objected accused persons assaulted. She has further stated that after fracture of her husband's hand when she went there to rescue her husband then Jitendra Rajwar striked with Lota on her head and Gita Devi snatched gold chain of one Bhar and ear ring of 8 gram. Thereafter she went to hospital and when in the evening she gained sense doctor referred her for city scan to Varanasi. She has claimed to identify all the accused persons.

In his cross-examination she has stated that when he had gone to rescue her husband Jitendra had assaulted her with danda. At the time of occurrence there were a number of villagers present at the P.O and she can not say the name of any body. She had gone to the hospital from there she was referred to Varanasi and in B.H.U she was treated and papers of treatment were prepared at both the hospital.

These are the evidences produced on behalf of prosecution.

13. Heard and perused the materials available on the record.

14. From the evidences available on the record I find in this case only three witnesses has been examined out of which P.W 1 is Abhimanu Kumar Soni who is the son of the complainant, P.W 2 and P.W 3 is wife of the complainant. Except these three witnesses no body has come to

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fore to prove the case of prosecution whereas P.W 3 Urmila Devi has stated that at the time of occurrence a number of villagers were present but P.W 2 has stated in para 10 of his cross-examination that no any villager was present. Thus there are contradictions on point of witnesses who had seen the occurrence. It is also clear that these three witnesses are naturally interested witnesses. P.W 2 in para 5 of his cross-examination who has stated that from whom he had purchased the disputed land he can not say which appears unbelievable. P.W 1 has stated in para 3 of his cross-examination that he had come out of his house after 5 minutes of occurrence and at that time he was at his house. This goes to show that he had not seen the occurrence of mar-pit. Moreover there is a land dispute and no paper regarding the land has been brought in evidence which also goes against the case of prosecution.

15. All the three witnesses examined have stated that the injured persons had first gone to Referral Hospital, Nauhatta and there both the injured persons were treated but no paper of treatment has been brought in evidence also all the witnesses have stated that Urmila Devi was referred to Varanasi and she was treated at Varanasi but no any treatment paper was brought in evidence whereas PW 3 Urmila Devi has stated in para 4 of her cross-examination that she has papers regarding her treatment at both the hospitals but these papers were not brought in evidence and no any reason for withholding these treatment papers has been assigned which goes against the case of prosecution. It is settled law that when the injured are treated by the doctor and when complainant states that when the injury reports are available but non production of injury report also goes against the case of prosecution which puts a question mark as to why the same was not brought in the evidence when it was available. Even for the section 323 I.P.C when it is asserted that a medical examination was done and due to non production of medical evidence as well as injury report an adverse inference shall be drawn. In a case law 1989 BLJ 575 the law has been laid down that “when there is no medical evidence of injury and witnesses examined were found untrustworthy, conviction under section 323, I.P.C cannot be sustained”. Moreover this is a complaint case about which evidence should be scrutinized with more care and caution. There is an inordinate delay of

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almost one month in filling the complaint for which no any satisfactory reason has been assigned. So for the reasons aforesaid I am of the humble view that prosecution has failed to prove its case beyond all reasonable doubts.

16. Thus in view of the above I have no hesitation in holding that the prosecution has failed to prove the case against the appellants beyond all reasonable doubts and thus they become entitled for acquittal from all the charges leveled against them and the appellants are reasonably entitled to benefit of doubt and they are acquitted of all the charges and accordingly the appeal succeeds and is allowed. The conviction and sentence imposed on the appellant are set aside as the same was not according to law and and ld. Lower court judgment required interference. All the appellants are on bail so they are discharged from liabilities of bail bond.

Dictated & Corrected

(Dictated)

3rd Additional Sessions Judge,
Rohtas at Sasaram
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