

Bidya Singh and Others Vs. the State of Bihar

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Court : Patna

Decided On : Feb-12-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No.713 of 2013

Appellant : Bidya Singh and Others

Respondent : The State of Bihar

Judgement :

Cav Judgment:

1. Appellants, Bidya Singh, Rahi Ram Singh, Deo Nandan Singh, Nakhalal Singh, Raj Nandan Singh, Baleshwar Singh, Ram Bhawan Singh, Deena Nath Singh have been found guilty for an offence punishable under Section 307/34 IPC, 323/34 IPC, 147 IPC, 148 IPC vide judgment dated 30.09.2013 and each one has been directed to undergo RI for four years as well as fined Rs. 10,000/- in default thereof, to undergo SI for six months additionally, SI for one year, fine of Rs. 1000/- in default thereof, to undergo SI for one month additionally having no separate sentence for an offence punishable under Section 147 IPC, 148 IPC, respectively vide order dated 03.10.2013 by 4th Additional Sessions Judge, Gopalganj in Sessions Trial No. 295/1994/292/2011 have preferred instant appeal.

2. On 21.06.1992 at about 5:00 p.m, injured Satya Narain Singh (PW-6) gave his Fard-e-beyan while he was admitted at State Dispensary, Kuchaikot along with

injured, Gajadhar Singh, Suresh Dutt Singh before O/C of Kuchaikot P.S. alleging inter alia that on the same day at about 8:00 a.m. while he was sitting at his Bathan and his brother Gajadhar Singh was providing fodder to animals, Bidya Singh armed with Katta, Baleshwar Singh armed with Farsa, Ram Chandra Singh armed with Farsa, Rahiram Singh armed with Farsa, Nagina Singh armed with Lathi, Rajendra Singh armed with Farsa, Deonandan Singh armed with Lathi, Ram Bhawan Singh armed with Farsa, Buddhu Singh armed with Lathi, Nokhe Lal Singh armed with Lathi, Dina Nath Singh came at his Bathan. On an order of Bidya Singh, Baleshwar gave Farsa blow over his (PW-6) head causing injury thereupon while others have also assaulted with Lathi and Farsa on account of which he fell down. During course thereof, he raised alarm over which Gajadhar Singh came in his rescue who was also assaulted by Ram Chandra Singh with Farsa over his head while others also assaulted with Farsa and Lathi. His neighbour, Suresh Dutt Singh, after hearing alarm rushed in rescue, was also assaulted. Dina Nath also snatched away his wrist watch. On hue and cry, Jagannath Singh, Banaras Singh, Ambika Singh, Chandrika Singh along with others rushed seeing whom the accused persons fled away.

3. The motive for occurrence has been shown as that there was a Panchayati as accused Bidya Singh had blocked the drainage belonging to Jag Narayan Singh. Even on the day of Panchayati, Bidya Singh quarreled with Jag Narayan Singh during course of opening of drain over which he (PW-6) along with other villagers had scolded both the parties.

4. The aforesaid Fard-e-beyan was referred to Gopalpur P.S. on account of which Gopalpur P.S. Case No. 19/1992 was registered. The police report, after completion of investigation, was submitted whereunder Bidya Singh, Buddhu Singh (since deceased), Dina Nath Singh, Nakhalal Singh, Ram Bhawan Singh were sent up for trial while Baleshwar Singh, Rahi Ram Singh, Nagina Singh (since deceased), Raj Nandan Singh, Deo Nandan Singh, Ram Chandra Singh (since deceased) were not sent up for trial, however, differing therefrom, all were summoned and accordingly, faced trial with the ultimate result, the subject matter of instant appeal.

5. The defence case, as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence. It has further been pleaded that on the same day at the same time, the prosecution party brutally assaulted Baleshwar Singh, Rahi Ram Singh for which Gopalpur P.S. Case No. 20/1992 was registered and only to put safeguard to themselves, this case has been instituted and for that defence had also exhibited series of documents.

6. While assailing the judgment of conviction and sentence rendered by the learned lower court, it has been submitted on behalf of appellants that the findings so recorded by the learned lower court is not at all based upon the materials available on the record. It has also been submitted that the judgment impugned suffers from basic infirmities as the learned lower court failed to deal with the evidence in the background of case and counter case, non explanation of injuries sustained by accused more particularly, being grievous in nature. In continuity with the same, it has been submitted that according to consistent version of the prosecution the occurrence must have been committed at the Bathan of PW-6 but from the objective finding of the I.O. as well as from cross-examination of the witnesses, it is apparent that the place of occurrence is found shifted therefrom supporting the version of the defence and on account thereof, the learned lower court should have considered the plea that prosecution by suppressing the real genesis as well as manner of occurrence proceeded with false story and on account thereof, would have rejected at the threshold itself.

7. Then it has been submitted that three witnesses namely, Suresh Dutt Singh (PW-1), Gajadhar Singh (PW-5) and Satya Narayan Singh (PW-6) as per prosecution version have sustained injuries at Bathan of PW-5, PW-6 as is evident from Fard-e-beyan as well as from their evidence but shifting of P.O. therefrom and being an accused in counter case is indicative of the fact that they along with others have committed the occurrence whereunder appellant, Baleshwar Singh and Rahi Ram Singh were assaulted. Non explanation of injuries of appellants, Baleshwar and Rahi Ram in the aforesaid background, must be considered as a major setback to the prosecution case. It has further been submitted that shifting of P.O. indicates that even discarding defence version probabalized it case of a

free fight amongst the parties for which case and counter case was going on and in the aforesaid background, the Court has to see as to who happens to be aggressor because of the fact that the adversary, in the aforesaid background would have a right of private defence. From the evidence on record, it is evident that prosecution had completely failed to substantiate that the appellants were aggressors and on account thereof, the finding so recorded by the learned lower court is found at variance with the evidence on the record.

8. It has further been submitted that there is reason behind suppression of genesis of occurrence which in the Fard-e-beyan has been disclosed dispute amongst appellants Bidya Singh with Jag Narayan Singh (PW-4) over blockade of drain. That means to say, spell of direct confrontation has been knowingly averted, however, during course of cross-examination of all the PWs, it is found exposed on account of prevalence of land dispute amongst the parties since before the occurrence, parties were on strained relationship as well as were inimical.

9. In the aforesaid background, it has been submitted just to shield themselves being aggressors, a new theory has been propounded, although, is found completely dislumed on account of objective finding of I.O. on this very score. Because of the fact that judgment impugned is not congruent with the material on the record, hence is fit to be set aside.

10. On the other hand, the learned APP counter-meeting the submission raised on behalf of appellants submitted that there is no truthfulness in the defence version because of the fact that after having the FIR of Gopalpur P.S. Case No. 20/1992 (counter case) the same is not all found properly supported with by exhibiting the injury report as well as by examining the doctor has been examined. On this very score, it has also been submitted that prosecution is under no obligation to explain the minor injuries sustained by the accused, so much so, that injuries even having over the person of accused attracts no explanation, in case, having the prosecution case proved by cogent, consistent and reliable evidence.

11. It has further been submitted that examination of injured clearly suggest that they were present at the place of occurrence and sustained injuries as per their narration. Having the aforesaid factual aspects fully proved, the allegation so put

forward by them with regard to assailants as well as members of unlawful assembly, apart from evidence of these three injured PWs, other witnesses have also supported. It has further been submitted that learned trial court was very much conscious and dealt with each and every issue involved in the trial. As such, the judgment of conviction and sentence needs no interference.

12. PW-8 is Dr. Janak Lal Sharma who had examined the injured on 21.06.1992 and found following injuries over their persons:- (a) Suresh Dutt Singh:- i. One incised bleeding wound 2"x 1/3" on right parietal region of scalp. ii. One small scratch on right hand. iii. One small scratch on left wrist joint. iv. One bruise 3"x3" around left wrist joint. v. One scratch of 1" on left side of neck. vi. Diffuse tenderness all over body. M.I. one old cut scar mark in front of chest. Age of injury within 12 hours. All injuries are simple in nature. Amongst injuries, injury no.1, 2, 3 by sharp cutting weapon such as Farsa. Rest injuries caused by hard and blunt substance such as Lathi. (b) Gajadhar Singh:- i. One incised profusely bleeding wound 1" x x" on right parietal region of scalp with fracture of right parietal bone. ii. One bruise 4" x 4" on upper portion of right shoulder joint with dislocation of right shoulder joint. iii. One bruise 4" x 4" on middle of left forearm. iv. One bruise 3" x 3" on left side of chest. v. Tenderness on right side of chest. M.I. one mole on left lower portion of chest, age of injury within 12 hours. Injury No.1 is grievous in nature inflicted by sharp cutting weapon such as Farsa, Injury no. 2 and 5 inflicted by hard blunt weapon such as Lathi. Amongst which injuries no.2 is grievous in nature rest are simple in nature. (C) Satya Narain Singh:- i. One incised bleeding wound 2" x x" on left side of forehead with cutting of left frontal bone, ii. One bruise 2"x 2" on front of chest. iii. One bruise 2" x 2" on right side of chin. iv. One bruise 4" x 4" on right gluteal region. v. Diffuse tenderness all over body. M.I. one old burn scar mark on chest. Age of injury within 12 hours. Injury No.1 is grievous in nature inflicted by sharp cutting weapons such as Farsa. Rest injuries are simple in nature caused by hard and blunt weapons such Lathi.

13. From cross-examination, it is evident that nothing substantial has been elicited by the defence save and except if one takes risk of life, these injuries could be manufactured.

14. Now coming to the ocular evidence, PW-1 during his examination-in-chief had said that while he was picking grass in his field lying east to the house of Baleshwar Singh, he heard sound coming out from main road in front of Bathan of Satya Narain Singh. When he reached at the place of occurrence, he saw Satya Narain Singh in unconscious state. Baleshwar Singh was assaulting Gajadhar Singh with Farsa. He also found Ram Chandra Singh, Nagina Singh, Buddhu Singh, Shiv Nandan Singh, Ram Nandan Singh, Rahi Ram Singh, out of whom Ram Nandan Singh and Rahi Ram Singh were assaulting with Farsa while rest were assaulting with Lathi. On his intervention, he was assaulted by Lathi by Baleshwar, Rahi Ram, Ram Chandra. On hue and cry, villagers came, seeing whom accused persons escaped therefrom. Subsequently, the villagers took them to hospital where they were examined. Identified the accused. During course of cross-examination at para-2, he had admitted institutions of counter case by the accused (appellants), Baleshwar Singh but he had denied any sort of injury sustained by accused persons. In para-4, he had shown the boundary of the place of occurrence as North-house of Dina Nath Singh, South- Bathan of Satya Narain Singh, East-Road, West-Road. He had further disclosed that 20-25 persons apart from both the parties were present since before his arrival. There is contradiction as is evident from the said part. In para-5, he had disclosed that he had seen Satya Narain Singh lying at the middle of the road in injured condition.

15. PW-5, Gajadhar Singh is another injured who had deposed that on the alleged date and time of occurrence while he was at his Bathan, Harbansh Singh, Bidya Singh, Baleshwar Singh, Jugul Singh, Nagina Singh, Buddhu Singh, Ram Bhawan Singh, Ram Janam Singh, Raj Nandan Singh, Dina Nath Singh, Nakhlal Singh, Ram Chandra Singh came at his Bathan and began to abuse his brother Satya Narain Singh. Bidya Singh ordered to kill. Bidya Singh fired from Katta. Baleshwar gave Farsa blow over forehead of his brother. He rushed to rescue him whereupon Rahi Ram had assaulted him with Farsa over his head. Ram Chandra had also assaulted with Farsa on his head. Nagina Singh, Buddhu Singh, Ram Bhawan Singh, Jugul Singh, Dina Nath Singh, Nakhalal Singh assaulted him with Lathi. The accused persons also assaulted Suresh Dutt. Then thereafter, they were taken to hospital. Identified the accused.

16. During course of cross-examination, he had admitted in para-9, that accused persons have also filed counter case against them which is going on. In para-10 and 11, he had deposed that there was no subsisting dispute relating to land dispute amongst the parties as well as pendency of litigation. However, in para-12 and 13 he exposed himself being an accused in earlier instituted case as well as being an accused regarding murder of accused Ram Chandra. In para-14, he had admitted the place of occurrence to be road.

17. In para-16, he had denied any sort of injury over the person of accused in para-18, he had stated that first of all his brother was assaulted over his head. Then he was assaulted. Para-35 happens to be suggestion challenging the manner as well as genesis of occurrence in the background of counter case.

18. PW-6 is the another injured-cum-informant, Satya Narain Singh. He had deposed that on the alleged date and time of occurrence while he was at this Bathan, Bidya Singh, Baleshwar Singh, Rahi Ram Singh, Ram Chandra Singh, Nagina Singh, Raj Nandan Singh, Buddhu Singh, Ram Bhawan Singh, Jugul Singh, Nakhalal Singh, Dina Nath Singh came out of whom Bidya Singh was armed with Katta, Baleshwar Singh was armed with Farsa, Ram Chandra Singh was armed with Farsa, Rahiram Singh was armed with Farsa, Nagina Singh was armed with Lathi, Rajendra Singh was armed with Farsa, Deonandan Singh was armed with Lathi, while Jugul Singh, Ram Bhawan Singh, Dina Nath Singh were armed with Lathi. They came and began to assault. Baleshwar had given a Farsa blow while rest had given Lathi blow. His brother, Gajadhar Singh came in rescue who was assaulted by Ram Chandra Singh. When Suresh Dutt came, he was assaulted by Rahi Ram Singh with Farsa. Rest had also assaulted with Lathi. The motive of occurrence has been disclosed on account of blockade of drain by Bidya Singh over which Panchayati was effected. Witnesses have seen the occurrence and lifted them to hospital. Identified the accused. In para-4 of his cross-examination, he had admitted presence of counter case bearing Gopalpur P.S. Case No. 20/1992 which is going on. He had denied the injury of Baleshwar as well as Rahi Ram Singh. In para-5, he further disclosed pendency of eight cases amongst the parties. In para-7 of his cross-examination he had shown presence of Bathan of accused Dina Nath Singh, north to road while his Bathan lies south to

raod. In para-8 of his cross-examination, he had shown the boundary of place of occurrence as north- house of Dina Nath Singh, south- his Bathan, east-road, west-road. In para-9, he had stated that first of all he sustained injury and then fell down. In further para he had stated that he had sustained more than twenty injuries over his person and in likewise manner, Gajadhar Singh had. Suresh Dutt had fifteen injuries. Then there happens to be suggestion in the background of counter case.

19. PW-9 is the I.O. From his evidence, it is evident that prosecution had examined him in casual manner. During his examination-in-chief in para-2, he had shown the place of occurrence and described it in following way:- Ghatna Asthal Gram Ahirauli Basti Ke Madhya Se Gujri Kachchi Sarak Jo Purab Pashchim Hai Uttar Khadar Ka Dher Tatha Naad Khunta Jo Abhiyukta Baleshwar Singh Ka Bataya Gaya Hai. Waadi Ka Bathan Tatha Naad Khunta Palani Hai. Pashchim Mein Waadi Ka Makan Tatha Sakchhi Jagan Nath Singh Ka Makan Hai. Pashchim Mein Abhiyukta Dina Nath Singh Aur Nokhelal Singh Ka Makan Isthit Hai. Ghatna Asthal Par Sarak Ke Sate Uttar Khadar Ka Dher Hai Jo Chhitaye Hue Halat Mein Paya Gaya Hai.

20. During cross-examination at para-5, he had deposed that the place of occurrence happens to be Kachchi Sarak. He had further stated that Baleshwar lies adjacent north to Kachchi Sarak. He had further stated that road also lies east to the place of occurrence. He has further stated that he had seen the place of occurrence as pointed out by Jagnarain Singh.

21. Jagnarain Singh is PW-4. He in chief had stated that his wife as well as wife of Bidya Singh had a quarrel over drain about two or three days prior to the occurrence and on account of intervention of villagers, brawl was pacified. Then he had deposed that Satya Narain, Gajadhar, Beleshwar, Rahi Ram quarreled and during course thereof Baleshwar and Rahi Ram gave Farsa blow over Satya Narain as well as Gajadhar respectively. Suresh had also sustained injury but he is unable to name the assailant. He further identified the accused. During cross-examination at para-6, he had stated that Dina Nath was not involved during course of œMaar-peet?. In para-8, he had stated that when he came at the place

of occurrence, he had not seen Baleshwar and Rahi Ram in injure condition. He had further admitted to be an accused in counter case bearing Gopalpur P.S. Case No. 20/1992. In para-15, he had shown the boundary of place of occurrence as North- accused Dina Nath Singhs Naad and Khunta, South-Gajadhar Singhs Naad and Khunta, East and West-Road. In para-16, he had stated that he had seen only one injury over person of Gajadhar Singh. In para-18, he had stated that 50-60 persons were present since before his arrival. In para-19, he had stated that Gajadhar Singh had not sustained injury before his arrival. He had sustained injury after his arrival. Then there happens to be suggestion.

22. PW-3 is Ishwar Dayal Singh. He had stated that on the alleged date and time of occurrence while he was at his Bathan, he heard sound coming from eastern direction over which he had gone to Bathan of Hira Singh and therefrom he saw Baleshwar armed with Farsa, Rahi Ram armed with Farsa, Ramchandra Singh armed with Lathi, Nagina Singh, Ram Bhanwan Singh and Deonandan Singh armed with Lathi. So many persons were also present having variously armed whose name he is unable to disclose. Baleshwar assaulted Satya Narain Singh with Farsa over his head. His brother Gajadhar came in his rescue who was assaulted by Rahi Ram with Farsa over his head. Suresh Dutt came in his rescue who was also assaulted with Farsa by Rahi Ram Singh. When all the three fell down others began to assault with Lathi. Then thereafter, the accused persons escaped therefrom. From para-7 of his cross-examination, it is evident that Suresh Dutt happens to be his cousin brother. In para-8, he had further disclosed that he is unable to say the location of injury save and except the Farsa injury. In para-11, he had disclosed that when he came to place of occurrence, at that very time, none was injured. In para-13, he had shown the place of occurrence as North-Road, South- field of Baleshwar, East- House of Ambika Singh, West- field of Ram Chandra Singh. In para-14, he had stated that Bidya Singh was at his Darwaja which lies 10-12 houses away from the place of occurrence at eastern side where Nokhalal was also present.

23. PW-2 is the formal witness while PW-7 has not supported the case of the prosecution.

24. After having parallel scrutiny of the evidences of all the PWs, it is crystal clear that even the injured witnesses are not consistent with regard to their respective assailants what to talk about the evidence of so-called other witnesses. Not only this, the witnesses are also inconsistent with the place of occurrence. They have not fixed the actual place of occurrence and on that very score, from the evidence PW-9, the I.O. under para-2, the same is found utterly demolished. From the evidence of PW-8, the doctor, it is evident that some sort of injuries have been sustained by the injured but apart from admitting the animosity amongst the parties which has purposely been withheld at initial stage and substituting with fresh cause arising on account of blockade of drain of PW-4 is found again completely demolished in the background of evidence of PW-9, the I.O. who had not found or who was not shown, although the P.O. was shown by the PW-4 himself during course of investigation. Though, the appellants have failed during course of trial to exhibit the injury report as well as examining doctor which they have filed by way of supplementary affidavit but the same can not be looked into as an exhibit of the record but the facts remain and admitted one by the prosecution witnesses as well as from Exhibit-C that counter case was there at the behest of one of the appellants, Rahi Ram Singh. It is further evident from the evidence of PW-2 as well as PW-3 that they had also changed the scenario by keeping away the main accused, Bidya Singh, Dina Nath Singh and Nakhalal Singh apart from the inconsistency relating to presence of accused, manner of occurrence as well as place of occurrence.

25. Presence of counter case as well as inconsistency amongst the evidences of the PWs including that of injured over assailants and further shifting of place of occurrence, in other words, one could safely infer that prosecution could not be able to substantiate the place of occurrence as well as manner of occurrence along with presence of appellants. It is obligatory on the part of prosecution to prove its case beyond reasonable doubt and will not be allowed to stick over weakness of defence like present one wherein defence had failed to examine the doctor as well as exhibit injury report. Further more there happens to be inconsistencies in between medical evidence as well as ocular evidence which did not justify the allegation so alleged by the prosecution. That means to say at every occasion there happens to be inconsistency in the prosecution.

26. In the case of Arshad Hussain v. State of Rajasthan as reported in AIR 2013 SC 3001, the Honble Apex Court has held under paragraphs-18 and 19 which are as follows:-

"18) It is a well settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted for the offence punishable under Section 302 IPC. Inasmuch as the prosecution failed to establish the circumstances in which the appellant was alleged to have fired at the deceased, the entire story has to be rejected.

19) In the light of the above discussion, though we are unable to accept the contention relating to the right of private defence as pleaded by learned counsel for the appellant, on going through the entire prosecution case, coupled with the reasoning of the High Court accepting the claim of the other accused, i.e., A-2 and A-3, the entire prosecution case is to be rejected as unbelievable. In such circumstances, the appellant is entitled to the benefit of doubt, accordingly, we set aside his conviction and sentence."

27. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed. All the appellants are in custody. They are directed to be released forthwith if not wanted in any other case.

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