

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.280 of 1992

Arising Out of PS.Case No. -218 Year- 1983 Thana -Nawada District- NAWADA

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Rama Pandit son of Sriman Narain Pathak, resident of Muhalla, Malgodown PS,
Nawadah, Distt-Nawadah.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : None

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 03-08-2015

In spite of having been repeatedly called out, none
appears on behalf of appellant.

2. The Hon'ble Apex Court in the case of *K.S. Panduranga v. State of Karnataka* as reported in *2013(2) PLJR (SC) 276* has held that even in absence of learned counsel for the appellant, the High Court is not precluded from disposing of the Cr.Appeal on its merit. That being so, the records have been minutely gone through.

3. Sole appellant, Rama Pandit who has been found guilty for an offence punishable under Sections 326 IPC, 307 IPC and further been directed to undergo RI for ten years under Section 307 IPC while no separate sentence has been passed under Section 326 IPC by the 1st Additional Sessions Judge, Nawada vide its judgment of conviction and sentence dated 17.11.1992 passed in Sessions Trial No. 25/1989/802/1984, has preferred instant appeal.

4. Before coming to deal with the instant appeal, it is apparent from the lower court record that fire had broken in the Civil

Courts, Nawada and on account thereof, lower court records containing the original documents including FIR etc got burnt. Subsequently thereof, as per direction, the record was reconstructed and trial commenced, concluded in a manner as indicated above.

5. PW-1, Bilat Singh gave his Fard-e-beyan on 22.08.1983 at 10:30 PM at Sadar Hospital, Nawada disclosing therein that on the same day at about 6:00 PM while he was at his shop situated near Pakribarawan Bus Stand, one female labourer came and complained to him that her son had fought with her and on account thereof, did not provide food and had sought for his intervention. He, accordingly, scolded her son over which the mother and son indulged in an altercation. Subsequently thereof, her son called Rama Pandit, a priest who inquired from him. He abused Rama Pandit and on account thereof, Rama Pandit inflicted Farsa blow causing injury over his left hand as well as shoulder of his right hand. After sustaining injury, he fell down. His wife Dulari Devi, Shambhu Singh, Ramlal Sao along with others came in his rescue, seeing whom the accused escaped. At the other end, he was lifted to Nawada Hospital.

6. On the basis of aforesaid Fard-e-beyan, Nawada PS Case No. 218/1983 was registered under Section 324 IPC and after completing investigation, charge sheet was submitted under Section 307, 326 IPC whereupon the case was committed to the court of sessions and after conclusion of trial, as stated above, met with ultimate result, the subject matter of instant appeal.

7. The defence case, as is evident, from the mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C. is that of complete denial of occurrence as well as of false implication. However, neither any DW nor any kind of document has been exhibited in defence.

8. In order to substantiate its case, the prosecution had examined altogether seven PWs out of whom PW-1, Bilat Singh, injured, PW-2, Dulari Devi, his wife, PW-3, Karu Singh, son of informant, PW-4, Balchand Prasad, tendered, PW-5, Sunil Prasad, hostile, PW-6, Shambhu Ram, hostile and PW-7, Dr. Ram Chandra Singh who had examined PW-1. The prosecution had also exhibited Ext-1, Injury Report.

9. PW-7, Dr. Ram Chandra Singh had found following injuries over the person of PW-1, Bilat Singh whom he examined on 22.08.1983 at about 7:20 PM and found the following:-

1. incised wound 3 ½"x3/4"x3" on the left wrist medial side cutting skin muscles, radius and ulna bone.
2. incised wound 4"x1/3"x1/3" over right shoulder interior part.

Injury No.1 has been identified as grievous while injury no. 2 as simple caused by sharp cutting weapon. Duration of injuries were within six hours.

10. From cross-examination of this PW, it is apparent that the defence could not be able to discredit his testimony, therefore, the injury caused by sharp cutting weapon is there.



11. PW-1 has stated that on the alleged date and time of occurrence while he was at his shop, Rama Pandit came, abused and then assaulted him. He had inflicted Garasa blow and during course of prevention of blow he sustained injury over his left hand. He had further admitted recording of Fard-e-beyan at his behest. During cross-examination, he had disclosed that the matter has been compromised amongst the parties. Though no cross-examination has been done over occurrence.

12. PW-2 is Dulari Devi. Although, her presence has not been corroborated by PW-1 during course of his evidence and in likewise manner, Fard-e-beyan also did not speak her presence before occurrence rather after the occurrence. However, in her examination-in-chief, she had claimed to be present at her shop along with her husband situated near Railway crossing over road leading to Pakribarawan. She had further asserted that Rama Pandit came and assaulted her husband with Garasi causing injury over his right hand as well as shoulder. During cross-examination, apart from disclosing that she had not seen the occurrence, also asserted that case has been compromised amongst the parties.

13. PW-3 is the son of informant as well as PW-2. His presence has not been either in the Fard-e-beyan or in the deposition of PWs-1 and 2. However, he claimed that he happens to be a rickshaw puller and at the crucial moment while he was parking his rickshaw at the shop, one person came and assaulted his father



with Farsa over his hand and fled away. The blow was aimed at his neck but could not succeeded. He then identified the accused in the dock to be the assailant. During cross-examination, he had stated that he is separate from his parents. He has further stated that when he reached at the shop, he had seen his father in an injured condition. He had further stated that after hearing hue and cry, he rushed to the place of occurrence, lifted his father to hospital. He did not disclose whether he had talked with his father or not.

14. PW-4 was tendered. Even then, he was not cross-examined on facts. PWs-5 and 6 are hostile.

15. I.O. has not been examined. However, taking into account the nature of evidence, it is apparent that non examination of the I.O. had not caused prejudice to the appellant.

16. Furthermore, it is apparent from the scrutiny of the evidence of the PWs, more particularly, the injured, it is apparent that appellant could not be able to sack his testimony, more particularly, on the status of his being an assailant. However, from the evidence of PW-1, it is apparent that though blow was given but those blows were neither with an intention to commit murder nor over the vital part of the body.

17. Be that as it may, it is apparent from the evidence of PW-1 and his wife, PW-2, the case has been compromised. So far Section 326 as well as 307 IPC is concerned, both Sections whereunder appellant has been found guilty are non compoundable.



Even then, the Hon'ble Apex Court in the case of *Yogendra Yadav v. The State of Jharkhand* as reported in *2014 Cri.L.J. 3935* considered the aforesaid theme. The facts of the aforesaid case happens to be that while the trial was going on, the matter was compromised and in the aforesaid event, a prayer was made for recalling of the witnesses and the same was rejected by the learned lower court which was challenged before the High Court where met with same sequence and ultimately went to Hon'ble Apex Court. Apart from quashing of the order impugned along with whole prosecution, it has been observed in para-6 which is as follows:-

6. Learned counsel for the parties have requested this Court that the impugned order be set aside as the High Court has not noticed the correct position in law in regard to quashing of criminal proceedings when there is a compromise. Affidavit has been filed in this Court by complainant-Anil Mandal, who is respondent No. 2 herein. In the affidavit he has stated that a compromise petition has been filed in the lower court. It is further stated that he and the appellants are neighbours, that there is harmonious relationship between the two sides and that they are living peacefully. He has further stated that he does not want to contest the present appeal and he has no grievance against the appellants. Learned counsel for the parties have confirmed that the disputes between the parties are settled; that parties are abiding by the compromise deed and living peacefully. They have urged that in the circumstances pending proceedings be quashed. State of Jharkhand has further filed an affidavit opposing the compromise. The affidavit does not persuade us to reject the prayer made by the appellant and the second respondent for quashing of the proceedings.

18. In the case of *Rajendra Harakchand Bhandari v. State of Maharashtra* as reported in *(2011)13 SCC 311* wherein

appellants were convicted and sentenced for non compoundable cases including 307 IPC, although compromise was effected and even considered the offence to be non compoundable, held as follows:-



13. We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned senior counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on May 17, 1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two and a half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.

14. Consequently, while confirming the conviction of the appellants for the offences punishable under Section 307 read with Section 34, Section 332 read with Section 34 and Section 353 read with Section 34, the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is.

19. Now coming to present episode, it is apparent that apart from acceptance of compromise and further having deposed in the aforesaid background, the occurrence is of the year 1983

consuming 32 years and on account thereof, is found completely engrafted with the principle laid down by the Hon’ble Apex Court in the case of *Rajendra Harakchand Bhandari (Supra)*.

20. Consequent thereof, maintaining conviction the sentence is modified as already undergone. The appeal is disposed of in terms thereof. Appellant is on bail, hence he is exonerated from its liability.

(Aditya Kumar Trivedi, J)

Patna High Court
August 3rd 2015
Perwez/AFR

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