

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.288 of 2002

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Saheb Yadav son of Faudari Yadav, R/O Village- Barhara, Police Station, Gogari,
Distt-Khagaria.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Niraj Kumar@ Sanidh, Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 15-01-2015

Heard learned Amicus Curiae for the appellant as well as

learned APP for the State.

2. Sole appellant Saheb Yadav has been found guilty vide judgment dated 09.05.2002 for an offence punishable under Sections 448, 323 and 307 IPC and has been directed to undergo SI for six months, under Sections 448 and 323 IPC respectively as well as for four years under Section 307 IPC vide order of sentence dated 20.05.2002 by 1st Additional Sessions Judge, Khagaria in Sessions Trial No. 307/1995, has challenged the same under present appeal.

3. Shorn of unnecessary details, the prosecution case as it appears on the written report submitted by Buchan Sao, a Chaukidar (PW 9) on 04.05.1995 disclosing therein that child of Saheb Yadav had stoned upon his children a few days ago. On 04.05.1995 also, stone was thrown and on account thereof, he had scolded them. In the aforesaid background, while he along with his maternal uncle was taking meal in his Angan at 9:00 p.m., Saheb Yadav came armed with

Lathi, abused and then, had given Lathi blow over his head causing injury thereupon. Another blow was given on his thigh. His maternal uncle, wife along with children were cited as eyewitnesses to the occurrence. Subsequently thereof, he was taken to PS where he had submitted written report.

4. After registration of Gogri P.S. Case No. 73/1995, investigation was taken up and after concluding the same, charge-sheet was submitted on the basis of which, the trial commenced and concluded in a manner, the subject matter of instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as from statement recorded under Section 313 of the Cr.P.C. is of complete denial as well as of false implication. However, neither any DW nor any document has been exhibited on behalf of defence.

6. It has been submitted on behalf of learned Amicus Curiae that the finding recorded by the learned trial court is perverse on account of the fact that all the witnesses save and except PW-1, so-called maternal uncle of the informant, a chance witness, PW 9 remaining i.e., PWs 2, 3, 5, 6 and 7 have not supported the prosecution case identifying the appellant to be author of the injuries sustained by the victim PW 9. It has also been submitted that from the written report itself, it is apparent that family members were cited as eye-witnesses but none of them have been examined during course of trial as well as there also happens to be absence of explanation on that



very score. Then it has been submitted that the whole prosecution case became doubtful in the background of collusiveness of the police personnel on account of the fact that informant himself happens to be a Chaukidar and on that count, got favoured. To support the same, it has been submitted that although no cross-examination has been made on behalf of appellant before the trial court but from the record, it is apparent that FIR was drawn on 04.05.1995. The aforesaid theme, as submitted, has got primacy in the background of over-writing so far date on written report is concerned. It has also been submitted that informant PW 9 failed to disclose in whose hand-writing, the aforesaid written report happens to be and, whether the aforesaid written report was on his dictation. PW 1, his maternal uncle who claimed to have gone along with victim PW 9 to the PS happens to be also silent. Moreover, presence of PW-1 has also been doubted in the background of having his absence on the written report.

7. It has also been submitted that from nature of the injuries, as deposed by PW 4, clearly suggest that these injuries could have been manufactured. Even considering that appellant happens to be the author of the aforesaid injuries, nature of the injury rules out the intention as well as knowledge attributable against the appellant to commit murder and on account thereof, application of Section 307 of the IPC was not at all attracted. Consequent thereupon, the evidence on its face, at best, satisfies the ingredients of Section 323 as well as 448 IPC whereupon, having absence of criminal antecedents as well

as taking into account the motive, the mental agony which appellant has faced till date would justify the sentence as already undergone.

8. On the other hand, learned APP while supporting the findings recorded by the learned lower court has submitted that there happens to be specific averment during course of evidence at the end of PW-9, the informant as well as PW-1, Bishun Deo Sao that it was appellant who had given repeated blow over PW 9, the informant causing injury over his head as well as over his thigh. It has further been submitted that though other witnesses were declared hostile by the prosecution as they relieved appellant during course of their evidence to be assailant of informant, however, supported the occurrence. So, the hostile witnesses also gave additional support to the prosecution version. Furthermore, the evidence of Doctor (PW-4) corroborates prosecution version. Hence, the finding recorded by the learned trial court needs no interference.

9. PW 4 had found following injuries on the person of informant during course of his examination on 04.05.1995 at 10:25 P.M.:-

- (1) One lacerated wound 3"x1/4"x bone deep over scalp caused by hard and blunt object and simple in nature.
- (2) Bruise 5"x1", (two in number) over lateral aspect of left thigh. Simple in nature, caused by hard and blunt object.

10. After going through the evidence of PW-1 & 9, it is apparent that they both are consistent over manner of occurrence and

are conclusive against appellant, Saheb Yadav to be assailant of PW-9, informant, Buchan Sao. From rest of the witnesses, it is also apparent that they have supported the factum of occurrence. From the evidence of PW-5, Md. Vilayatuddin, it is apparent that he had taken the victim to hospital on 04.05.1995 at 9:00 p.m. Therefore, the occurrence is found supported with and corroborated by the other witnesses including the doctor.

11. According to the version of PW 4, it is apparent that he had identified three injuries though, during course of evidence PW 1 and well as PW 9 disclosed regarding two blows only. Even then, considering the evidence of PW-1 as well as PW-9, it is apparent that in spite of absence of intervening circumstance there was no repetition of blow over any vital part of the body of informant, PW-9. Furthermore, it is apparent that dispute arose over a trivial issue. On account thereof, inference drawn by the learned trial court regarding activity of appellant attracting application of Section 307 IPC is not at all found justified. On account thereof, the aforesaid part of the judgment is scrapped. Hence, the appellant is found and held guilty for an offence punishable under Sections 448 and 323 IPC.

12. Now coming to the question of sentence, it is apparent from the lower court records that petitioner has got no criminal antecedents nor got himself involved subsequently after release on bail. Furthermore, the genesis of occurrence is found to be a trivial issue. The occurrence is of the year 1995 and appellant on that very

score, faced ordeal of prosecution since thereafter.

13. Consequent thereupon, it looks desirable as well as will meet the ends of justice, in case, the sentences under both counts are mould as period already undergone and is accordingly, ordered so.

14. With the aforesaid modification, the appeal is partly allowed.

15. Appellant, being on bail, is discharged from the liability of bail bonds.

16. The first and last pages of the instant judgment be handed over to the Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Patna High Court
January 15th 2015
Perwez/AFR

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