

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.5 of 2002

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1. Baso Thakur son of Bachan Thakur
2. Dinesh Thakur,
3. Ramesh Thakur
4. Binesh Thakur alias Vinay Thakur, all sons of Baso Thakur, All residents of Village Sutihara P.S. Nusahri, Distt-Muzaffarpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.Jitendra Narain Sinha, Adv

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-01-2015

Heard learned counsel for the appellants as well as learned APP for the State.

2. Appellants, Baso Thakur, Dinesh Thakur, Ramesh Thakur and Binesh Thakur have been found guilty for an offence punishable under Sections 307/34 IPC and each of them has been directed to undergo RI for four years while Baso Thakur has further been held guilty for an offence punishable under Section 341 IPC and has been directed to undergo SI for fifteen days with a further direction to run the sentences concurrently vide judgment of conviction dated 21.12.2001 and order of sentence dated 22.12.2001 passed by 5th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 270/1990, have preferred the instant appeal.

3. On 23.01.1989, Tribhuvan Mishra (not examined on account of his death) recorded First Information Report alleging inter



alia that on 22.01.1989, his son Satish Chandra Mishra (PW 7) along with his daughter Vibha Kumari had gone to the house of Ramanand Mishra to participate in *Puja Matkor*. During course of returning, he indulged in a brawl with Binesh Thakur near the house of Satya Narain Mishra on account of which Binesh assaulted him with fists and slaps which was reported to him whereupon, he went to the house of Baso Thakur to inquire into the matter, on this, Baso Thakur, Dinesh Thakur armed with *Farsa*, Ramesh Thakur armed with iron rod and Binesh armed with Lathi came out from their house. Baso Thakur caught hold of him while Dinesh gave a *Farsa* blow on his head while Ramesh inflicted a rod blow. He raised alarm, over which Ramesh and Binesh also assaulted him. Jagdeo Mishra, Shiv Nath Mishra, Ram Sakal Mishra and other came in his rescue and on account thereof, he was saved and taken to Mushahari hospital where he got treatment.

4. On the basis of the aforesaid the First Information Report, Mushahari P.S. Case No. 05/1989 was registered under Sections 323, 324, 341 and 307/34 of the IPC followed with investigation as well as submission of charge-sheet under the aforesaid Sections whereupon the case was committed, trial commenced and concluded in a manner, the subjected matter of instant appeal.

5. The defence case is that of complete denial. However, it has also been suggested that there was an altercation in between

daughter of informant and daughter of Baso Thakur, namely, Indu Kumari and in the aforesaid background, the prosecution party assaulted wife of Baso Thakur and to save their skin, the instant case has purposely been filed by the prosecution party with false and frivolous allegation.

6. During course of trial, altogether eight PWs have been examined out of whom PW-1 is Shashi Nath Mishra, PW-2 is Ram Sundar Paswan, PW-3 is Ram Sakal Mishra, PW-4 is Nand Kishore Mishra, PW-5 is Ganesh Mishra, PW-6 is Kailash Paswan, PW-7 is Satish Chandra Mishra and PW-8 is Dr. Madan Prasad Sharma. Prosecution has also exhibited Ext-1, FIR Ext-2, signature of FIR attesting witness, Ext-3 is injury report. So far status of witnesses are concerned PW-1 and PW-5 are hostile witnesses while PW-2 and PW-6 are formal witnesses, PW-8 is the doctor who had examined the injured. Remaining witnesses, PWs 3, 4 and 7 are on material aspect. The Investigating Officer has not been examined.

7. Learned counsel for the appellants referring relevant paragraphs of deposition of PWs-3, 4 and 7 have categorically stated that there happens to be absence of repetition of *farsa* blow that too in the background of admitted factual scenario in spite of presence of no intervening circumstance, the *farsa* blow was not repeated and on account thereof, the finding recorded by the learned trial court holding the appellants guilty for an offence punishable under Section 307/34 of the IPC is not at all maintainable. The aforesaid contention, as per

learned counsel for the appellants is found duly fortified from the evidence of PW 8, the doctor who had found single sharp cut injury, simple in nature along with other injuries caused by hard and blunt substance as well as pain. So, it has been submitted on behalf of appellants that at best even considering the evidence on record, it speaks with regard to allegation falling under purview of Section 323, 324 of the IPC and further taking into account such a long delay, appellants should be let off sentencing them period already undergone.

8. Learned APP did not object.

9. PW-8 had found following injuries over the persons of injured, Tribhuwan Mishra:-

- (i) One incised wound measuring 4"x1/4"x skin deep on the right side of the forehead vertical in the direction.
- (ii) One lacerated wound measuring 1"x 1/2" x skin deep on the left side of forehead.
- (iii) Pain. Swelling and tenderness over right shoulder joint.
- (iv) One swelling measuring 3"x1" over right wrist joint.
- (v) One abrasion measuring 2" x 1/2" situated 3" above left wrist joint on lateral side.

10. When the evidence has gone through, it is apparent that there happens to be consistent version of the prosecution witnesses that Dinesh had inflicted single *Farsa* blow while Ramesh and Binesh assaulted him with rod and lathi respectively. There happens to be specific disclosure that after falling down, none had assaulted the

informant, Tribhuvan Mishra. No *Farsa* blow was repeated as is evident from PW-3 , paragraphs-2 and 9, PW-4, paragraph-1, PW-7, paragraphs 1 and 9.

11. To attract Section 307 of the IPC, the nature of injury has got no relevance. The basic ingredients attracting application under Section 307 IPC is relating to activity of an accused possessing such intention or knowledge that by such activity death of victim might occur during commission of crime and the activity of the accused is to be perceived from surrounding circumstances. Having possessed with *Farsa* as alleged and indulging in single blow, that too, in a way, as is exposed by the evidence of PW 8, the doctor, considering the injury skin deep and further having the appellants restrained themselves subsequently, thereof, in spite of the fact that the victim was lying in front of them in hapless condition, clearly indicate that at the time of occurrence they did not possess an intention to commit murder of the victim nor had inflicted the injury with knowledge that it might occur death of injured.

12. In the aforesaid circumstances, rightly learned counsel for the appellants submitted that it cannot be a case whereunder there should be application of Section 307 IPC.

13. Accordingly, appellant, Dinesh Thakur is found guilty for an offence punishable under Section 324 IPC while Ramesh Thakur, Binesh Thakur under Section 323 IPC. Appellant, Baso Thakur is found guilty with the aid of Section 34 IPC along with

Section 341 IPC.

14. So far sentence is concerned, it should be inconsonance with the nature of the offence. The occurrence is of the year 1989 and much water has flown since thereafter faced ordeal for such long period. There also happens to be evidence on the record that parties were on cordial relation since before and it was sheer a mishappening on a trivial issue, they indulged in such kind of activity. As such, period already undergone will serve the purpose and is, accordingly, ordered so.

15. With the aforesaid modification, the appeal is dismissed.

16. Appellants, being on bail, are discharged from the liabilities of bail bonds.

(Aditya Kumar Trivedi, J)

Patna High Court
January 7th 2015
Perwez/AFR

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