

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.452 of 2015

Arising Out of PS.Case No. -142 Year- 2007 Thana -NAWANGAR District- BUXAR

Sanjeet Kumar Singh, son of Shri Tilakdhari Singh, resident of Village-Budhaila,
P.S.-Nawanagar, District-Buxar. Appellant/s

Versus

1. The State of Bihar.
2. Parasnath Singh, S/o Late Ramdeo Singh.
3. Santosh Kumar Singh, S/o Late Kedarnath Singh
4. Mukesh Kumar Singh, S/o Parasnath Singh.
5. Nirbhaye Kumar Singh, S/o Late Kidarnath Singh

All resident of village-Budhaila, P.S.-Nawanagar, District-Buxar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Kamlesh Prasad Yadav, Advocate

For the Respondent/s : Mr. Z. Hoda, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-08-2015

The appellant Sanjeet Kumar Singh has filed this application under the proviso to Section 372 of the Code of Criminal Procedure (For short 'the Code') against a judgment and order dated 2nd May, 2015 passed by the learned Additional Sessions Judge-4th Buxar in Sessions Trial No. 110 of 2009 arising out of Nawanagar P.S. Case No. 142 of 2007 whereby respondent nos. 2 to 5 were convicted for a lesser offence under Section 325 of the Indian Penal Code instead of Section 307 of the Indian Penal Code under which they were charged.

2. Respondent Nos. 2 to 5 were made to face trial in Nawanagar P.S. Case No. 142 of 2007 dated 27.11.2007 registered under Sections 341, 323, 324 and 504 read with 34 of the Indian Penal Code.

3. The process of law was started on a statement made by the appellant Sanjeet Kumar Singh wherein it was stated that on 27.11.2007 at 6.00 a.m. all the accused persons, namely, Parasnath Singh, Santosh Kumar Singh, Mukesh Kumar Singh, Nirbhay Kumar Singh and Kedar Mahto caused injuries to the informant, his father Tilakdhari Singh and cousin sister Minta Kumari by *lathi*, sticks and *Rama* (a hard blunt object). From the statement made by the informant Sanjeet Kumar Singh, the trial court has noted the following facts regarding the case of the prosecution :-

“The case of the prosecution in short is that one Sanjeet Kumar Singh gave an application to the S.H.O. Nawanagar that on 27.11.2007 at about 6.00 O’ clock when the informant was fixing khuta before his house in the land of State Government. At the same time Paras Singh arrived and said that he is putting his cattle over this land from last 60 years. So why the Informant is fixing the Khuta, on this the Informant replied that the land is before his house as such he is fixing the khuta, on this Paras Singh started abusing when the Informant forbid the accused from abusing. Accused Paras Singh gave a lathi blow on the head of the Informant and on



elbow on this Informant started bleeding. The father of the Informant Tilakdhari Mahto and his cousin sister Minta Kumari came to rescue, on this other accused persons Kedar Mahto, Nirbhay Singh, Santosh Singh and Mukesh Singh armed with sticks and ram arrived and beaten badly to Tilakdhari and Minta Kumari. On raising alarms neighbours came and rescued the family of the Informant. On the basis of above application, Nawanagar P.S. Case No. 142 of 2007 was registered u/s 341, 323, 324 and 504 read with 34 I.P.C.”

4. After recording the statement of the informant, the injured were taken to Nawanagar Primary Health Centre where they were examined by Dr. Parmanand Chaudhary (P.W. 6). Taking note of restricted movement of left shoulder, he was sent to Buxar Sadar Hospital for X-ray of left shoulder.

5. From deposition of P.W. 6 Dr. Parmanand Chaudhary, the trial Judge has noted the following injuries sustained by three injured :-

“P.W. 6 is the Doctor who has examined the injured witnesses. This witness has found following injuries on the person of Tilakdhari Singh :-

1. Abrasion on mid head.
2. Two bruise 2” x ½” on the upper most part of left upper arm of near shoulder joint.
3. Restricted movement of left shoulder.
4. Bruise 4”x1” of left upper arm.

5. Extensive bruise over upper $\frac{3}{4}$ " forearm.
6. Bruise 6"x2" on the right shoulder.
7. Swelling upper half of right upper arm.
8. Bruise 4" x 2" on the left buttock.
9. Bruise 4" x 2" on the left knee.
10. Bruise 5" x 2" on left leg.

The patient was send to Sadar Hospital, Buxar for X-ray of lateral shoulder AP and lateral view. The X-ray of shoulder AP and left lateral view shows dislocation of left shoulder joint. So injury no. 2 and 3 are grievous in nature. All injuries were caused by hard and blunt substance.

This witness found following injury on the person of Sanjeet Kumar:-

1. Incise wound in 2" left deep into bone on the left side of the head.

There was profuse bleeding. The Patient was in shock and Patient was saved by life saving drugs and measures hence above injuries was dangerous to life and grievous in nature.

2. Swelling and pain below left elbow.

Cause of injury – Injury no. 1 caused by sharp cutting object.

Injury no. 2 caused by hard blunt object.

This witness has found following injury on the person of Minta Devi

1. Bruise 1"X $\frac{1}{2}$ " on left half of knee.
2. Swelling and tenderness on left side of back.

Nature of injury – Simple caused by hard and blunt

substance.”

6. The investigating officer of the case Vijay Kumar Ojha (P.W. 9) recorded statements of witnesses and on completion of investigation a report under Section 173 of the Code was put in the Court. After complying with the requirements of Section 207 of the Code, the case was committed to the court of Sessions, as cognizance was also taken by the learned Magistrate for the offence punishable under Section 307 of the Indian Penal Code which is triable by a court of Sessions.

7. It would be relevant to note here that one of the accused, namely, Kedar Mahto died before commitment of the case and, hence, the case against him got abated.

8. The prosecution in order to prove its case examined nine witnesses during trial and also proved documentary evidence. On conclusion of prosecution evidence, separate statements of all the accused were recorded under Section 313 of the Code. Incriminating evidence against them, on record, was put to them, which they denied. They claimed innocence and false implication.

9. The trial Judge on appraisal of evidence found that the prosecution has not been able to prove its case beyond reasonable doubt as regard the allegation under Section 307 of the Indian Penal Code. However, the trial Judge held that the prosecution has proved

its case for lesser offence under Section 325 and 323 of the Indian Penal Code against the accused persons. Accordingly, the trial court convicted them under Sections 325 and 323 of the Indian Penal Code. For framing its opinion, the trial Judge has noted its findings in the following manner:-

“Accused persons are facing trial u/s 307 and 504 of the I.P.C. From the perusal of the evidence of the Doctor i.e. P.W. 7 it appears that injury no. 1 caused to the Informant was dangerous to life and grievous. Before appreciating the evidence of the parties I would like to have a bird eye view over section 307 I.P.C. According to section 307 I.P.C. who ever does any act with such intention or knowledge and under such circumstances that if he by that act caused death he would be guilty of murder. The question of intention to kill or the knowledge of death in terms of section 307 I.P.C., is the question of fact and not one of law. It would all depend on the facts of case. The allegation of u/s 307 I.P.C. is attracted in view of the injury sustained by the Informant. From the perusal of the evidence it is clear that regarding the inflicting of injuries of Informant two versions are available. One version i.e. given in the written application of the Informant. According to which Paras Mahto gave a lathi blow on the head of the Informant while another version has been given by the informant himself while being examined as witness and this witness has stated that Paras Mahto gave a farsa blow. From the perusal

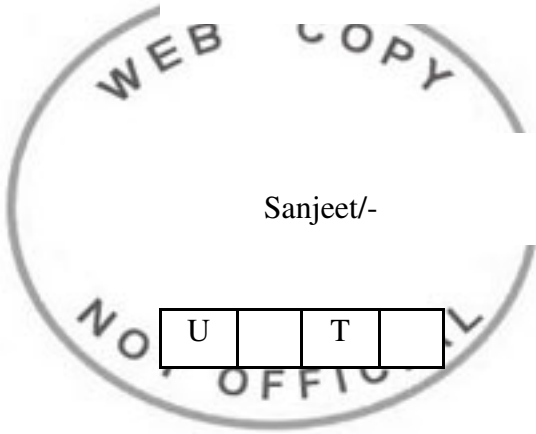


of the injury report and from the evidence of Doctor it appears that the injury of head was caused by sharp cutting weapon. The 1st version of above allegation seems to be developed by the witnesses during trial. When there is deference in ocular and medical evidence regarding injury no. 1 of Sanjeet Kumar is contradictory which creates a reasonable doubt. It is well settled that the benefit of doubt goes to accused persons. As far as the injuries of Tilakdhari Singh is concerned in ocular and medical both evidence. It has been stated that left shoulder joint was dislocated. The injury is grievous and has been caused by hard and blunt substance and it attracts the allegation u/s 325 I.P.C. Injuries sustained by Minta Kumari, cousin sister of Informant are supported by ocular and medical evidence. The allegations regarding the injuries of Minta Kumari and the evidence thereon is sufficient to attract the section 323 I.P.C. As the victim sustained simple hurt.”

10. Having heard learned counsel for the appellant and perused the material brought on record, I am of the opinion that the view expressed by the trial Judge is perfectly justified and is as per evidence on record. I find that the trial court has given clear, cogent and convincing reasons for recording conviction of the accused persons for a lesser offence. The view taken by the trial court is based on sound principles of law.

11. In that view of the matter, I find no error in the

impugned judgment. Accordingly, the appeal is dismissed.



(Ashwani Kumar Singh, J.)