

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.958 of 2012

Against the judgment of conviction, dated 22.02.2012, and order of sentenced dated 23.02.2012, passed by Mr. Vijay Shankar Pathak, Additional District and Sessions Judge, II, Saran at Chapra, in Sessions Trial No. 894 of 2010 arising out of Muffasil P.S. Case No. 181 of 2010

Nanhak Mahto, son of late Ram Ayodhya Mahto, resident of village Ratanpura, Bin Toli, P.S. Chapra Muffasil, district Saran Appellant

Versus

The State of Bihar Respondent

Appearance :

For the Appellant : None

For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 29-09-2015

Heard the learned counsel for the petitioner and the State.

2. The appellant has been convicted under Section 307/34 of the Penal Code and sentenced to undergo rigorous imprisonment for five years and a fine of rupees five thousand and on non-payment of fine to undergo rigorous imprisonment for three months.

3. The prosecution case, as alleged in the fardbeyan is that the informant Ramsagar Mahto on 20.09.2010 while he was returning after purchasing vegetables from Chanchaura Bazar at about 07.00 P.M. to his house and in way when he reached in between Mathia and Bintoli pond then Nanhak Mahto, Manhgoo Mahto, Vinod Mahto, Manu Mahto surrounded him and Vinod Mahto abated that he is a person to protest the selling of the liquor and he was the person who was instrumental to close the business of selling of liquor through the Panchayati and on the

command of Vinod Mahto, Nanhak Mahto repeatedly gave dagger blow by which he caused injury on the chest, shoulder, elbow and neck and he fell down and started making cry then the female inmates of Mathia came out and made cry then the accused persons flee away leaving the informant in injured state. Thereafter, he was taken to Hospital in injured condition. The fardbeyan of the informant was recorded in the Surgical Ward of Chapra Sadar Hospital on 21.09.2010 at 12 noon by Sub Inspector of Police, Subodh Kumar Mishra, and the investigation was handed over to Sushil Kujur, P.W. 6. The police after investigation submitted charge sheet for offence under Section 307/34 of the Penal Code and subsequently cognizance taken, case committed to the Court of session, after commitment the charge was framed against three persons, Nanhak Mahto, Manhgoo Mahto and Vinod Mahto for offence under Section 307/34 of the Penal Code.

4. However, during the trial six witnesses were examined by the prosecution, who are P.W. 1, Dhaneshwar Ram, who supported the prosecution case that while he was returning from market saw in the light of the torch, on the cry of Ramsagar Mahto, and claimed to have identified the accused persons. P.W. 2 is Shiv Kumar Mahto who has been declared hostile and has not supported the prosecution case. P.W. 3 is Manbharan Mahto who also claimed to have seen the occurrence in the light of torch. P.W. 4 is Ramsagar Mahto, the informant. He has

stated that he also identified the accused persons in the light of torch as well as in the moon light. P.W. 5 is Dr. Deepak Kumar, who examined the victim, informant, and has found five injuries on his person, which are as follows and marked as Exhibit 4 :

- (i) one incised wound 1" x ¼" x muscle deep on hypochondriac region of abdomen
- (ii) one incised wound ½" x ¼" x muscle deep on mid sternum region of the chest
- (iii) one incised wound ½" x ¼" x muscle deep on left side of the neck
- (iv) one incised wound ½" x ½" x muscle deep on right shoulder on scapular region
- (v) one incised wound 1" x ½" x muscle deep over left elbow.

5. P.W. 6 is Sushil Kumar, the investigating officer of the case. He has stated that he recorded the fardbeyan of the informant in presence of his son and was read over to Ramsagar Mahto on which he gave his left thumb impression. He has proved fardbeyan marked as Exhibit 2. He has also proved the endorsement of S.K. Mishra, Officer-in-Charge, and handed over the investigation to him

6. The trial Court taking into consideration the evidence convicted the appellant, Nanhak Mahto, for offence under Section 307/34 of the Penal Code, however, acquitted the other accused persons as it was found that no offence is made out against them and discharged

them from the liabilities of the bail bonds. Hence, the appellant was convicted.

7. No one appeared on behalf of the appellant.

8. The learned counsel for the State, however, resists order and submits that the witnesses supported the prosecution case. The prosecution case was that it was dark night though he claimed to have identified the appellant in the light of torch. The other witnesses also stated that he has identified the appellant in the light of the torch. However, said torch has not been produced. So far the evidence of the witnesses is concerned, though there is allegation of assault by dagger by the appellant. However, from the injury report of the Doctor, it is apparent that five injuries have been received though on the vital part of the body, but, all the five injuries have been shown to be simple and special feature of the case that all the injuries are only muscle deep. There is no evidence that the injuries were dangerous to life. However, it is pertinent to mention that to attract the offence under Section 307 of the Penal Code what is required to be established that the injuries is on the vital part, the nature of weapon used and that it is alleged dagger and, further, the impact by which the injuries were given and, further, whether there was intention to kill. Having regard to the fact, it is true that the weapon used to be dagger and it is also true that the part of the body used is vital, but, the impact by which the injuries have been given

shows that all the injuries though by dagger on vital part of the body, but, it is only muscle deep, hence, it is apparent that the impact by which the injuries were given and the force used for inflicting injuries does not appear to be intending to kill.

9. Having regard to the fact that the injuries though on the vital part of the body and weapon used is dangerous, but, the injuries are only muscle deep and the injuries have been shown to be simple and there is nothing in the evidence of the Doctor that the injuries were dangerous to life, hence, on that basis it can not be inferred that the injuries were inflicted with intention to kill.

10. Hence, I find and hold that the trial Court misdirected itself in holding and convicted the appellant for offence under Section 307/34 of the Penal Code and the prosecution has not been able to prove the charges beyond all reasonable doubt for offence under Section 307/34 of the Penal Code. Hence, the order of conviction and sentence, recorded by the trial Court for offence under Section 307/34 of the Penal Code is hereby set aside.

11. There is evidence that the appellant inflicted dagger blow and the injuries having been simple then the conviction can at best be recorded under Section 324 of the Penal Code, hence, the conviction under Section 307 of the Penal Code is set aside and the appellant is ordered to be convicted under Section 324 of the Penal Code. From the

perusal of the record, it appears that the appellant is in jail since 03.01.2011 and the maximum punishment under Section 324 of the Penal Code is three years and the appellant has already remained in jail for more than five years, hence, ordered to be released forthwith, if not wanted in any other case. He is discharged from the liability of bail bond.

12. The appeal is **allowed in part**.

(Gopal Prasad, J)

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