

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.392 of 2016

Arising Out of PS.Case No. -14 Year- 2006 Thana -KANTI District- MUZAFFARPUR

Nagendra Paswan S/o late Shivdhar Paswan Resident of village- Vishunpur Sumer,
P.S.-Kanti, District-Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Sanjay Kumar @ S.K., Advocate.

For the Respondent : Mr. S.A. Ahmad (APP)

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 09-06-2016

This appeal is filed against the judgment of conviction and order of sentence dated 05.05.2016 passed by 8th Additional District and Sessions Judge, Muzaffarpur in Sessions Trial No. 100 of 2007, arising out of Kanti P.S. Case No. 14 of 2006, whereby while acquitting the appellant from the charge under Section 307/34 of the Indian Penal Code, the learned Trial Court has convicted him for the offences under Sections 323, 447 and 341 of the Indian Penal Code. The appellant has been convicted for 1 (one) month S.I. for the offence under Section 341 and three (3) months S.I. for the offence under Section 447 of the Indian Penal Code. The appellant has been further convicted for one (1) year for the offence under Section 323 of the Indian Penal Code with a fine of Rs. 2000/- each.

2. The prosecution case, as made out by the informant Surendra Paswan (P.W.5), dated 17.01.2006, recorded by a Police Officer in Sadar Hospital at Bed No. 12, in short, is as follows; the informant stated that on

06.01.2006 at 7.30 hours, he was sitting at his door, in the meantime, all the accused persons came and threatened him to withdraw the case otherwise he would be killed. When the informant protested, co-accused Nirmala Devi caught him and Harendra Paswan assaulted him by *Garansa*. When his son and wife came to rescue him, then they were also assaulted by the accused persons.

3. On the basis of fardbeyan of the informant, Kanti P.S. Case No. 14 of 2006 was registered under Sections 323, 447, 341, 324 and 307/34 of the Indian Penal Code.

4. After investigation, the police submitted charge sheet under Sections 341 and 323/34 of the Indian Penal Code. However, the learned Magistrate took cognizance of the offence under Section 307 of the Indian Penal Code and committed the case to the Court of Sessions for trial.

5. In support of this case, the prosecution has examined the following 8 witnesses:- P.W.1 Nathuni Ram (independent witness/hearsay), P.W.2 Indal Paswan (son of informant), P.W.3 Mamta Devi (daughter of informant), P.W.4 Chinta Devi (wife of the informant), P.W.5 Surendra Paswan (informant/victim), P.W.6 Kiran Devi (independent witness/hearsay), P.W.7 Bipin Bihari Ray (Doctor) and P.W.8 Guddu Kumar (Formal witness).

6. The accused did not examine any witness in support of his case.

7. The statement of the appellant has been recorded under Section 313 of the Cr.P.C., in which the accused claimed to be an innocent.

8. On consideration of the case on record, the trial court has convicted the sole appellant under Sections 323, 447 and 341 of the Indian Penal Code.

9. I have heard the counsel for the parties and also perused the

materials available on record. I find that the trial court on consideration of the material has rightly come to the conclusion that the prosecution has failed to bring home the charge under Section 307/34 of the Indian Penal Code and the Trial Court as such rightly convicted the appellant under Sections 323, 447 and 341 of the Indian Penal Code.

10. I further find that the case is of the year 2006, and the accused and the prosecution parties belong to the same village. The accused was also in incarceration for sometimes, in the case. In my view, the ends of justice would be achieved, if the period of conviction is reduced to the period already undergone. The amount of fine, imposed under Section 323 of the Indian Penal Code is reduced to Rs. 1200/-, which the appellant would pay to the informant within three weeks.

11. The appeal is, accordingly, disposed of.

(Samarendra Pratap Singh, J.)

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