

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.71 of 2016**

Arising Out of PS.Case No. -185 Year- 2011 Thana -RIGA District- SITAMARHI

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1. Niranjana Kumar @ Babloo son of Late Raghav Prasad, Resident of Mohalla- Purani Bazar, Narkatiyaganj, P.S.- Shikarpur, District- West Champaran.

.... .... Appellant/s

Versus

1. The State of Bihar  
2. Kiran Kumar  
3. Sanjay Kumar

Both sons of Late Raghav Prasad, Resident of Mohalla- Purani Bazar, Narkatiyaganj, P.S.- Shikarpur, District- West Champaran.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Pushpendra Kumar Singh  
For the Respondent/s : Mr. Bipin Kumar(App)

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE**  
**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL ORDER**

**(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)**

2 11-03-2016

By the judgment and order, dated 29.09.2015, passed, in Sessions Trial No. 180 of 2014/106 of 2014 (Registration No. 1568 of 2014), arising out of Riga P.S. Case No. 185 of 2011, by Shri Kishore Kumar Sinha, 3<sup>rd</sup> Additional Sessions Judge, Sitamarhi, though the respondent Nos. 2 and 3 have been acquitted of the charge under Section 307 read with Section 34 of the Indian Penal Code, but have been convicted of the charges under Sections 323, 324, 341 and 504 read with Section 34 of the Indian Penal Code and, consequently, for their conviction, under Section 324 read with Section 34 of the Indian Penal Code respondent Nos. 2 and 3 have been sentenced to

undergo rigorous imprisonment for two years, under Section 323 read with Section 34 of the Indian Penal Code, simple imprisonment for six months, under Section 504 read with Section 34 of the Indian Penal Code, simple imprisonment for six months and further to undergo simple imprisonment for one months under Section 341 read with Section 34 of the Indian Penal,. All the sentences aforementioned have been directed to run concurrently.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) On 11.12.2011, at about 07.00 P.M., while the informant was going to his *sasural* (i.e., the residence of his in-laws), situated at Kishanpur, along with his brother-in-law (*sala*), Mukesh Kumar, and one Sheo Narayan Paswan, after watching a movie and reached at the turning point of the river at village Sirauli, they were intercepted by four persons. Out of them, accused Kiran Kumar and accused Sanjay Kumar abused the informant and inflicted a knife blow with intention to kill him. As a result thereof, the informant sustained injury on his right ankle. Thereafter, accused Sanjay Kumar assaulted the informant, on his head, with iron rod; as a result whereof, the informant sustained injury on his head and fell down and, then, accused Kiran Kumar

inflicted a blow with a knife on informant's chest causing injury on his chest and blood started oozing out therefrom.

(ii) On alarm having been raised, people assembled there and the accused persons fled away. The informant was brought to Sitamarhi Hospital with the help of his brother-in-law and passers-by.

(iii) Treating the *fardbeyan* of the informant as First Information Report, Riga P.S. Case No. 185 of 2011 was registered, under Sections 321/324/307, 504 of the Indian Penal Code, against the two named accused persons namely, respondent No. 2, Kiran Kumar and respondent No. 3, Sanjay Kumar, and two other unknown persons.

(iv) On completion of investigation, a *charge sheet*, under Section 341/323/324/504/34 of the Indian Penal Code, was laid against respondent Nos. 2 and 3, namely, Kiran Kumar and Sanjay Kumar.

(v) Aggrieved by the exclusion of Section 307 read with 34 of the Indian Penal Code, while framing the charge, the appellant preferred Cr. Revision No. 11 of 2013, which was allowed, and as a result thereof, the learned Chief Judicial Magistrate, Sitamarhi, on 18.01.2014, took cognizance, under

Sections 321/323/ 324/307/504/34 of the Indian Penal Code against Respondents No. 2 and 3.

**3.** At the trial, charges, under Section 341, 323, 324, 307 and 504 read with Section 34 of the Indian Penal Code, were framed against the accused respondent Nos. 2 and 3. The accused persons pleaded not guilty to their respective charges.

**4.** In support of their case, prosecution examined altogether 7 (seven) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. The defence also adduced evidence by examining two witnesses.

**5.** Having arrived at the finding that the charges against the accused-respondent Nos. 2 and 3, under Section 307 read with Section 34 of the Indian Penal Code, had not been proved, the learned trial Court acquitted them accordingly; but having, however, found the accused respondent Nos. 2 and 3 guilty of the charges under Section 323, 324, 504 and 341 read with Section 34 of the Indian Penal Code, the learned trial Court convicted and sentenced them accordingly.

6. Aggrieved by the acquittal of respondent Nos. 2 and 3 of the charge under Section 307 read with Section 34 of the Indian Penal Code, the informant of the case has preferred this appeal.

7. Heard Mr. Pushpendra Kumar Singh, learned Counsel, for the appellant, and Mr. Bipin Kumar, learned Additional Public Prosecutor, appearing for the State. Perused the materials on record.

8. The evidence, adduced by the prosecution, has been found to be self contradictory. There is a contradiction in the evidence of P.W.-2, father-in-law of the informant, whose presence, at the place of occurrence, has also been doubted. The learned trial Court, on consideration of the evidence of P.W.-2, has observed that there is some contradiction, in the version of the F.I.R. and the deposition of the P.W.-2, on the point of his being eye-witness to the alleged occurrence.

9. It has also been held by the learned trial Court that there is inconsistency in the statement made by the informant (P.W.-5), with regard to the place of occurrence, as PW 5 has deposed, in paragraph No. 6 of his cross-examination, that the place of occurrence was 5-6 kilometers north to his *sasural*; whereas, the actual the place of occurrence was south to the

*sasural* of the informant. It is observed by the learned trial Court that this statement of PW 2 may be because of the misunderstanding or may be inadvertently as the evidence of other prosecution witnesses on the point of place of occurrence is intact.

**10.** Further-more, the learned trial Court, after sifting the evidence, has come to the conclusion that so far as the motive behind the occurrence is concerned, the admitted position is that there was dispute between the informant (P.W.-5) and the two accused persons (i.e., respondents No. 2 and 3), who are full-brothers of the informant (i.e., the appellant herein). The learned trial Court has also considered the injury report (Exhibit-4). In the said report, incised injury was found on the left side of the chest and also on the forearm. Another lacerated injury was found on the right parietal region of the scalp. However, all the injuries were found to be simple in nature and were stated to be subcutaneous and, thus, would not be dangerous to life. The learned trial Court, though has taken note of certain discrepancies in the evidence, but having found the accused persons guilty of the charges levelled against them under Section 341, 323, 324 and 504 read with Section 34 of the Indian Penal Code, has convicted and sentenced them accordingly; but finding the

evidence inadequate to bring home the charge, under Section 307 read with Section 34 of the Indian Penal Code, has acquitted them accordingly.

**11.** In view of the above discussions and after consideration of all facts and circumstances including the materials and testimonies referred to by the learned trial Court, we find no infirmity in the judgment and order passed by the learned trial Court.

**12.** In the result, the appeal fails.

**13.** This appeal is, therefore, not admitted and is accordingly dismissed.

**(I.A. Ansari, ACJ)**

**(Anjana Mishra, J)**

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