

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1059 of 2015

Arising Out of PS.Case No. -215 Year- 2008 Thana -BARAUNI District- BEGUSARAI

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Shankar Das, S/o Debu Das, Resident of Village - Bihat,- Saudi Asthan,
P.O. & P.S. - Barauni (FCI), District - Begusarai

.... Appellant/s

Versus

1. The State of Bihar
2. Sharwan Mahto, Son of Ramheet Mahto
3. Janki Devi, Wife of Chunchun Mahto
4. Raso Devi, Wife of Ramheet Mahto
5. Reeta Devi, Wife of Sharwan Mahto
Accused no. 2 to 5 all are resident of Bihar, Saudi Asthan,
P.O. & P.S.- Barauni (FCI), District - Begusarai

.... Respondent/s

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Appearance :

For the Appellant : Mr. Pankaj Kumar Sinha, Advocate

For the Respondent-State : Mr. Sujeet Kumar Singh(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)

3 26-02-2016 By the judgment and order, dated 07.09.2015,

passed by Shri Ram Vinod Prasad Singh, learned Additional
Sessions Judge-IV, Begusarai, in Sessions Trial No.941 of
2008, arising out of Barauni P.S. Case No.215 of 2008, though
the accused-respondent Nos. 2 to 5 have been acquitted of the
charges framed under Sections 379, 307 read with Section 149
of the Indian Penal Code, they have been convicted under
Section 323 Indian Penal Code and have been sentenced
accordingly to undergo simple imprisonment for one year and
pay fine of Rs.1000/- each and, in default of payment of fine,

to undergo simple imprisonment for further one month.

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

(i) On 19.7.2008, the wall of the house of the appellant herein fell down on account of rainfall. On 20.7.2008, at 10:30 A.M., when he was constructing wall with bricks, his co-villagers, Sharwan Mahto and Laxman Mahto, came there and started abusing him and objecting to any further construction of the wall, whereupon the informant told the accused that his (informant's) house stood open, because of the fact that the wall had fallen and, hence, he was merely re-constructing the wall. In the meantime, Raso Devi and wife of Sharwan Mahto, Chunchun Mahto, and others came there with *lathis* and *dandas* and started abusing him. The informant's wife, Sheela Devi, objected to the abusive language, whereupon accused Nago Mahto ordered to kill her. Sheela Devi, then, threatened to take the matter to the Panchayat Samiti, on which Sharwan Mahto assaulted Sheela Devi on her head by a *Khanti* with an intention to kill her causing head injuries and blood started oozing out. Seeing this, the informant rushed to save his wife, but accused Sharwan Mahto assaulted the informant by the same *Khanti*,



which hit his left leg, as a result of which he fell down and suffered fracture of his leg. Then, the ladies, amongst the accused persons, assaulted the informant's wife and daughter with fists and slaps and Raso Devi snatched away six pieces of *Jitya*. Seeing this, the informant and his father went to save the informant's wife, but both of them were assaulted and Sharwan snatched away *Titan* watch from the informant. On *hulla*, the nearby people came and saw the occurrence and, thereafter, all went to Sadar Hospital, Begusarai, where they were treated. The cause of incident is land dispute.

(ii) The *fardbeyan* of the informant was recorded by the police, on 20.7.2008, at 4:00 P.M., at Sadar Hospital, Begusarai, and treating the same as First Information Report, Barauni P.S. Case No.215 of 2008 was registered under Sections 147/148/447/448/323/341/ 342/504/506 and 307 of the Indian Penal Code against accused respondent Nos. 2 to 5. Later on, Section 379 of the Indian Penal Code was also added thereto and, on completion of investigation, a *charge sheet* was laid, under Sections 147/148/447/448/341/323/500/ 506/307 of the Indian Penal Code, against the accused aforementioned.

3. At the trial, charges, under Sections 323 and 307



read with Section 149 of the Indian Penal Code, were framed against three accused persons, namely, Raso Devi, Janki Devi, Reeta Devi, charges under Sections 323 and 307 were framed against accused Sharwan Mahto, and accused Raso Devi was further charged under Section 379 of the Indian Penal Code. The accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 10 (ten) 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 offence, which was alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, arrived at the finding that the charges against the accused-respondent Nos. 2 to 5, under Sections 379, 307 read with Section 149 of the Indian Penal Code, had not been proved, the learned trial Court acquitted them, but convicted all the accused persons under Section 323 Indian Penal Code and sentenced them to undergo simple imprisonment for one year and pay fine of Rs.1000/- each and, in default of payment of fine, to undergo simple imprisonment for further one month.

6. Aggrieved by their conviction under Section 323 of the Indian Penal Code, the informant of the case has preferred this appeal.

7. Having heard Mr. Pankaj Kumar Sinha, learned Counsel, for the appellant, and Mr. Sujeet Kumar Singh, learned Additional Public Prosecutor, appearing for the State and after having perused the materials on record, we find that the learned trial Court has carefully considered the evidence, which has been placed before the court by the prosecution.

8. The prosecution had examined altogether ten witnesses; out of which, two, namely, P.W.6 and P.W.7, were declared hostile. It was further observed by the learned trial Court that against three accused persons, namely, Raso Devi, Janki Devi and Reeta Devi, the charges had been levelled only under Sections 323 and 307 read with Section 149 of the Indian Penal Code and it was only accused Sharwan Mahto, who had been charged under Sections 323 and 307 of the Indian Penal Code. Accused Raso Devi had been charged only under Section 379 of the Indian Penal Code. As such, the learned trial Court held that so far as Section 307 of the Indian Penal Code is concerned, it was only Sharwan Mahto, who came to be charged, as such, for having given a blow by

Khanti on the wife of the informant.

9. It is further noticed by the trial Court that there was no repetition of blows by said Sharwan Mahto and instead, when the wife of the informant was attacked and the informant came to save her, the accused turned around to attack the informant. The learned trial Court has further noticed that P.W.1 (Babli Kumari) has given a version, which is contrary to the version of the prosecution and informant had stated that he was hit in the left leg by the attack of Sharwan Mahto. Several other witnesses, who have come forward to depose on behalf of the prosecution, have clearly stated that there was only one *Khanti* blow given by the accused Sharwan Mahto. There being no repetition of blows and there being no intervening circumstances preventing the accused from attacking repeatedly, it could not be said that the accused persons had come with a clear intention of killing the wife of the informant and/or the informant himself. Even the injured (P.W. 5) has not stated that the blow given to her by Sharwan Mahto was with an intention to kill her. The informant's statement also did not disclose any further repetition of blows on his wife and/or on himself. Further-more, there is no material on the record to show that in the aforesaid *marpit*,

there were such injuries, which could have been dangerous to life.

10. P.W.10, is the doctor, who examined the wife of the informant, and found the injury on her person to be simple like swelling and bruise and had opined that the same was caused by hard and blunt substance. He had, thus, opined that the injuries on Sheela Devi, wife of the informant, cannot be treated as grievous and/or dangerous for life, and similarly, the injuries on the body of the father of the informant, Debu Das, are also simple in nature. Accordingly, the learned trial Court, upon due consideration of all the facts and circumstances coupled with the findings of the doctor, held that Section 307 of the Indian Penal Code could not be attracted as the main ingredient for constituting the offence was not present. Had the intention to kill been there, the accused, Sharwan Mahto, could have made a second attempt by using *Khanti* for the second time with the intention of finishing the life of the informant's wife and/or that of the informant; but no such act was done by accused Sharwan Mahto. Thus, the charge, under Section 307 of the Indian Penal Code, was not, according to the learned trial Court, found proved.

11. Having perused the entire appraisal of evidence

made by the learned trial Court, we, too, find and hold that there is no lacuna in the reasonings arrived at by the learned trial Court calling for any interference at the appellate stage.

12. This appeal is, therefore, not admitted and is accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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