

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.717 of 2015

Arising Out of PS.Case No. -48 Year- 2001 Thana -PUNPUN District- PATNA

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1. Rajendra Singh Son of Late Ramdeo Singh, resident of village Wahitpur P.S.
Gaurichak, District Patna.

.... Appellant/s

Versus

1. The State of Bihar.
2. Satish Singh Son of Baijnath Singh, resident of village Wahitpur, P.S.
Gaurichak, District Patna.
3. Baijnath Singh Son of Late Chandrika Singh, resident of village Wahitpur, P.S.
Gaurichak, District Patna.
4. Anuranjan Singh Son of Baijnath Singh, resident of village Wahitpur P.S.
Gaurichak, District Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Kumar Singh, Sr. Advocate
Mr. Arun Kumar Singh, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 13-07-2016

By the judgment and order, dated 15.05.2015, passed, in Sessions Trial No. 960 of 2003, the learned Additional Sessions Judge-III, Patna, while acquitting the accused-respondents, namely, Satish Singh, Baijnath Singh and Anuranjan Kumar, of the charge framed against them under Section 307 read with Section 34 of the Indian Penal Code, have convicted them under Section 323 of the Indian Penal Code. However, the learned trial Court has allowed them to go, in the facts and circumstances of the case, by admonishing them as first offenders. The grievance of the present appellant is that the

accused-respondents ought to have been convicted by the learned trial Court for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described as under:

(i) On 03.08.2001, at about 5:00 PM, informant went to his paddy field and adjacent thereto is the field of accused, Baijnath Singh, Anuranjan Kumar and Satish Singh. When the informant reached his field, he found the ridge of his field broken and when he asked the accused as to who had broken the ridge, the accused started hurling abuses in filthy language, surrounded the informant and started assaulting him by *lathi*, whereby the informant sustained injuries on his head and also on his left hand. Seeing the occurrence, when the informant's cousins, Sudhir Singh, Mahendra Singh and others, started coming, the respondents fled away.

3. Based on the First Information Report, so lodged, Punpun (Gauri Chowk) Police Station Case No. 48 of 2001, under Section 307/34 of the Indian Penal Code, was registered, on 03.08.2001, against the accused persons, namely, Baijnath Singh, Anuranjan Kumar and Satish Singh. On completion of investigation, *charge sheet* was submitted and accused persons were put on trial.

4. At the trial, when a charge, under Section 307 read with Section 34 of the Indian Penal Code, was framed against the accused aforementioned, they pleaded not guilty thereto.

5. In support of their case, prosecution examined as many as 7 (seven) witnesses. The 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.

6. While considering the present appeal against acquittal of the accused-respondents, it needs to be pointed out that according to the evidence of the informant (PW 5), accused Baijnath Singh had fired from his pistol, which caused superficial injury only on his head and, thereafter, other accused persons assaulted him, he sustained fracture injuries on his left hand, fore-head, left eye and other parts of the body and also lodged the First Information Report. The First Information Report was, however, silent with regard to use of any fire-arm.

7. Lending support to the evidence of the informant, his son (PW 4) has deposed that when he went to the place of occurrence, he, too, was assaulted by the accused-respondents; but this was, as clearly pointed out by the learned trial Court, was an improvement over the description of the occurrence, which had been disclosed by the First Information Report.

8. Broadly in tune with each other, PWs 1, 2 and 3 deposed that the informant was assaulted in the manner as alleged by the informant.

9. However, in the light of ocular evidence, which has been adduced by the prosecution, when we turn to the medical evidence, we find that the following injuries were claimed to have been found on the person of the Informant:

“A. A contusion 8 cm x 2 cm over posterior aspect of left forearm;

B. A lacerated wound 2.5 cm long x .25 cm wide x bone deep over right side of vertex of scalp;

C. A Peanut size abrasion over left side of front of scalp;

D. An abrasion .75 cm long x .25 cm wide over left side of fore head;

E. An abrasion 1 cm x .25 cm over left side face, 1 cm lateral to left eye;

F. A contusion 20 cm long x 2 cm wide (Lathi Marks) over back of right side of chest;

10. The learned trial Court has pointed out that though the informant has claimed to have sustained fracture, the X-ray plate has not been produced nor has the doctor of radiology department, who had taken the X-ray, has been examined and, therefore, the accusation of fracture having been caused to the informant cannot be readily believed; more so, when the injuries do not disclose that any fire-arm was used; whereas the assertion of the prosecution witnesses had been that bullet from a pistol had been fired on the informant and the bullet had caused superficial injury on the head of the informant.

11. In the circumstances, as indicated above, the learned

trial Court, while convicting the accused-respondents under Section 323 of the Indian Penal Code, did not find the accused guilty of the offence under Section 307 of the Indian Penal Code and has acquitted them accordingly of the charge framed against them under the said penal provisions. We do not find, in the light of what has been discussed above, that this finding of acquittal, reached by the learned trial Court, suffers from any infirmity, legal or factual.

12. As far as the conviction of the accused-respondents is concerned, we express no opinion inasmuch as the conviction under Section 323 of the Indian Penal Code is not under challenge before us by the accused-respondents.

13. In the result and for the foregoing reasons, we are of the considered view that the impugned judgment and order do not suffer from any such infirmity, which requires interference by this Court in appeal.

14. This appeal is, therefore, not admitted and stands accordingly dismissed.

Mkr./-

(I. A. Ansari, ACJ)
(Anjana Mishra, J)

AFR/NAFR	NAFR
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