

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.963 of 2015

Arising Out of PS.Case No. -13 Year- 1998 Thana -EKMA District- SARAN

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Shyam Narayan Rai, son of Late Madhaw Jee Rai, resident of Village-Nanikpur,
P.S.- Ekma, District- Saran.

.... Appellant

Versus

1. The State of Bihar.
2. Ranjit Rai, son of Late Arjun Rai,
3. Bachha Rai, son of Suresh Rai,
Both are resident of Village- Manikpur, P.S. Ekma, District- Saran.

.... Respondents

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Appearance :

For the Appellant : Mr. Mukesh Kumar Singh, Advocate

For the Respondent No.1 : Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 02-02-2016

By the judgment and order, dated 14.07.2015,
passed, in Sessions Trial No. 349 of 1998, by the learned 1st
Additional Sessions Judge, Chapra, the accused-respondent
Nos. 2 and 3, namely, Ranjit Rai and Bachha Rai, have been
convicted under Section 323 read with Section 34 of the Indian
Penal Code. However, they have been released from custody,
under Section 3 of the Probation of Offender Act, 1958, after
due admonition. The grievance of the present appellant is that
the accused-respondent Nos. 2 and 3 ought to have been
convicted by the learned trial Court for the offences punishable
under Section 307 of the Indian Penal Code.

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

(i) On 24.01.1988, at about 07.00 AM, the accused persons, namely, Manjit, Ramesh, Rakesh and Sushil, caught hold of the informant, Shyam Narain Rai (PW 4), on the road, dragged him to some distance and gave multiple blows, by means of *lathis*, on the informant, Shyam Narain Rai. When informant's uncle, Ram Narain Rai (PW 1), and his wife, Gaytri Devi (PW 2), came there to save the informant, accused Bachha Rai gave a blow, by means of *farsa*, on Ram Narain Rai and other accused persons assaulted him by *lathis*.

(ii) On written information lodged, in this regard, by Shyam Narain Rai, Ekma Police Station Case No. 13 of 1998 was registered against Manjit, Ramesh, Rakesh and Sushil and, on completion of investigation, *charge sheet* was laid, under Sections 147/148/149/341/323/324/325/307 of the Indian Penal Code, against two accused persons, namely, Ranjit Rai and Bachha Rai.

3. At the trial, when a charge, under section 307 read with Section 34 of the Indian Penal Code, was framed against two accused persons, namely, Ranjit Rai and Bachha Rai, they pleaded not guilty thereto.

4. In support of their case, prosecution examined altogether 6 (six) witnesses. Accused were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, both 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 accused-respondents, namely, Ranjit Rai and Bachha Rai, had been proved guilty of offence under Section 323 read with Section 34 of the Indian Penal Code, the learned trial Court convicted them accordingly. However, both the accused persons have been released from custody, under Section 3 of the Probation of Offender Act, 1958, after due admonition.

6. Aggrieved by their conviction under Section 323 read with Section 34 of the Indian Penal Code only and their consequent release from custody under Section 3 of the Probation of Offender Act, 1958, the present appellant, informant of the case, has preferred this appeal.

7. We have heard Mr. Mukesh Kumar Singh, learned Counsel, appearing on behalf of the appellant, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

8. The only grievance, which has been raised, on behalf of the appellant, is that according to the evidence on record, as Ram Narain Rai (PW 1) had sustained incised wound over vertex, measuring 1/2" x 1/4" x scalp deep, the learned court below ought to have held that there was attempt to cause death of Ram Narain Rai (PW 1) and, thereupon, the

accused-respondents ought to have been convicted under Section 307 of the Indian Penal Code read with Section 34 thereof.

9. On perusal of the materials on record, we notice that as far as the informant, Shyam Narain Rai (PW 4), is concerned, he merely suffered some abrasions and had tenderness on his body. Same was the situation with his wife, Gyatri Devi (PW 2). However, as far as Ram Narain Rai (PW 1) was concerned, he suffered incised wound as described above. Had the accused respondents intended to cause death of Ram Narain Rai (PW 1), there would have been more than one blow on the head of Ram Narain Rai (PW 1) or on some vital parts of his body.

10. We are, therefore, clearly of the view that no case under Section 307 of the Indian Penal Code has been made out against the accused respondents. The impugned judgment and order does not, thus, suffer from any infirmity, legal or factual.

11. In the result and for the foregoing reasons, this appeal is not admitted and is dismissed accordingly.

(I. A. Ansari, ACJ)

(Samarendra Pratap Singh, J)

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