

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.66 of 2015**

Arising Out of PS.Case No. -40 Year- 2009 Thana -BHAGWANPUR District- BHABHUA
(KAIMUR)

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1. Arjun Ram, son of Late Ramadhar Ram
2. Jitendra Ram, son of Arjun Ram, both resident of village - Ballipur, P.S.
Bhagwanpur, District - Kaimur at Bhabhua

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Tribhuwan Narayan-Advocate
Mr. Vivek-Advocate
For the Respondent/s : Mr. Z. Hoda-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 29-08-2017

Heard learned counsel for the appellants as well as
learned Additional Public Prosecutor.

2. Learned counsel for the appellants has submitted that
though appellant no.2, Jitendra Ram was convicted for an offence
punishable under Sections 323, 341, 504 I.P.C. along with Jai Prakash
Ram, Bunia Ram (non-appellant), but instead of having substantial
sentence, he along with other co-convict named above has been let off
in terms of Section 3 of the Probation of Offenders Act after due
admonition. Instant appeal has been filed on his behalf on account of
being a Government Servant and further, to ward off any kind of
stricture or disqualification attached with his conviction in connection
with his service, is found not at all regressive in the background of
privilege having prescribed under Section 12 of the Probation of
Offenders Act mandating that a convict having let off in terms of



Section 3 or 4 of the Probation of Offenders Act will not carry any kind of disqualification on account of his conviction. That being so, in the background of aforesaid settled legal proposition, the learned counsel for the appellant seeks withdrawal of instant appeal relating to appellant no.2, Jitendra Ram and is accordingly, allowed.

3. Now, this appeal remains alive against appellant no.1, Arjun Ram, who has been directed to suffer substantial sentence.

4. Appellant, Arjun Ram has been found guilty for an offence punishable under Section 323 of the I.P.C. and sentenced to undergo R.I. for six months as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for one month, additionally, for an offence punishable under Section 341 of I.P.C. and sentenced to undergo R.I. for one month, for an offence under Section 504 of I.P.C. and sentenced to undergo one month with a further direction to run the sentences concurrently by the Additional Sessions Judge-4th, Kaimur at Bhabua in Sessions Trial No.197 of 2010/ 3222 of 2014 vide judgment of conviction and sentence dated 09.01.2015.

5. After going through the judgment impugned, it is evident that appellant, Arjun Ram along with Bunia Ram, Jitendra Ram and Jai Prakash Ram were prosecuted for an offence punishable under Sections 323, 341, 326, 307/34 and 504/ 34 of the I.P.C. as well as Jai Prakash Ram was additionally charged for an offence punishable under Section 379 of I.P.C. The learned lower Court, after



scrutinizing the evidence had observed that prosecution miserably failed to substantiate the charge under Section 307, 326/ 34, 379 of the I.P.C. However, found the appellant along with remaining three others so named above guilty for an offence punishable under Section 323, 341, 504 of the I.P.C. After hearing argument over sentence, the learned lower Court had given benefit of Section 3 of the Probation of Offenders Act relating to other co-convict, but declined to give same benefit to the appellant on the ground that he had inflicted Garasa blow over the informant, (PW-4).

6. The learned counsel for the appellant confined his submission over sentence and submitted that learned lower Court had passed sentence impugned in arbitrary manner. In the background of the fact that once the learned lower Court had disbelieved the story of assault by means of Garasa, then in that event, the case of the appellant stood on similar footing than that of other co-convict, who had already been given benefit of Section 3 of the Probation of Offenders Act.

7. On the other hand, learned Additional Public Prosecutor though at an initial stage challenged the submission made on behalf of appellant, but considering the evidence of PWs, had also conceded that learned lower Court should have given benefit to the appellant also in similar way.

8. After hearing the parties as well as going through the record, it is evident that learned lower Court should have also treated



the appellant at par with other co-convict in the background of the fact that apart from absence of injuries having over the person of PW-4, informant caused by sharp cutting weapon, the consistent version of the prosecution witnesses if taken together would have suggested the mode of occurrence in similar way whereunder PW-4 sustained injuries by means of hard and blunt substance. Furthermore, there happens to be admission at the end of the prosecution that both the parties are on litigating term since before.

9. That being so, maintaining the conviction having recorded by the learned lower Court, sentence so inflicted by the learned lower Court is hereby erased and further, appellant Arjun Ram is also found entitled for similar treatment whereupon, instead of substantial sentence, should avail the privilege in similar terms attracting admonition as provided under Section 3 of the Probation of Offenders Act. Instant appeal is partly allowed in terms thereof, the learned lower Court is directed to notice the appellant for that purpose, on which date, there should be appearance of the appellant Arjun Ram for hearing admonition. Till then, the privilege of bail is extended.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
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