

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.569 of 1994

(Against the judgment of conviction dated 24.08.1994 and order of sentence dated 26.08.1994 passed by Shri Sardar Bhagat Singh, learned Additional Sessions Judge-II, Buxar in S.T. No. 759 of 1992, arising out of Buxar (M) P.S. Case No. 19 of 1992)

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Gandhi Dubey @ Arvind Dubey @ Ravindra Dubey @ Gandhi Jee, son of Shri Ramashish Dubey, resident of Village- Anyaypur, P.S. Buxar Mufassil, District-Buxar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shambhu Sharan Singh, Amicus Curiae

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-09-2017

The instant appeal has been preferred by the appellant under Section 374(2) of the Cr.P.C. against the judgment of conviction dated 24.08.1994 and order of sentence dated 26.08.1994 passed by learned Additional Sessions Judge-II, Buxar in S.T. No. 759 of 1992, arising out of Buxar (M) P.S. Case No. 19 of 1992, whereby the learned Additional Sessions Judge convicted the appellant under Sections 307 of the Indian Penal Code and sentenced to undergo imprisonment for 10 years.

2. On repeated calls, no one appears on behalf of the appellant. As the appeal is pending since 1994, Mr. Shambhu Sharan Singh, learned Advocate, who is present in Court, is appointed as



Amicus Curiae to assist the Court.

3. The injured Mohan Sao on 13.02.1992 in the morning was approached by the appellant Rabindra Dubey and an offer was made by him to accompany him to village Anyaypur where the accused promised to sell some junk material to the injured Mohan Sao. It is the case of the prosecution that Mohan Sao is dealing with selling junk material and it is said that when both Mohan Sao and the appellant Rabindra Dubey reached a place near Chausa Railway Station, the accused made quarrel with him with regard to a dispute between Mohan Sao and his cousin and the accused Rabindra Dubey wiped out a knife and caused injury on Mohan Sao. It is said that three injuries were caused on the person of Mohan Sao, one in the abdomen, one in the left hand and other on the left scapular. It is said that after causing the injuries, the accused ran away. Mohan Sao thereafter dragged himself to a nearby Government Pump House and called his family members through the attendant of the Pump House, thereafter, the matter was informed to police station and the investigation conducted. Mohan Sao was admitted to the Surgical Ward of the Hospital in Buxar, where he was examined by the doctor S.K. Pandey (P.W.6), who submitted his medical report indicating the following three injuries on the person of the injured:

- (i) One stale injury over lower part of the abdomen on his left side with prolapsed of omentum and intestine coming out from wound, the wound was 2 ½" x ¼" and



chest cavity deep.

(ii) Incised injury over left forearm $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{6}$ ".

(iii) Incised injury on the left scapular region on $2\frac{1}{4}$ " x $\frac{1}{2}$ " x chest cavity deep.

4. On the basis of the fardbeyan of the informant, Buxar (M). P.S. case no. 19 of 1992 was registered for the offence under Section 307 of the Indian Penal Code.

5. The police after investigation submitted charge-sheet, thereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial.

6. The prosecution examined 7 witnesses. P.W.1 is Keso Kanu and P.W.2 is Balchand Sao, who had learnt about the incident. P.W.3 Tarkeshwar Dueby, who was present in the Pump House where he saw Mohan Sao lying near a drain of the pump house. P.W. 4 Mohan Sao is the informant of the case. P.W. 5 Gupteshwar Kanu was tendered for cross-examination. P.W. 6 is Dr. S.K. Pandey, who examined the injured and P.W.7 is a formal witness.

7. Mr. Shambhu Sharan Singh, learned Amicus Curiae argued that if the injury sustained by the injured Mohan Sao is taken note of, it would be seen that injury no.1, which is said to have been caused in the abdomen, as marked by the doctor, is a stale injury. The report of the doctor is dated 13.02.1992. He is said to have examined the injured in Sadar Hospital, Buxar on 13.02.1992 at 12.00 noon and



the incident is of the same day i.e. 13.02.1992. Shri Singh argues that if the injury was caused on the same day, how such an injury can be termed as stale injury. The injury not being a fresh injury occurred on the same day cannot be attributed to have been caused in the incident in question. The other two injuries are simple and minor injuries on the left forearm and scapular region of the chest, which are not found to be grievous or serious in nature. Accordingly, learned counsel argues that even if the entire story of the prosecution is accepted and the injury report analyzed, at best, the appellant can be convicted for an offence under Section 324 of the Indian Penal Code and the appellant has already remained in custody for more than 3 years, now the appellant should be left free.

8. Learned counsel for the State, however, refuted the aforesaid contention and tried to justify the conviction under Section 307 of the Indian Penal Code.

9. Having considered the rival submissions and on going through the record, we find that the submissions made by Mr. Singh, learned Amicus Curiae is correct, apart from the fact that Mohan Sao speaks about the accused, stabbing him, causing him only one injury by one stab. Even if it is assumed to be a mistake on his part, the medical report indicates that the injury on the abdomen is a stale injury and by no stretch of imagination it can be said to have been caused on the date of incident. The other two injuries are simple injuries on non-vital part



of the body. Therefore, it is a fit case where the conviction under Section 307 of the Indian Penal Code should be converted into Section 324 of the Indian Penal Code and as the appellant has already remained in jail for more than three years, we allow this appeal in part, modify the conviction of the appellant from Section 307 of the Indian Penal Code to Section 324 of the Indian Penal Code and sentence him with three years imprisonment.

10. As the appellant has already undergone three years imprisonment, and he is on bail, he is discharged from the liabilities of his bail bonds.

11. Let a copy of the judgment be handed over to Mr. Shambhu Sharan Singh, who appears in this appeal, as Amicus Curiae for needful.

12. The Patna High Court Legal Services Authority is directed to pay the fixed remuneration to Mr. Shambhu Sharan Singh, who is appearing in this appeal, as Amicus Curiae.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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