

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.639 of 2002

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Jokhan Sao, son of Mahabir Sao, resident of Village- Babhnaul, Police Station- Dawath, District- Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamal Yadav Chaubey, Sr. Advocate
Mr. Nagendra Dubey, Advocate
Mr. Ambuj Nayan Chaubey, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 09-11-2017

Challenging his conviction for an offence punishable under Section 307 I.P.C and sentencing him to undergo two years R.I. by the court of Additional Sessions Judge, Fast Track Court No. 1, Sasaram, Rohtas in Sessions Trial No. 26 of 1988/268 of 2002 vide judgment dated 15th of November, 2002, appellant Jokhan Sao has filed this appeal.

It is the case of the prosecution that the informant Raj Nath Mahto used to live with his maternal uncle Sri Kishun Mahto and on the date of the incident i.e. 31 years back on 20th of June, 1986 when the informant had gone to the house of Nathuni Sah at 8:00 P.M. in the evening to attend the marriage of Nathuni Sah's daughter, appellant Jokhan Sao along with his brother Sokhan Sao came from the back and fired at him



because of which he sustained injury on his back. The appellant was prosecuted along with his brother Sokhan Sao. However, as no overt act was attributed to Sokhan Sao, he has been acquitted and looking to the nature of the injury sustained by the injured person which has been testified as a superficial simple injury by P.W. 4 the doctor who has been examined, the appellant has been convicted to undergo two years R.I taking note of the nature of injury sustained, which is a superficial and only simple injury, and considering the fact that there are rivalries between the parties

It is argued by learned counsel that it is a case of false implication and the incident as narrated has not occurred.

On a perusal of the statement of the informant P.W. 2 Rajnath Mahto, it is clear that he was fired at from the back side and he admits in Paragraph 7 of his cross examination that he had made the complaint at the instance of his maternal uncle and there are also evidence available on record that there are serious family dispute between the maternal uncle and the appellant's family.

That being so, possibility of false implication cannot be ruled out. That apart P.W. 2 speaks about the incident being witnessed by him i.e. firing from the back in the backdrop



of a gas light which was burning whereas the other eye witness P.W. 3 speaks about there being an electric light functioning in the area by way of generator. Apart from the aforesaid contradictory report available on record, it is seen that the nature of injury sustained has been categorically classified as a very simple superficial injury and therefore, taking note of the totality of the circumstances now after a period of more than 31 years, that apart looking to the circumstances when the offence took place, the appellant was 35 years of age and now he would be more than 72 years of age, it is not appropriate to sentence him and to send him to undergo the imprisonment. On the contrary, it is a case where looking to the nature of injury sustained and taking note of the totality of the circumstances, even though happening of the event has been found to be proved in the matter, the benefit of release of the appellant on probation exercising the power under Section 360 Cr.P.C. should be exercised as it is only a case where certain things have happened and there is nothing to show that the appellant is a hardened habitual criminal and has misused the provisions of bail which was granted to him during the period the trial and appeal were pending.

Taking note of the aforesaid, while upholding the



conviction of the appellant, he is directed to be released on probation on his furnishing a personal bond for maintaining peace and tranquility for one year.

The appeal stands disposed of.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	15.11.2017
Transmission Date	

