

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.323 of 2017

=====

Dhano Devi, W/o Baban Yadav , Resident of Village-Kripa Bigha Tola Nighma,
P.S.-Kurtha, District-Jehanabad (Informant)

... Petitioner/s

Versus

1. The State of Bihar

2. Bindi Yadav, Son of Late Faghu Yadav, Resident of Kripa Bigha, Tola Nighma,
P.s.-Kurtha, District-Jehanabad.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate.

Mr. Piyush Anand, Advocate.

For the State : Mr. Manoj Kumar No. 1, Advocate.

For the Respondent/s : Mr. Subodh Kumar, Advocate.

Mr. Dinesh Jha, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 16-10-2017

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the O.P. No. 2.

2. The petitioner is informant of Kurtha P.S.Case No.
104 of 2000 in S.T. No. 211 of 2003/88 of 2004, arises out of this
police case in which the accused persons were put on trial by framing
of charge against them under Section 307 of the Indian Penal Code.

3. This revision application is directed against the
judgment of acquittal dated 20th December, 2016 passed by the
Additional Sessions Judge-1st, Jehanabad in S.T. No. 211 of 2003/88
of 2004 whereby he acquitted accused Bindi Yadav (O.P. No. 2
herein) from the charge under Section 307 of the Indian Penal Code
and convicted him only under Section 323 of the Indian Penal Code.



However, giving the benefit under Section 3 of the Probation of Offenders Act, the accused was released after due admonition.

4. Learned counsel for the petitioner submits that though the injury report of Bhola Yadav and Dhano Devi was on the record but Section 294 of the Code of Criminal Procedure was not adopted in the case and the court also not exhausted all the processes for securing the attendance of the doctor during trial. Learned counsel places reliance in the case of ***State of Bihar vs. Jai Kant Tiwari*** reported in ***1994 (1) PLJR 488***.

5. Contrary to that, learned counsel appearing on behalf of O.P. No. 2 submits that there is no illegality or impropriety in the impugned judgment. The trial court has correctly appreciated the evidence and prosecution has failed to prove the charge under Section 307 of the Indian Penal Code as neither proved the injury report nor the doctor was examined and in absence of that, charge under Section 307 of the Indian Penal Code is not proved.

6. Having considered rival submissions and on perusal of record, it appears that due to some land dispute, accused gave a *lathi* blow on the head of the informant; and his son too was assaulted over the head when came to rescue her. There is no such allegation that any repeated blow of *lathi* was given by the accused or was there any intervening circumstances which came on the way of the accused not



to assault further. However, considering genesis of occurrence, weapon used in the case which is *lathi*, manner of assault giving a single blow, no repetition as well as neither injury report was proved by the prosecution nor the doctor was examined during trial, even after a decade of the trial, and there is absence of any intervening circumstances, so the court cannot direct for reopening of the trial. As far as paragraph no. 1 of the impugned judgment is concerned, there is no material to prove the charge under Section 307 of the Indian Penal Code. Section 294 of the Cr.P.C. is only an enabling provision giving liberty to the prosecution to produce document before the court thereby accused is asked to admit or deny the genuineness of the document concerned, but in the present case, even the injury report was not produced before the Court under this provision. In this case charge was framed on 06.08.2005 and prosecution evidence was closed on 16.07.2016, so I do not find any illegality in the impugned judgment to intervene the same. Accordingly, this revision application stands dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.11.2017
Transmission Date	02.11.2017

