

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.656 of 2017

Arising Out of PS. Case No.-78 Year-2008 Thana- BEGUSARAI MUFFASIL District-
Begusarai

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1. Ramchandra Paswan, S/o Late Harkhit Paswan,
 2. Mukesh Paswan, S/o Ramchandra Paswan,
Both R/o Village- Wajitpur & P.S.- Muffasil, District- Begusarai,
State- Bihar.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Ram Chandra Paswan, S/o Late Radha Krishna Paswan.
3. Prem Kumar, S/o Ram Chandra Paswan.
4. Rakesh Paswan @ Bhola, S/o Ram Chandra Paswan.
5. Sujeet Paswan, S/o Ram Chandra Paswan
All R/o Village- Wajitpur & P.S.- Mufassil, District- Begusarai, State- Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Amit Narayan
For the Respondent/s : Sri Mayanand Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

5 06-10-2017 Heard Sri Amit Narayan , learned counsel for the

appellants and Sri Mayanand Jha , learned Additional

Public Prosecutor.

The appeal has been preferred by two of the victims of
Begusarai Muffasil P.S. Case No. 78 of 2008 registered for
the offence under section 341, 323, 324, 307 / 34 of the
Indian Penal Code, 1860 (hereinafter referred to as
“I.P.C.”). The Appeal has been preferred against the



judgment dated 15.02.2017 passed by Sri Piyush Kamal Dixit, learned Additional Sessions Judge – IV, Begusarai in Sessions Trial No. 872 of 2008 and Sessions Trial No. 410 of 2009. By the said judgment learned trial judge has acquitted respondent no. 2 to 5 from charge under Section 307 read with Section 149 of the I.P.C., however the respondent no. 2 to 5 have been held guilty and convicted under Section 324 read with Section 34 of the I.P.C. and they have been sentenced to undergo rigorous imprisonment for two years. Besides this, fine of Rs. 1000/- has also been imposed and in default, it has been directed to undergo further simple imprisonment for three months.

Sri Amit Narayan, learned counsel for the appellants has argued that since there were consistent evidences on the point that accused persons with intent to kill both the appellants had given blow from deadly weapons and the evidence was not contradicted during cross-examination, the learned trial judge was required to convict them under Section 307 read with Section 149 of the I.P.C. instead of Section 324 read with Section 34 of the I.P.C. It has been argued that there is specific allegation that the accused



persons had given 'farsa' blow on the head and chest of the appellants and as such, it was specific case of committing attempt to murder, and accordingly, the respondents were liable to be convicted under Section 307 read with Section 149 of the I.P.C. Accordingly, it has been argued to alter the sentence and alter the conviction from Section 324 read with Section 34 of the I.P.C. to Section 307 read with Section 149 of the I.P.C.

Learned Additional Public Prosecutor opposing the Appeal has argued that learned trial judge has rightly passed the judgment of conviction and sentence considering the nature of injuries. By way of referring to the evidence of the doctor who examined the injuries of both the appellants i.e. Ramchandra Paswan and his son Mukesh Paswan has argued that injuries of both the persons were noticed as 'simple in nature'. According to him, there is no apparent perversity in the judgment warranting interference.

Besides hearing, we have also examined the materials available on record. Fact remains that respondent no. 2 was tried in Sessions Trial No. 872 of 2008, whereas remaining respondents were tried in Sessions Trial No. 410



of 2009. Since both the sessions trial were in relation to the same case i.e. Begusarai Muffasil P.S. Case No. 78 of 2008, the trial judge by common judgment has convicted and sentenced them for offence under Section 324 read with Section 34 of the I.P.C. On going through the materials available on record it is evident that the informant in the fardbyan had alleged that all the accused persons variously armed including armed with pistol had arrived at the land in dispute and in relation to dispute of land the private respondents had assaulted the appellants. It is specific case that the accused persons were carrying pistol but in the occurrence there is no allegation of opening firing nor there is allegation of repetition of injury. It is true that in the occurrence 'farsa' blow was given on the head as well as chest, but injury which was examined by the medical expert has been found as 'simple in nature'. It is also evident that there was case and counter -case in between the parties, which fact has also been noticed by the learned trial judge in paragraph no. 17 of its judgment. Considering the nature of evidence, no allegation of repetition of blow or use of fire arm despite the fact that accused persons



were carrying pistol, the court is of the opinion that learned trial judge while convicting respondent no. 2 to 5 under Section 324 read with Section 34 of the I.P.C. has committed no error warranting interference nor it is a case of perversity in the judgment. Accordingly, we do not find any ground to grant leave to appeal, and as such, the interlocutory application i.e. I.A. No. 1822 of 2017 filed under Section 378(3) of the Code of Criminal Procedure, 1973 for grant of leave stands rejected. Consequently, the Appeal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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