

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.283 of 2015**

Arising Out of PS.Case No. -37 Year- 2008 Thana -JAMHORA District- AURANGABAD

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Suresh Sharma @ Suresh Mistri, S/o Late Bakhoura Mistri resident of Village - Shantipur, P.S. - Jamhore, District - Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh-Sr. Advocate
Mr. Mithilesh Kumar Singh-Advocate

For the Respondent/s : Mr. Sujeet Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 11-10-2017

Appellant, Suresh Sharma @ Suresh Mistri has been found guilty for an offence punishable under Sections 323, 325, 341 and 307 of the I.P.C. and sentenced to undergo R.I. for 10 years vide judgment of conviction dated 17.04.2015 and order of sentence dated 21.04.2015 passed by the Additional Sessions Judge-3rd, Aurangabad in Sessions Trial No.28 of 2010/ 111 of 2014.

2. Tapeswar Sharma (PW-7) while was admitted at Sadar Hospital, Aurangabad in an injured condition gave his fard-bayan on 02.04.2008 at about 4.00 p.m. disclosing therein that on account of dispute relating to breaking of tape having affixed over his tractor, there was scuffle in between his driver as well as Anil



Sharma, whereupon Anil Sharma assaulted his driver with iron rod as a result which, case has been instituted. In the aforesaid background, on 01.04.2008 at about 4.30 p.m., Suresh Mistri, Anil Sharma @ Danjras and wife of Suresh Mistri came at his darwaza, began to abuse and stating that you are responsible for getting the case instituted through his driver, Suresh Mistri gave Farsa blow causing injury over his back. He fell down. His son Mahendra Sharma (PW-1) rushed in rescue, who was also assaulted by them with Danda as a result of which, he sustained injury over his left hand as well as head. On hue and cry, his neighbours Birendra Sharma, Dukhi Sharma, Binod Sharma, Sitaram Sharma and others came in rescue seeing whom, accused persons fled away. They have lifted him to the hospital.

3. On the basis of the aforesaid fard-bayan, which was transmitted to the P.S. concerned, Aurangabad (Jamhore) P. S. Case No.37 of 2008 was registered followed with an investigation and after completing the same, chargesheet was submitted facilitating the trial with ultimate result, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement having been recorded under Section 313 of the Cr.P.C. is that of complete denial. It has specifically been



pleaded that on the alleged date and time of occurrence, the prosecution party raided their house and brutally assaulted for which, wife of appellant namely Suryamani Devi was admitted to Sadar Hospital, Aurangabad where her fard-bayan was recorded and on the basis thereof, Jamhore P. S. Case No.38 of 2008 was registered. To substantiate the same, certified copy of chargesheet, order of the cognizance have been exhibited.

5. In order to substantiate its case, prosecution had examined altogether 11 PWs, out of whom, PW-1 Mahendra Sharma, PW-2 Dukhi Mistri @ Dukhi Sharma, PW-3 Vinod Kumar Sharma, PW-4 Mithlesh Yadav, PW-5 Vijay Rawani, PW-6 Parmanand Chandrabanshi, PW-7 Tapeswar Mistri, PW-8 Rambhajan Choudhary, PW-9 Mahendra Thakur, PW-10 Uma Ram and PW-11 Md. Imteyaz Khan. Side by side, had also exhibited viz. Exhibit-1 signature of informant over fard-bayan, Exhibit-2 series, injury report relating to Mahendra Sharma as well as Tapeswar Sharma, Exhibit-3 formal F.I.R. As submitted, defence had also exhibited viz. Exhibit-A chargesheet and Exhibit-B the order of cognizance.

6. During course of hearing of instant appeal while L. C. Record along with judgment impugned has been gone through, it is evident from the concluding Paragraph-16 of the judgment impugned



that learned lower Court had acquitted other co-accused namely Anil Sharma, Suryamani Devi, while had found appellant Suresh Mistri guilty for an offence punishable under Sections 323, 325, 341, 307 of the I.P.C. On the point of sentence, the learned lower Court had heard the matter on 24.01.2015 and from Para-19 thereof, it has been found that the learned lower Court had sentenced the appellant Suresh Mistri to undergo R.I. for 10 years without specifying whether it happens to be relating to Section 323 I.P.C. independently or Section 325 I.P.C. independently or under Section 341 I.P.C. independently, or under Section 307 of the I.P.C. independently or it has been conjointly relating to all the offences or the same happens to be for 307 I.P.C. only. It is worth mention to note that neither Section 323 I.P.C. nor Section 325 I.P.C. nay Section 341 of the I.P.C. prescribes sentence to such extent that means to say, either the Court has to infer on its own that the aforesaid sentence has been passed relating to Section 307 I.P.C. exclusively and if not, then in that event, ambiguity persists on that very score.

7. The basic principle for awarding sentence is that it should be in relation to each offence whereunder convict has been found guilty. Furthermore, if the accused is found guilty for more than one offence, then in that circumstance, the convicting Court should endeavour to pass appropriate sentence against each of the Section



whereunder convict is found guilty as is evident from Section 354(1)(c) of the Cr.P.C. That being so, the sentence having inflicted by the learned lower Court suffers from vagueness and that being so, needs interference, whereupon only that part of finding recorded by the learned lower Court is set aside. The appeal is allowed in terms thereof, remitting the matter to the learned lower Court to hear both the parties and pass appropriate order on the sentence. The appellant, who is on bail, is directed to surrender before the learned lower Court within four weeks and will pray before the learned lower Court over grant of bail, which the learned lower Court will consider in accordance with law, failing which the privilege so being enjoyed by the appellant will cease to survive, whereupon, the learned lower Court will be at liberty to proceed against the appellant in accordance with law. Aforesaid exercise, in case of presence of appellant, must be completed within eight weeks from the date of receipt of judgment by the learned lower Court.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	16.10.2017
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