

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.622 of 2002
(Against the judgment of conviction, dated 23.09.2002, and order of
sentence, dated 28.09.2002, passed by Shri Ramesh Kumar Rataria,
4th Additional Sessions Judge, Begusarai in S.T. No. 293 of 1997)

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1. Basudeo Yadav, son of Ramdhani Yadav
 2. Lakhan Yadav, son of Sukhdeo Yadav
 3. Hare Ram Yadav, son of Sukhdeo Yadav
 4. Ramdeo Yadav, son of Ammai Yadav
 5. Dinesh Yadav, son of Ramdeo Yadav
 6. Dilip Yadav, son of Sukhdeo Yadav
 7. Ravi Yadav, son of Ramdhani Yadav
 8. Jagdish Yadav, son of Ramotar Yadav
 9. Anil Yadav, son of Bishundeo Yadav
 10. Mushhara Yadav, son of Ram Bharosh Yadav
 11. Ram Prakash Yadav, son of Ram Bharosh Yadav
 12. Shambhu Yadav, son of Ram Prakash Yadav
 13. Ram Uday Yadav, son of Charitra Yadav
 14. Phulo Yadav, son of Charitra Yadav
 15. Guneshwar Yadav, son of
 16. Satynarayan Yadav, son of
 17. Lakshmi Yadav, son of Ram Prakash Yadav
 18. Bishun Yadav, son of Ram
 19. Baldeo Yadav, son of
 20. Siya Yadav, son of

All residents of Sonversa, P.S.-Cheria Bariarpur, District-Begusarai.

.... Appellants

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rashmi Bharti, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 11-11-2017

The instant appeal has been filed by the appellants
against the judgment of conviction dated 23.09.2002 and order of
sentence dated 28.09.2002 in Sessions Trial No. 293 of 1997 whereby



the trial court convicted the appellants for the offence under section 307/149 and Section 380 of the Indian Penal Code and they have been sentenced seven years rigorous imprisonment for the offence under section 307/34 and three years rigorous imprisonment for the offence under section 380/34 of the Indian Penal Code. However, the sentences were directed to be run concurrently.

2. The prosecution story, as alleged by the informant (P.W.6) is as follows:-

On 17.11.1996 the informant gave his fard-beyan at Cheria Baraipur, Public Health Centre stating therein that on 16.11.1996 Ramdeo Yadav went to watch his field and saw that accused Siya Yadav kept his cow and calf for grazing there. On protest made by Ram Deo Yadav accused Siya Yadav abused him. Later on in the evening, all accused persons came there armed with deadly weapon and appellant Basudeo Yadav assaulted the grand-son of the informant namely Bakil Yadav with Bhala and appellant Dinesh Yadav assaulted him with lathi. It is further alleged by the informant that Ram Prakash Yadav gave Farsa blow upon the informant due to which he received injury on his finger. It is further alleged that appellant Anil Yadav and Mushru Yadav assaulted Ramdeo Yadav and Mahesh Yadav due to which they also received injury.



It is also alleged by the informant that he was dragged by the accused persons and the roof of his house was damaged. It is further alleged that accused Ramdeo Yadav took wrist watch from the Ram Chandra Yadav, accused Lakhan Yadav took one bag of maize. Appellant Jagdish Yadav took an attachee of clothes and ornaments, appellant Dilip Yadav took a bag of fertilizer. It is also stated by the informant that cause of occurrence is alleged to be the previous enmity and several litigations.

3. The police after investigation submitted charge-sheet and the case was committed to the court of sessions. After framing of the charge, the appellants pleaded not guilty and as such they have been put on trial.

4. In the trial on behalf of the prosecution 12 witnesses were examined, out of which, P.W.1 and P.W.2 are the formal witnesses to prove formal information report. P.W. 3 and P.W.4 are also the formal witnesses as they have proved exhibits 2 and 3. P.W.5 is the cousin of the informant. P.W. 6 is the informant. P.Ws. 7, 8, 9 and 10 are claimed to be eye-witnesses. P.W. 10 is the I.O. of the case and P.W.12 is the Doctor who examined the injured. In addition thereto, on behalf of prosecution, 3 documents have been exhibited whereas on behalf of the defence 14 documents were placed on record by way of exhibits.



5. Learned counsel appearing on behalf of the appellants submitted that there are contradictions in the version of the witnesses, and that there was previous enmity with the appellants and the informant side in relation to which several litigations were pending against them.

6. He submitted that in the instant case injury report would indicate that all the injuries are simple in nature and no case under section 307 of the Indian Penal Code is made out against the appellants warranting conviction under section 307 of the Indian Penal Code. He further submitted that the incident is of 1996 and 21 years have passed by now and the trial court while passing the sentence has noted the fact that the accused were farmers and were not convicted earlier, hence, the court should consider the totality of the facts situation that it does not make out a case under section 307 of the Indian Penal Code rather utmost the offence under section 323 of the Indian Penal Code.

7. Counsel for the State submitted that the appellants have committed the crime of assault. However, on going through the record, he admitted that injury report indicates that the injuries are simple in nature and as such he has not disputed the submission of the appellants that at the highest it is a case under section 323 of the IPC and not a case under section 307 of the Indian Penal Code.



8. Learned counsel for the appellants submits that there is no material which warrants conviction of the appellants under section 380/34 of the Indian Penal Code.

9. I have heard the learned counsel for the parties and on perusal of the injury report, I find that the injuries on the persons of the informant side are simple in nature which was caused due to dispute on account of grazing of cow at the field. The appellants have no past criminal antecedent and it is their first offence. I have also found that the incident took place 21 years back and the appeal remained pending for 15 years and in totality of facts situation, when I consider the nature of injury as per opinion of the Doctor, I find that ends of justice would be served, if the conviction of the appellants are converted from section 307/34 to 323 of the Indian Penal Code and the sentence is modified to the extent of period already undergone.

10. Accordingly, I modify the judgment of conviction and order of sentence of the appellant from section 307/34 and 307/149 to 323/149. I do not find any justification to interfere with the finding of the trial court so far as conviction under section 380/34 of the Indian Penal Code is concerned. However, I modify the sentence of the appellants, as considering the background of the dispute and the fact that occurrence took place 21 years back accordingly I modify the sentence of all the appellants under section



380/34 as period undergone.

11. The judgment of conviction and order of sentence is accordingly modified. The appeal is partly allowed to the extent indicated above.

12. Since the appellants are on bail, they are discharged from the liability of bail bond.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.11.2017
Transmission Date	18.11.2017

