

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.597 of 2002

**(Against the judgment of conviction and order of sentence dated
7.10.2002 passed by Shri Bishwadeo Narain Singh, Ad hoc
District and Sessions Judge, Fast Track Court-III, Patna).**

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1. Suraj Sao, S/o late Moti Sao
2. Mauji Sao, S/o late Moti Sao
3. Ramjeet Sao, S/o Suraj Sao,
All residents of village-Tata Colony, Maner, P.O.- Maner, P.S.- Maner, District-
Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pandit Jee Pandey, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 25-11-2017

These three appellants in the present appeal are aggrieved by the judgment of conviction and order of sentence dated 7th of October, 2002 passed by the Fast Track Court-III, Patna in Sessions Trial Case No. 509 of 1993 by which the appellants have been convicted and sentenced for the offence under Section 307 of the Indian Penal Code.

2. The prosecution case as appearing from the Fard-beyan of the informant is that on 17.04.1993 the informant has stated before Sub-Inspector, Maner Police Station that there was a light altercation



between his mother Fulsi Devi and the wife of accused Suraj Sao regarding a dispute among the children of both the families. Subsequent to the said altercation, the accused Suraj Sao abused and slapped informant's father namely Laxman Sao. The informant went in front of the house of one Ram Subagh Rai and asked the accused Suraj Sao as to why he had abused and slapped his father whereupon accused Suraj Sao became hot and went inside his house and came out with a Fasuli in his hand. Immediately thereafter, the accused Mauzi Sao and Ramjit Sao reached there armed with lathi. Accused Mauzi Sao assaulted him by means of lathi on his left hand and chest and accused Suraj Sao assaulted him on his head by means of Fasuli, as a result of which, he sustained bleeding injury. When Laxman Sao, the father of the informant, his uncle Sukhnarain Sao and mother Fulsi Devi noticed the assault on the persons of the informant, they came to the place of occurrence in order to save him. Thereafter, accused Suraj Sao with an intention to kill the informant's father Laxman Sao, assaulted him by Fasuli on his neck and left shoulder, as a result of which, he sustained bleeding injuries. Suraj Sao also assaulted the uncle of the informant by means of Fasuli on his head and nose and consequently he also became injured. The accused Ranjeet Sao and Mauzi Sao assaulted his mother by means of lathi, resulting injuries on her person. The informant further alleged that in course of assault,



the wife of accused Suraj Sao and Mauzi Sao also came there and caused injuries by throwing brick bats. On alarm, the co-villagers namely Basropan Sao, Bishwanath Sao, Deoki Rai, Hardeo Rai and others reached there and saved the informant and his family members and brought them hospital for treatment where the informant gave his fardbeyand. On the basis aforesaid fardbeyan, the police registered Maner P.S. Case No. 49/93 dated 17.04.1993 under Sections 341,323,324,337,307 and 34 of the IPC against the accused persons including these appellants and started investigation.

3. The police after investigation submitted charge-sheet against five accused persons for offences under Sections 307 of the Indian Penal Code and after cognizance, the case was committed to the Court of Sessions. The trial court framed charges against accused persons under section 307 of the Indian Penal Code and they were tried by the Fast Track Court-III, Patna on their pleading not guilty.

4. On behalf of the prosecution, altogether seven witnesses were examined, out of them four are the informant and his family members, P.W. 3 who was independent witness has been declared hostile. P.W. 7 is formal witness and P.W.5 is the only FIR witness examined in this case.

5. Mr. Pandit Jee Pandey, learned counsel appearing on behalf of the appellants submitted that admittedly, the occurrence



took place at the door of the appellant no. 1 and there is a scuffle between the parties. According to the counsel for the appellants the informant side was aggressor and the appellants as a right of private defense has used *lathi* and as such fight took place between the parties. Both sides have sustained injuries, and there is a case and counter case between the parties and as such he submitted that appellants have committed such assault in their private defense and this aspect of the matter was not considered by the trial court.

6. He further submitted with reference to the prosecution case that the injury report falsifies the allegation of prosecution as to use of *Fasuli* as no such injury was found on the persons of the injured as alleged by the prosecution. He submitted that in such situation non-explanation of the injury sustained by the appellant side has caused prejudice to the appellants.

7. In view of the above facts and circumstances and submissions made by learned counsel for the appellants it appears that there was dispute between parties and altercation took place between the parties which led to filing of case and counter case. He refers to the depositions of the witnesses to suggest that there was contradiction in the version of the witnesses. Witnesses are at variance in their statement before police and the court. The incident is of 17.04.1993 and nine years have been consumed by the trial court and



this appeal remained pending for nearly 15 years.

8. From the materials available on record and on consideration of the injury report, the court is of the view that considering the injury report, no case under Section 307 of IPC is made out in this case. Utmost the case may be under Section 323 of the IPC and 24 years have already been elapsed since the date of occurrence.

9. From perusal of the trial court record, it appears that the trial court while examining the accused under Section 313 Cr.P.C. has not confronted with the adverse material surfaced during the trial against the accused persons. Particularly, the material which was relied upon by the trial court for convicting the appellants under Section 307 IPC. Moreover, there is no materials against the accused, warranting conviction under Section 307 of the Indian Penal Code.

10. In the totality of the facts situation and on consideration of the departure for the mandatory requirement under Section 313 Cr.P.C., this court is of the considered view that at this stage, no useful purpose would be served by sending the appellants in jail when the conviction under Section 307 is unsustainable and accordingly, the conviction is converted into under Section 323/34 instead of Section 307 of the Indian Penal Code.

11. Since 24 years have elapsed during pendency of trial



and appeal the ends of justice would be met by reducing the sentences to the period already undergone.

12. Accordingly, the appeal is partly allowed. The conviction of the appellants is converted from Section 307/34 IPC to 323/34 IPC and the sentence is reduced to the period already undergone by the appellants. The appellants are on bail they are discharged of the liability of bail bonds.

(Anil Kumar Upadhyay, J)

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

