

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.568 of 2002

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Rama Shankar Chaubey, son of Sri Ram Choubey, Resident of Village-
Sikariya, Police Station- Tiar, District- Bhojpur

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

=====

with

Criminal Revision No. 1104 of 2002

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Laxman Choubey, son of Late Ram Ekbal Choubey, R/o- Village- Sikaria,
P.S. Tiar, Distt- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar

2. Rama Shankar Choubey, S/o- Late Shri Ram Choubey, R/o- Village-
Sikaria, P.S. Tiar, District- Bhojpur

... .. Respondent/s

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Appearance :

For the Appellant :

For the Informant : Mr. Arun Kumar Pandey-1, Advocate

For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 14-10-2017



As both these cases arise out of the same judgment, they are being decided by the common order.

In Cr. Appeal No. 568 of 2002 appellant Rama Shankar Chaubey questioned his conviction for an offence under Section 324 of the Indian Penal Code in Sessions Trial No. 104 of 1999 by the court of 1st Additional Sessions Judge, Ara vide judgment dated 17th of September, 2002 and in Cr. Revision No. 1104 of 2002 petitioner Laxman Choubey, the complainant, seeks challenge to the same judgment whereby the respondent Rama Shankar Chaubey is acquitted of the charge under Section 307 I.P.C.

Facts in brief goes to show that P.W. 4 the informant and applicant in Cr. Revision No. 1104 of 2002 recorded the *fardbeyan* in question (Exhibit-3) on 19.08.1998 at 4:15 P.M. alleging that on the same day at about 6:00 A.M. while he was going to Sikaria Halt Station when he reached near the house of Dadhibal Chaubey the accused Rama Shankar Chaubey came running from the front side, gave a *farsa* blow on his head and a second *farsa* blow was given on the wrist of the right hand. He fell down and on the alarm made by him Sheodhan Chaubey, Dadan Chaubey and others came. In the meanwhile, accused ran away and entered his house along with



farsa. It is said that while this was going on, his wrist watch was also removed when he fell down. On the basis of the aforesaid, a case was registered for the offences under Sections 341, 324, 379 read with Section 307 I.P.C. and the trial court after examining six witnesses found that offence under Sections 307, 341 and 379 of the Indian Penal Code are not proved. The only offence proved was under Section 324 of the Indian Penal Code and after convicting the appellant, he has been left on probation under Section 360 Cr.P.C. and, therefore, this appeal by the appellant who is a police constable in the Police Department challenging his conviction.

In Cr. Revision No. 1104 of 2002 the informant and complainant Laxman Choubey challenges the acquittal under Section 307 of the Indian Penal Code primarily on the ground that a *farsa* blow was given on the head and, therefore, an offence under Section 307 of the Indian Penal Code is made out and in acquitting the appellant accused person in Cr. Appeal No. 568 of 2002 for the aforesaid offence, an error has been committed by the trial court. He further challenges the grant of benefit of probation under Section 360 Cr.P.C. primarily on the ground that vide Exhibit-4 and Exhibit-4/A proceedings were initiated against the respondents. He has a criminal history and,



therefore, the benefit of Section 360 of the Cr.P.C. cannot be granted.

I have heard learned counsel for the parties and find from the record that in the trial in question that was conducted P.W. 1 Dadan Chaubey, P.W. 2 Ram Nath Chaubey, P.W. 3 Sheodhan Chaubey who are said to have reached the spot on hearing the alarm of the appellant have been examined. The informant has been examined as P.W. 4 and one Dr. Shashi Shankar Prasad has been examined as P.W. 5 to prove the injuries on the person of the informant P.W. 4 and P.W. 6 Vikas Gupta is the Investigating Officer.

On a due analysis of the evidence that has come on record, P.W. 1 Dadan Chaubey, P.W. 2 Ram Nath Chaubey and P.W. 3 Sheodhan Chaubey are only persons who came to the spot after the actual assault was committed. The only witness to the actual assault is the informant P.W. 4 Laxman Chaubey himself and he speaks about his being assaulted on the head by the *farsa*. However, from the statement of the doctor P.W. 5, it is seen that he speaks about the injured person only receiving simple injuries. Even though he speaks about one incised wound on the head but he says that even Injury No. 1 on the head is a simple injury which could be caused either by sharp cutting



weapon or even could be a self caused or self inflicted injury. However, he classifies in the injury report that all the injuries appearing on the person of the injured person are simple in nature.

Once the expert evidence of the doctor goes to show that the injuries on the person of the informant are simple in nature, there is no reason for not believing the same and holding that the conviction under Section 307 of the Indian Penal Code was not warranted. This Court cannot lose sight of the fact that the parties have been litigating with each other. Available on record on the respondents own showing are the proceedings initiated vide charge-sheet Annexure-4/A in G.R. Case No. 597 of 1990 and a judgment in Case No. 2766 of 1994 in a proceeding under Section 107 Cr.P.C. If these documents are scanned, it would be seen that there are various disputes between the parties, and, therefore, possibility of exaggerating the incident by the informant cannot be ruled out. That is also one reason why the objection with regard to grant of probation cannot be interfered with. The exhibits available on record with regard to past criminal record of the respondent are only a charge-sheet and a proceeding held under Section 107 Cr.P.C. and in the facts and circumstances of the case, the learned court



if evaluating each and every aspect of the matter has taken correct decision of convicting the appellant under Section 324 of the Indian Penal Code and granting him the benefit of probation, I find no error in the order passed by the learned trial court warranting consideration. Both the appeal and Cr. Revision are without any merit and devoid of substance and, therefore, dismissed.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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