

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.65 of 2015**

=====

1. Upendra Sah, S/o Late Rabbi Sah
 2. Neelam Devi, W/o Upendra Sah
 3. Ramchandra Sah, S/o Upendra Sah, all are resident of Vill-Parasmani, P.S.-Sarsi,
 Distt-Purnea

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Dr. Bidhu Ranjan-Advocate
 Mr. Shailendra Kumar Jha-Advocate
 For the Respondent/s : Mr. Bipin Kumr-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 08-08-2017

Appellants Upendra Sah, Neelam Devi and Ramchandra Sah have been found guilty for an offence punishable under Section 323 I.P.C. and each one has been directed to undergo R.I. for six months as well as to pay fine appertaining to Rs.500/- in default thereof, to undergo simple imprisonment for one month, under Section 325 I.P.C. whereunder each one has been sentenced to rigorous imprisonment of three years and to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo simple imprisonment for one month with a further direction to run the sentences concurrently vide judgment of conviction and sentence dated 06.01.2015 passed by the 3rd Additional Sessions Judge, Purnea in Sessions Trial No.19 of 2013.



2. Rani Devi (PW-8) filed written report on 25.10.2011 disclosing therein that on the same day at about 7.00 a.m. while she was brooming her courtyard, male members have gone to open their shop on account of Diwali, during midst thereof, the family members of Upendra Sah armed with Garasa, Dabiya, axe and lathi came and began to assault her as a result of which, there happens to be cut injury over her head. On hearing hue and cry, her husband Kanhaiya Lal Sah, Dewar Yugal Kishore, Bhainsur Wakil Sah came. Family members of Upendra Sah attacked upon them, during course of which, Upendra Sah gave Garasa blow over head of her husband Kanhaiya Lal Sah. Neelam Devi gave Dabiya blow over head of Yugal Kishore as well as was also assaulted with lathi. Ramchandra Sah, son of Upendra Sah was armed with axe. Because of the fact that today is date fixed in a proceeding under Section 107 Cr.P.C. on account thereof, they have committed this occurrence in pre-planned manner.

3. After registration of Sarsi P. S. Case No.101 of 2011, investigation was taken up and after completing the same, chargesheet was submitted facilitating the trial which ultimately concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the



Cr.P.C. is that of complete denial of the occurrence. Also pleaded that on account of land dispute as well as at an earlier occasion, prosecution party had done away with the life of their son for which, they are being prosecuted, instant case has been filed only to coerce for withdrawal of the same.

5. In order to substantiate its case, prosecution had examined altogether 11 PWs, out of whom, PW-1 Dr. Janardan Prasad Yadav, PW-2 Wakil Sah, PW-3 Munna Sah, PW-4 Krishndev Sah, PW-5 Tara Devi, PW-6 Suresh Sah, PW-7 Kanhaiya Sah, PW-8 Rani Devi, PW-9 Guddu Kumar, PW-10 Yugal Kishor Sah and PW-11 Anil Sah. Side by side, had also exhibited, Exhibit-1 series injury, report of the respective witnesses, Exhibit-2 series signature of informant as well as witnesses over fard-bayan, Exhibit-3 endorsement over fard-bayan. As stated above, nothing has been adduced on behalf of defence.

6. The learned counsel for the appellants has submitted that there happens to be an admission at the end of the family members that both the parties are blood relation being uncle and nephew. Appellant No.1 is the uncle, appellant no.2 is the aunt and appellant no.3 is the cousin brother of husband of informant. It is also an admitted fact that prosecution party had got sale deed from the wife of another brother Mahesh, who is still alive and on the basis thereof,



illegally trying to grab the land though wife in the lifetime of her husband would not be competent to execute sale deed and when protested at an earlier occasion, they made murderous attack upon the son of the appellant nos.1 and 2 and for that, they are being prosecuted. It is also an admitted fact that series of litigations including Partition Suit is going on amongst the parties.

7. It has also been submitted that though there happens to be an allegation of assault by means of sharp edged weapon having in the hand of appellant no.1 Upendra Sah as well as appellant no.2 Neelam Devi, appellant no.3 Ramchandra Sah. Contrary to it, PW-1 had found all the injuries caused by hard and blunt substance and so, though appellants have been found guilty for an offence punishable under Sections 323 and 325 of the I.P.C., but the learned lower Court failed to consider that manner as well as genesis is found completely demolished. To substantiate the same, it has further been submitted that I.O. (PW-9) had visited the place of occurrence which, as claimed by the prosecution happens to be inner courtyard, but there happens to be no objective finding relating thereto which could have substantiated the said place to be real place of occurrence and in likewise manner, the objective finding of the I.O. rules out the inner courtyard to be an actual place of occurrence. Furthermore, it has also been submitted that while brushing aside the submission made on



behalf of appellants that they should be allowed to avail the benefit of Probation of Offenders Act, it has been held that same would not be permissible in the background of the facts and circumstances of the case, but at the latter part while inflicting the sentence, the learned lower Court had considered age, antecedent and good conduct shown by them during course of trial. So, submitted that appellants should have been given benefit of Probation of Offenders Act as they are the victim and not the prosecution party.

8. On the other hand, learned Additional Public Prosecutor opposed the prayer and fairly concedes that so far strained relationship amongst both the family is concerned, that happens to be admitted one coupled with the fact that prosecution party had obtained a sale deed (Kewala) from wife of Mahesh the another brother of father-in-law of informant as well as brother of appellant no.1 Upendra Sah. In the aforesaid facts and circumstances of the case, lenient view may be taken.

9. Heard the rival submissions as well as gone through the record along with the judgment impugned. In the facts and circumstances of the case, it is apparent that learned lower Court should have allowed the appellants to avail the liberty of Probation of Offenders Act, whereupon modifying the sentence, maintaining the conviction, it is hereby ordered that the appellants will furnish a bond



of Rs.10,000/- each with two sureties of the like amount each to be effective for a year, during midst thereof, will maintain peace and harmony. However, before the execution of the same, the learned lower Court will also procure a report from Probation Officer. In terms thereof, appeal is disposed of. Appellants are on bail, which they continued till their presence before the learned lower Court, failing which the learned lower Court will be at liberty to pass appropriate order in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	16.08.2017
Transmission Date	16.08.2017

