

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.199 of 2017

Arising Out of PS.Case No. -329 Year- 2009 Thana -BIHTA District- PATNA

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Kamal Nayan Singh, S/o Late Ram Naresh Singh, resident of village -
Babhan Lai, Police Station – Bihta, District – Patna

.... Appellant/s

Versus

1. The State of Bihar
2. Jaimangal Singh S/o Raj Deo Singh, resident of village – Katari,
Police Station -Rani Talab, District- Patna
3. Amrendra Singh, S/o Kamalesh Singh
4. Kamalesh Singh s/o Late Ram Naresh Singh both are residents of
village – Babhan Lai, Police Station – Bihta, District – Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar
For the Respondent/s : Sri Ajay Mishra

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

8 23-06-2017 1. At the very outset Sri Pramod Kumar, learned
counsel for the appellant, requests for allowing him to make
correction in respect of parentage of respondent no. 3. He is
permitted to make correction in course of the day.

2. Heard Sri Pramod Kumar, learned counsel for the
appellant and Sri Ajay Mishra, learned Additional Public
Prosecutor.

3. The present Appeal has been filed by the informant
against the judgment of conviction dated 5.09.2016 passed by
learned 7th Additional District & Sessions Judge, Danapur in
Sessions Trial No. 1517 of 2011. By the said judgment the



respondent nos. 2 to 3 have been held guilty for the offence under Section 341 and 325 of the Indian Penal Code. They have been sentenced to suffer rigorous imprisonment for seven years and fine of Rs. 10000/- for offence under Section 325 of the Indian Penal Code. The aforesaid respondents have been sentenced under Section 341 of the Indian Penal Code for one month simple imprisonment and fine of Rs. 500/- . The respondent no. 4 /Kamalesh Singh was convicted under Section 323 and 341 of the Indian Penal Code and sentenced to undergo simple imprisonment for one year and fine of Rs. 1000/-, for offence under Section 323 and for offence under Section 341 of the Indian Penal Code he has been sentenced to undergo simple imprisonment for one month and fine of Rs. 500/-. However , the respondent no. 2 , 3 and 4 were acquitted from the charge of Section 326 & 307 of the Indian Penal Code. All the sentences have been directed to run concurrently.

4. Short fact of the case is that on 26.12.2009 the occurrence had taken place in which accused persons variously armed, assaulted the informant's side. Accused persons, it was alleged, were carrying *farasa*, *rod* and *lathi* and mercilessly they assaulted the informant's side. Thereafter, an F.I.R. vide Bihta P.S. Case No. 329 of 2009 was registered for offences under



Section 147, 341, 323, 325 and 307 of the Indian Penal Code and after investigation charge sheet was submitted against the accused persons for offences under Section 147, 341, 325, 326 and 307/34 of the Indian Penal Code. After cognizance and compliance of provision under Section 207 of the Code of Criminal Procedure, 1973 the case was committed to the court of Sessions. During trial from the prosecution side six witnesses were examined. However, from the defence side one document was got exhibited i.e. certified copy of the plaint of Title Suit No. 130 of 2009. The accused denied charges.

5. It is admitted fact that respondent no. 4 is the full brother of the appellant and other accused persons were blood relations. During trial witnesses supported the prosecution case. The injury was examined at P.H.C., Bihta by P.W. 4 and all the injuries were found lacerated, which were caused by hard and blunt substances. Since there was no allegation of use of sharp cutting weapon in the occurrence despite the fact that it was alleged that accused persons were carrying *farasa*, the learned trial judge opined that it was not a case relating to attempt to murder or give grievous injury by deadly weapon, the accused persons were acquitted from the charges for the offence under Section 326 and 307 of the Indian Penal Code. However, since there were



evidence on record to suggest commission of offence under Section 325 of the I.P.C., the learned trial judge convicted them, as indicated hereinabove, and imposed maximum sentence i.e. seven years of rigorous imprisonment, besides imposing fine.

6. Considering the fact that during trial no evidence was brought on record to suggest use of weapon like *farasa*, the learned trial judge has rightly acquitted the accused persons from the charges of Section 307 and 326 of the Indian Penal Code. Since the learned trial judge has imposed maximum sentence i.e. seven years as prescribed under Section 325 of the Indian Penal Code, there is no reason to grant leave to Appeal, which has been sought for vide interlocutory application i.e. I.A. (Cr.) No. 1040 of 2017 under Section 378 (3) of the Cr.P.C. Leave is refused and simultaneously, the Appeal against acquittal in respect of Section 326 and 307 of I.P.C. stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

Praful/-

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