

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.398 of 2016

Arising Out of PS.Case No. -43 Year- 2004
Thana -KUMARGHAND District- MADHEPURA

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1. Md. Moin @ Lal Son of Late Badruddin	
2. Md. SALim S/o Md. Moin Both resident of Village- Lakuriya, P.S. Kumarkhand Now Srinagar Distt- Madhepura	 Appellants
Versus	
The State of Bihar	 Respondent

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Appearance :

For the Appellants : Mr. Kumar Vishoka Nand, Advocate
For the Respondent : Mr. S.A.Ahmad(APP)

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

4 26-07-2017 The instant appeal is filed against the judgment of conviction dated 10.5.2016, passed in Sessions Trial No. 214 of 2006, arising out of Kumarkhand Police Station case no. 43 of 2004 by which both the appellants have been convicted for offences under sections 323/34 of the IPC.

The prosecution case is that the informant was sitting on 11.4.2004 at his house. In the meantime, accused persons Md. Moin @ Lal, Md. Salim and Samilna Khatoon came there and started to dismantle the thatched hut of the informant and on protest they abused and beaten the informant. It is further alleged that the appellant Md. Moin gave order to kill the informant, thereafter Md. Salim threw the Dabia on the head of the informant.

The prosecution in support of its case examined five



witnesses. I find that there are material contradictions in the evidence of the informant and the other witnesses. Furthermore, there is land dispute between the parties. The explanation under section 313 of the CrP.C. too suffers a number of infirmity as the appellants did not get the opportunity to explain the accusation.

Generally, this Court would have considered remanding this matter to the trial court once again to explain the accusation but since the appellants have been convicted under sections 323, 34 IPC, I do not consider it to remand the matter. In the result, the appeal succeeds. The impugned judgment under sections 323/34 of the IPC against the appellants is set aside. Appellants are on bail, as such they are discharged from the liability of the bail bond.

(Samarendra Pratap Singh, J)

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