

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.456 of 2015**

Arising Out of PS.Case No. -80 Year- 2012 Thana -GAMAHARIYA District- MADHEPURA

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1. Chhabbu Sharma

2. Jagdish Sharma, Both S/o Late Bilchan Sharma @ Bilakshan Sharma, Both resident of Village- Jibachhapur, P.S.- Gamhariya, District- Madhepura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :For the Appellant/s : Mr. Bhaskar Shankar-Advocate
Mr. Meena Singh-Advocate
Saket Kumar Singh-Advocate

For the Respondent/s : Mr. S. A. Ahmad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 02-04-2018**

Appellants Chhabbu Sharma and Jagdish Sharma have been found guilty for an offence punishable under Section 307/34 of the I.P.C. and each one has been sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo R.I. for one year, additionally, under Section 323 of the I.P.C. and sentenced to undergo R.I. for one year, under Section 341 of the I.P.C. and sentenced to undergo R.I. for one month, under Section 379 of the I.P.C. and sentenced to undergo R.I. for one year with a further direction to run the sentences concurrently vide judgment of conviction dated 25.05.2015 and order of sentence dated 28.05.2015 passed by the Sessions Judge, Madhepura in Sessions



Trial No.195 of 2012.

2. PW-6 Chandeshwari Sharma filed written report on 05.08.2012 disclosing therein that on 04.08.2012 at about 7.00 p.m. while he was gossiping with Bounu Sharma, Chhabbu Sharma inflicted lathi blow over his head with an intention to kill as a result of which, he sustained injury over his head. He became unconscious and fell down. He took away his mobile. In the meantime, Jagdish Sharma came with lathi and began to assault Anil Sharma son of Bounu Sharma. When his mother came in rescue, she was also assaulted. He also snatched away her chain. 4-5 unknown persons also came at their instant, but he could not identify. Villagers came and rescued him.

3. After registration of Gamharia P. S. Case No.80 of 2012, investigation was taken up, respective injured were sent to hospital, witnesses were examined, injury reports were procured and then, after completing investigation, chargesheet was submitted on the basis thereof, trial commenced and 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. It has also been suggested that on account of animosity prevailing since before, this case has falsely



been instituted. Then has been suggested that there was co-sensuous intimate relationship in between PW-1 as well as informant PW-6 and as PW-4 son of PW-1 had seen both of them in compromising position, whereupon informant was assaulted, but subsequently, the matter was hushed up and in the background of prevailing long standing animosity, accused has been victimized. However, neither ocular nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether eight PWs, who are PW-1 Amerika Devi, PW-2 Bounu Sharma, PW-3 Sukhdeo Sharma, PW-4 Anil Sharma, PW-5 Chandar Sharma, PW-6 Chandeshwari Sharma, PW-7 Wakil Prasad Yadav and PW-8 Dr. Deep Narayan Choudhary. Side by side, had also exhibited as Exhibit-1, signature of informant over written report, Exhibit-1/1, formal F.I.R., Exhibit-2 series, requisites issued by the police relating to informant (PW-6) as well as Anil Sharma (PW-4), Exhibit-2/2, 2/3, injury reports of respective injured, Exhibit-3, chargesheet. As stated hereinabove, nothing has been adduced in defence.

6. While assailing the judgment of conviction and sentence impugned, it has been argued on behalf of learned counsel for the appellants that from the evidences available on the record, it is



apparent that none had substantiated the manner of occurrence. Furthermore, it has also been submitted that there was no source of identification. The witnesses have admitted that darkness had fallen down and so, there was no possibility of proper identification. Apart from this, also asserted that there happens to be material contradiction in the evidence of the PWs, which is found duly proved by the I.O. (PW-7) and so, discarding the same coupled with the medical evidence, it is apparent that case of the prosecution is not at all found duly proved, whereupon the judgment impugned is fit to be set aside.

7. On the other hand, learned Additional Public Prosecutor supporting the finding recorded by the learned lower Court has submitted that from the examination of doctor (PW-8) coupled with Exhibit-2/2, 2/3 injuries over the person of PW-4 as well as PW-6 is found duly substantiated. Because of the fact that assault was made over head of the injured, which happens to be delicate part of the body irrespective of being by lathi suggest that the injuries so inflicted by the appellants with a knowledge that the ultimate result would lead in death of the victim and so, the conviction and sentence recorded under Section 307 of the I.P.C. is found duly substantiated.

8. For the purpose of attracting Section 307 of the I.P.C., nature of injury did not find to be material one, rather it happens to be



one of the circumstances while appreciating the evidence whether such injury was caused during course of an attempt upon the life of the victim and that happens to be reason behind that ultimate resultant that means to say, nature of the injury has not been found a crucial one as the words so used under Section 307 of the I.P.C. is 'Hurt', which is defined under Section 319 of the Cr.P.C. and that suggest causing of wound, pain etc. Therefore, with regard to applicability of Section 307 (Second Part) of the I.P.C. basically the activity having been performed at the end of the accused during course of commission of occurrence is to be seen and the same should be gathered from:- a) the weapon which the accused had possessed b) in what manner, it was used, c) parts of body aimed at, d) nature of the injury e) repetition of blow. So far first part of Section 307 of the I.P.C. is concerned, that is to be gathered only from the activity whether accused had intended to cause death of the victim.

9. In spite of the fact that there happens to be evidence on the record that PW-1 Amerika Devi, PW-2 Bounu Sharma, PW-4 Anil Sharma and PW-6 Chandeshwari Sharma were assaulted by the appellants, but from the evidence of PW-7 as well as PW-8, it is evident that no requisition was issued relating to witness PW-1 as well as PW-2 nor injury report thereto was issued. That means to say, they were not at all found to be injured nor they were not present at the



relevant time at the police station. This theme is found further strengthened after going through the written report which only shows presence of PW-4 as well as PW-6. Now, coming to the evidence of doctor (PW-8), it is evident that he had examined the respective injured on 04.08.2012 at 8.00 p.m. and onward and found the following:-

CHANDESHWARI SHARMA

- *One swelling and tenderness on lateral aspect left ankle measuring 3 cm x 1 ½ cm.*
- *One swelling and tenderness over left elbow 2 ½ cm x 1 ½ cm.*
- *Abrasion with bleeding on both sides of left Pinna of ear ½ cm x ¼ cm and ½ cm x ¼ cm with swelling on Pinna.*
- *One lacerated wound with bleeding on frontal region on head measuring 1 cm x ¼ x scalp deep on his person.*

All the above injuries were simple in nature caused by blunt and hard weapon.

ANIL SHARMA

- *One bruise red in colour on right arm posterior aspect extend to back in one line measuring 16 cm x 3 cm.*
- *On bruise red in colour on right side waist 8 cm x 3 cm on*



his person.

All the above injuries were simple in nature caused by hard and blunt weapon.

From the injury report, it is evident that apart from having been caused by hard and blunt substance appears to be superficial in nature.

10. Now, the evidences are to be seen. PW-1 had deposed that on the alleged date and time of occurrence while informant Chandeshwari Sharma was in a way to his house after meeting nature's call, met with her husband and they both began gossiping. During course thereof, Chhabbu Sharma and Jagdish Sharma came and began to assault Chandeshwari Sharma with lathi. When her husband Bounu Sharma, son Anil Sharma and she herself rushed in rescue, they were also assaulted by Chhabbu Sharma, Jagdish Sharma and five unknown persons, who arrived at that very moment. They also snatched away mobile from Chandeshwari and her takdha, identified the accused. During cross-examination at Para-3, she had stated that darkness had fallen down. In Para-4, she had stated that firstly Chandeshwari was assaulted. When they began to assault her son, then she rushed in rescue. In Para-5, she had stated that she had seen her son, blood was oozing out from his injury. In Para-9, she



had stated that she had heard with regard to litigation going on in between Chandeshwari and Chhabbu Sharma. Then had denied the suggestion that she happens to be henchman of Chandeshwari and on account thereof, she has been falsely deposed.

11. PW-2 is Bounu Sharma. During course of examination-in-chief, he had stated that during course of returning after meeting with nature's call, Chandeshwari met with him and they both began to gossip. During course thereof, Chhabbu Sharma and Jagdish Sharma came with lathi and began to assault Chandeshwari Sharma. He along with his son Anil Sharma rushed in rescue, who were also assaulted. Chandeshwari Sharma sustained injury over his head, then he fled away. He hide himself beneath Chauki. He had not identified other accused persons. They have also assaulted his wife with fists and slaps. He carried the injured to hospital, police station, identified the accused persons. During cross-examination at Para-4, he had stated that he was sitting in front of his darwaza over Chauki. Then at Para-7, he had stated that Chhabbu Sharma and Jagdish Sharma are his neighbours. Chandeshwari was returning after meeting nature's call. In Para-9, he had stated that 4-5 unknown persons were along with Chhabbu and Jagdish, but they have not indulged in any kind of criminal activity. They were from the family of Chhabbu and Jagdish and were indulged in causing ruckus. In Para-11, he had



stated that he had not seen any kind of injury over head of his son rather over his hand. In Para-13, he had stated that there happens to be land dispute in between Debu and Chandeshwari as a result of which, so many cases are still going on in between them. In Para-17, he had stated that after marpit, Chandeshwari escaped therefrom.

12. PW-3 had stated that while he was returning from his field, he had seen Chandeshwari in an injured condition at the darwaza of Rukhichand, blood was coming from his head. His son Monu Sharma was also injured. Jagdish Sharma and Chhabbu Sharma assaulted them. He slipped there from. During cross-examination, he had admitted at Para-5 to be full-brother of Monu Sharma. He had also admitted that Amerika Devi (PW-1) to be wife of Monu and Anil Sharma is son of Monu. He had also admitted litigation in between Chandeshwari and Debu. In Para-7, he had stated that when he reached at the P.O. assailant were there and were talking. Then had denied the suggestion that no occurrence had taken place.

13. PW-4 is Anil Sharma, who had stated that on the alleged date and time of occurrence, he was at his darwaza. During course of returning after meeting nature's call, Chandeshwari Sharma met with his father, whereupon they both entered into gossiping. At that very time, Jagdish Sharma, Chhabbhu Sharma came, assaulted



Chandeshwari Sharma with lathi from behind. He rushed in rescue. He was also assaulted by Jagdish Sharma with lathi, Chandeshwari Sharma ran away there from. Accused persons cordoned him as a result of which, he hidden beneath the Chauki, his mother was assaulted with fists and slaps. He had gone to the police station and then to hospital. During cross-examination at Para-6, he had stated that Chandeshwari was talking with his father over road while he was sitting over Chauki. In Para-7, he had stated that his Bungalow is two lagga away from the road. He rushed over call of Chandeshwari. In Para-8, he had stated that when he reached, he found Chandeshwari lying in an injured condition. He began to lift him. During course thereof, he was assaulted. In Para-9, he had stated that he was given only one blow. In Para-10, he had stated that they have gone to the place of Chandeshwari and then, took him to police station and then, to hospital. Then had denied the suggestion that no such type of occurrence had ever taken place.

14. PW-5 is Chandar Sharma, who had not supported the case of prosecution on account thereof, was declared hostile.

15. PW-6 is the informant, who had deposed that on the alleged date and time of occurrence while he was returning after meeting with nature's call and came near the darwaza of Bounu



Sharma, he indulged in talking with him. During course thereof, Chhabbu Sharma came from behind and assaulted him with lathi. He had fallen down. When Bounu Sharma came in rescue, he was assaulted. When his son and wife came whereupon they were also assaulted, people arrived there seeing whom, accused persons fled away. Then had stated that he had identified amongst the assailant Chhabbu Sharma and Jagdish Sharma. Then had stated that he was taken to police station and then, to hospital. During cross-examination at Para-4, he had stated that it was rainy season, no darkness had fallen. He had further stated that it was twi light. He had fallen down after sustaining injury on account thereof, he could not identify the remaining persons. In Para-5, he had stated that all of a sudden, he was assaulted while he was present over road. In Para-6, he had stated that he regained sense at the police station. In Para-7, he had stated that accused persons were not on inimical term with him. In Para-13, he had stated that he was repeatedly assaulted. He sustained injury over his head, arm, leg and back. In Para-14, he had stated that blood had fallen down over his cloth. Then had denied the suggestion that he was under the physical relationship with the wife of Bounu Sharma which was seen by his son, whereupon they were assaulted.

16. PW-7 is the I.O., who had deposed that on 05.08.2012, he was posted as Officer-in-Charge of Gamharia P.S.



Informant came and informed regarding the occurrence (written report), whereupon case was instituted, injured Chandeshwari Sharma and Anil Sharma were sent to hospital on the basis of requisition issued by him. Then exhibited the relevant document. Took up investigation, visited the place of occurrence, which happens to be road in front of house of Bounu Sharma. He had disclosed the boundary as North-village road, South-village road, East-orchard of Munna Kumar Singh, West- house of Bounu Sharma, recorded statement of the witnesses, procured injury report and then, after completing investigation, submitted chargesheet. During cross-examination, there happens to be contradiction, but the most surprising feature is that respective witnesses were not at all confronted with the aforesaid statement. That being so, it has not been found in accordance with Section 162 of the Cr.P.C. read with Section 157 of the Evidence Act.

17. After analyzing the evidence available on the record, conclusively found that these two appellants happen to be responsible for causing injury over the person of Anil Sharma and Chandeshwari Sharma as on that very score, there happens to be no inconsistency amongst the PWs. Coming to finding recorded by the learned lower Court, it is evident that assault was made by lathi. From the evidence of the PW-6, it is evident that he had identified his assailant only



Chhabbu Sharma and not Jagdish Sharma. Though in later part of his deposition that he had identified Chhabbu Sharma and Jagdish Sharma amongst the assailant. Be that as it may, the nature of the injury suggest that in spite of absence of any intervening circumstance, had there been intention at the end of the appellants, there was no obstacle in between and in that circumstance, blow would have been more severe at least causing fracture endangering the life of the injured. The nature of injury suggests that appellants were not at all carrying an intention nor they acted having knowledge that their action would ultimately cause cost to the life of the victim. Furthermore, it is also evident that there happens to be no consistency amongst the evidence of the PWs with regard to snatching of mobile as well as Rakdha belonging to the PW-1.

18. In the aforesaid facts and circumstances of the case, the conviction and sentence recorded against the appellants for an offence punishable under Section 307/34 of the I.P.C. as well as Section 379 of the I.P.C. would not survive and to that extent, the judgment impugned is set aside.

19. Now, coming to quantum of sentence relating to Section 323 and 341 of the I.P.C., it has been submitted on behalf of learned counsel for the appellants that both the appellants were under



custody for three months approximately. Furthermore, it has also been pleaded that there happens to be no criminal antecedent. It has also been pleaded that from the evidence of informant, it is apparent that they were not on strained relationship since before and on account thereof, the sentence having been recorded by the learned lower Court be modified as the period already undergone. The learned Additional Public Prosecutor also did not object. In the aforesaid facts and circumstance of the case coupled with pendency of this case since 2012 and further, on the date of recording of statement of appellant no.1 Chhabbu Sharma has been found to be aged about 45 years while appellant no.2 Jagdish Sharma has been found to be aged about 50 years, it looks proper to modify the sentence under both heads as sentence already undergone. In terms thereof, this appeal is partly allowed. Appellants are on bail, hence are discharged from its liability.

Vikash/-

(Aditya Kumar Trivedi, J)

AFR/NAFR	A.F.R.
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