

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.101 of 1995

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{Arising out of Judgment of conviction and sentence order dated 26.04.1995 passed by the learned 1st Additional Sessions Judge, Saharsa, in Sessions Case No.268 of 1989}.

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1. Ram Shankar Kumar Singh @ Ram Shankar Singh, son of Late Ram Nihora Prasad Singh.
 2. Ram Bilas Singh.
 3. Ram Udagar Singh.
- Both sons of Late Gonar Pd. Singh.
All resident of village-Mahpura, P.O. Maina, Via Maheshi, P.S. Maheshi, P.S. Maheshi, District-Saharsa.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellants	:	Mr. Ranjan Kumar Jha, Advocate. Mr. Sanjay Kumar Jha, Advocate.
For the State	:	Mr. Shiwesh Chandra Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 05-09-2018

Originally, three appellants filed this appeal, assailing their Judgment of conviction and sentence order dated 26.04.1995 passed by the learned 1st Additional Sessions Judge, Saharsa, in Sessions Case No. 268 of 1989, by which and whereunder he convicted the original appellant no. 2, namely, Ram Bilas Singh, for the offence punishable under Section



302/34 of the Indian Penal Code and sentenced him to undergo life imprisonment for the above stated offence, whereas appellant no.1, namely, Ram Shankar Kumar Singh alias Ram Shankar Singh, and original appellant no.3, namely, Ram Udagar Singh, were convicted for the offence punishable under Section 323/34 of the Indian Penal Code and, accordingly, they were sentenced to undergo six months' rigorous imprisonment each. However, during the pendency of this appeal appellant no.2, namely, Ram Bilas Singh, and appellant no. 3, namely, Ram Udagar Singh died, as reported by Superintendent of Police, Saharasa, vide his letter no. 1803 dated 11.04.2018. Accordingly, this appeal filed on behalf of the appellant no.2, namely, Ram Bilas Singh and appellant no.3, namely, Ram Udagar Singh, stands abated.

2. We heard learned counsel appearing for the appellant no.1, namely, Ram Shankar Kumar Singh alias Ram Shankar Singh, as well as learned Additional Public Prosecutor for the State.

3. P.W.6, gave his fardbeyan to S.I., R.P.Singh of Saharsa Police Station on 06/07.04.1988 at about 12.00 midnight to this effect that the calf of Awanish Kumar Singh grazed the paddy field of the original appellant no.2, upon



which a quarrel took place between them. However, the original appellant no.2 went to his home and returned along with the appellant no.1 and original appellant no.3 and all the above stated persons started assaulting Awanish Kumar Singh by means of lathi and, in that course, original appellant no.2 gave lathi blow causing head injury to Awanish Kumar Singh, whereas remaining appellants assaulted him on his hands and legs by means of lathi. After the occurrence, Awanish Kumar Singh was taken to the hospital where the fardbeyan of P.W.6 was recorded and, accordingly, formal F.I.R. was drawn for the offence punishable under Section 307/34 of the Indian Penal Code. However, it appears that, in course of investigation, Awanish Kumar Singh died, as a result whereof after investigation, charge-sheet was submitted against the appellants for the offences punishable under Section 302 and other minor Sections of the Indian Penal Code.

4. The cognizance of the offence was taken and the case was committed to the court of sessions. The appellant no.1 as well as the deceased appellants stood charged for the offence punishable under Section 302/34 of the Indian Penal Code.

5. In course of trial, the prosecution examined, altogether, 7 witnesses and also got exhibited some documents.



6. The statements of the appellant no.1 and others were recorded under Section 313 of the Code of Criminal Procedure, in which they denied the prosecution story. No evidence was adduced by the appellant no.1 as well as the deceased appellants in support of their defence.

7. The learned trial court after scrutinizing the evidences, available on the record, convicted the appellant no.1 as well as the deceased appellants in the manner, as we have already stated above.

8. Learned counsel appearing for the appellant no.1 submits that, according to the prosecution case, the appellant no.1 and the deceased appellant no.3 assaulted the deceased by means of lathi on his legs and hands but no injury on the legs and hands of the deceased was found as it is evident from perusal of the post-mortem report. He further submits that only one injury on the head of the deceased was found and the aforesaid injury was attributed to the deceased appellant no.2 and, therefore, there was no scope before the learned trial court to convict the appellant no.1 for the offence punishable under Section 323 of the Indian Penal Code.

9. On the other hand, learned Additional Public Prosecutor for the State supported the impugned Judgment,



arguing that the learned trial court has rightly convicted the appellants.

10. Having heard the rival contentions of both the parties, we went through the record.

11. Paragraph-8 of the impugned Judgment goes to show that only one injury on the head of the deceased was found and according to the prosecution case itself, the aforesaid injury was caused by the deceased appellant no.2. Furthermore, in course of trial, the prosecution witnesses claimed that the appellant no.1 and the deceased appellant no.3 assaulted the deceased by means of lathi on the hands and legs of the deceased but no injury on the hands and legs of the deceased was found. Moreover, paragraph-9 of the impugned Judgment goes to show that the learned trial court came to the finding that the appellant no.1 and the deceased appellant no.3 had not assaulted the deceased by means of lathi and the learned trial court on the basis of surmises and conjectures came to the conclusion that the deceased might be assaulted by the appellant no.1 and the deceased appellant no.3 by fists and slaps. Therefore, in our view, learned counsel appearing for the appellant no.1 rightly submitted that there was nothing before the learned trial court to convict the appellant no.1 under



Section 323 of the Indian Penal Code.

12. In the aforesaid circumstance, we have no option except to set aside the Judgment of conviction and sentence Order of the appellant no.1 and, accordingly, this appeal is allowed in respect of the appellant no.1 and, accordingly, the Judgment of conviction and sentence Order of the appellant no.1 is, hereby, set aside and in the aforesaid manner, the impugned Judgment of conviction and sentence Order stands modified.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
CAV DATE	NA
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