

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.440 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BUXAR

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Chaturgun Mahto son of Bhikhari Mahto, resident of village Kesatha, P.S.
Nawanagar, District Buxar.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Rajesh Kumar Sharma

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 31-07-2018

On repeated calls, no one appears as such Sri Rajesh Kumar Sharma, Advocate has been appointed as the *Amicus Curiae* to assist the Court.

2. The sole appellant has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo R.I. for ten years and further been convicted under Sections 427, 307, 341 and 504 of the IPC and sentenced to undergo R.I. for one month in each count. All the sentences were directed to run concurrently, vide judgment and order dated 25.8.2003 and 26.9.2003 respectively passed by Sri Sheo Nandan Yadav IIIrd Additional District & Sessions Judge, Buxar, in Sessions Trial No.190 of 1996.

3. The prosecution case as per the complaint lodged by P.W.7 Moti Sah in short is that he was residing along with his family



members in a room owned by appellant on monthly rent and for earning livelihood a shop was run by them in that room. It is also the case that the appellant was putting pressure on the informant to vacate the same room but the same was not vacated as he was watching the other place for his residence. It is also his case that on the day of occurrence while he was sitting along with his wife Rajbanshi Devi and his grand daughter Pushpa Devi, the appellant arrived and began to abuse and throwing articles kept in his shop causing loss of Rs.500/- to the informant and when the witnesses went to prevent him they were also assaulted by the appellant mercilessly and in the meantime, the other witnesses arrived at the scene and in their presence the appellant threatened to kill him and dragged the informant to the nearby well and threw him in the said well due to which he received injuries and people of the locality assembled there, then the appellant fled away.

4. On the basis of the formal complaint a complaint was sent to the police for institution of the case under Section 156 (3) of the Cr.P.C., cognizance of the case was taken and the case has been committed to the court of Sessions which ultimately came to the file of Sheo Nandan Yadav IIIrd Additional District & Sessions Judge, Buxar and the summon was issued against the appellant later on.. The charges were framed under Section 427 , 307, 341 and 504 of the IPC.



5. In order to prove his case the prosecution has examined altogether nine witnesses they are : P.W.1 Sunil Dutt Paswan (hostile) , P.W.2 Rajeshwar Sah (hostile), P.W.3 Belash Mushar, P.W.4 Sambhu Sah son of the informant, P.W.5 Rajbaso Devi wife of the informant, P.W.6 Pushpa Devi, grand daughter of the informant, P.W.7 Moti Sah informant, P.W.8 Safai Mushar and P.W.9 Krishna Prasad Sharma (formal witness) and the injury report has also not been brought on the record.

6. P.W.7 is the informant in this case and he has stated in his chief that the appellant came to his shop and started throwing articles and he also threw the informant in the well causing injury to him, however, in his evidence he has stated that he was sitting on the well whereas in the complaint petition he has stated that he was sitting on his shop along with his wife and the grand daughter.

7. P.W.5 is the wife of the informant and P.W.6 is the grand daughter of the informant and they have also supported the evidence of P.W.7 and also stated that the appellant caught hold the informant, dragged him and threw him in the well.

8. P.W.3 and 8 are so called independent witnesses and they claim that they were also sitting and the appellant came and the threw the articles and dragged the informant to the well and threw him in the well.



9. On behalf of the defence neither any ocular nor documentary evidence has been adduced on behalf of appellant. Defence of the appellant as per the statement under Section 313 of the Cr.P.C. is of innocence and of his false implication .

10. Learned trial court on conclusion of the trial has convicted the appellant under Section 307 and other Sections of the IPC and sentenced them as mentioned above.

11. Being aggrieved by the judgment of the conviction and order of sentence, the learned Amicus Curiae has challenged the judgment on the ground that in this case neither the Doctor has been examined nor the I.O. has been examined as such neither injury on the person of the informant was established nor place of occurrence has been established as there is contradictions between the evidence of P.W.7 from his earlier statement and evidence of P.Ws. 5 and 6 as the evidence of the witnesses is that he was sitting on the well and his wife and other witnesses have stated that the informant was sitting in the shop and FIR also shows that he was sitting in the shop and moreover there is no injury report available on the record and the Doctor has not been examined as such the conviction of the appellant under Section 307 is also not sustainable in the eye of law and further submission of the learned Amicus Curiae is that it admitted that there was dispute between the parties as the rent was dues with the



informant and the informant was also asked to vacate the house and in such situation possibility of false implication can not be ruled out. Further submission is that the FIR shows only presence of the informant , his wife and grand daughter and it does not disclose presence of P.Ws. 3 and 8 at the place of occurrence but in spite of that P.W.3 and 8 claim themselves to be eye witness of the occurrence, that appears to be contradictory to the initial story.

12. On the other hand learned counsel for the State has also supported the judgment of guilt and stated that the evidence available on the record clearly discloses that the informant was dragged and threw to the well causing injury to him and the learned trial court has rightly held that intention of the accused person was to kill him as he has thrown him in well as such conviction of the appellant under Section 307 of the IPC and other Section of the IPC is just and proper and does not require any interference by this Court.

13. In the above background of the judgment and also on perusal of the evidence as discussed above, it appears that no doubt evidences are consistent so far prosecution case is that the appellant came and started throwing the articles and dragged the informant to the well and threw him into the well. No doubt there is some contradiction between the evidence of P.W.7 as he has stated in his evidence that he was sitting on the well and the other witnesses have



stated that the informant was sitting in the shop as such the above contradiction does not go to the root of the case. It appears that the prosecution case is that the informant was thrown to the well and he received serious injuries but the Doctor has not been examined and the evidence shows that they had gone to the Doctor, in such a situation, non-examination of the Doctor, non production of the injury report itself shows doubt about the prosecution case and possibility can not be ruled out that while fleeing he might have slipped into the well. Further in spite of claim of the P.W.7 that he was dragged and thrown into the well and other witnesses were also present and the appellant was alone but none of the witnesses has tried to prevent the appellant from throwing the P.W.7 into the well. As such conviction of the appellant under Section 307 of the IPC does not inspire confidence and especially in absence of non-examination of the Doctor in this case. Even the I.O. has not been examined and as such defence could not cross-examine him on the point of place of occurrence and as to how much deep the well was. In such a situation as discussed above, the conviction of the appellant under Section 307 of the IPC does not inspire confidence, hence, conviction under Section 307 of the IPC is modified to conviction under Section 324 of the IPC and conviction under Section 427, 341 and 504 of the IPC is affirmed.



14. Submission of the learned Amicus Curiae appellant is that the appellant has remained in custody for about 7 ½ months during the pendency of the appeal as such his conviction under Section 324 of the IPC be reduced to the period already undergone in custody.

15. Considering the submissions of the learned Amicus Curiae, sentences under Section 324 of the IPC is reduced to the period already undergone in custody and so far sentences under Section 341, 427 and 504 of the IPC are concerned, his sentence is affirmed and the learned trial court has already directed that the sentences shall run concurrently.

16. With the aforesaid modification in the conviction and the sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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