

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.410 of 2003

=====

Ram Nath Singh, Son of Late Ram Nagina Singh, Resident of Village – and Post
Office – Khairahan, P.S. – Dehri, District – Rohtas.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Rameshwar Singh, Adv.
Mr. Ravi Bharadwaj *Amicus Curiae*
For the Respondent/s : Mr. Bipin Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 19-07-2018

Sole appellant stood convicted under Section 323 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo rigorous imprisonment of six months by the judgment of conviction and order of sentence dated 08.07.2003 passed by Shri Baleshwar Prasad Singh, Presiding Officer, Additional Court No. 1, (Fast Track Court), Sasaram in Sessions Trial No. 13/91, 273/2002.

2. Prosecution case as per fardbeyan of informant Anil Kumar Singh, in short is that the informant had sown mustard crop, which was not ready for harvesting but on the day of occurrence co-accused Ram Nath Singh and Ram Nagina Singh (since deceased) were harvesting the said mustard crop, when the informant resisted, the accused persons assaulted him by means of *lathi* on his head causing injuries in his head and also in his shoulder and fingers of his



left hand.

3. On the basis of aforesaid fardbeyan, Dehri Town P.S. Case No. 20/90 was registered and post investigation, charge-sheet has been submitted and cognizance of the offence was taken. Accordingly the case was committed to the court of sessions, which ultimately came to the file of Shri Baleshwar Prasad Singh, Presiding Officer, Additional Court No. 1, (Fast Track Court), Sasaram in Sessions for trial and disposal.

4. Charges were framed under Sections 307/34 of the IPC against the appellant and one co-accused Ram Nagina Singh (died during pendency of the trial) and to prove the charge, prosecution has examined altogether six witnesses. They are; P.W. 1 – Shashi Kant Singh, brother of the informant and eye witness of the case, P.W. 2 – Kamla Singh, declared hostile, P.W. 3 – Anil Kumar Singh informant and injured, P.W. 4 – Ram Shobhit Rai, Investigating Officer, P.W. 5 – Dr. Ramashish Singh, who examined the injured, P.W. 6 – Rajendra Singh, claimed to be eye-witness of the occurrence.

5. Apart from that following documents have been brought on record and marked as; Ext. 1 – written report, Ext. 2 – Formal F.I.R, Ext. 3 – Injury Report of Anil Kumar Singh.

6. On behalf of defence no ocular evidence has been brought on record. However, they have brought on record the certified copy of khatiyani as Ext. A and certified copy of charge-sheet of Dehari P.S. Case No. 12/90 is Ext. B. From the above documents, it



appears that the defence of the appellant is that the land in question is the khatiyani land of the accused person and informant was trying to grab the said land, for which, he filed a case bearing Dehari P.S. Case No. 12/90, which is evident from Ext. A and B. Further defence of the accused is false implication and of innocence.

7. Learned Trial Court after conclusion of trial convicted the appellant under Section 323 of the IPC and sentenced him in the manner aforesaid.

8. Learned *Amicus Curiae* has assailed the judgment of trial court on the ground that there is delay of one month in lodging the F.I.R. and no plausible explanation has been offered for the same. It has further been argued that so far PW1 and PW6 are concerned, although they claimed to be eye witness of the occurrence but evidence of PW6 disclosed that he reached after the occurrence and his evidence disclosed that PW1 reached after five minutes of his arrival, which clearly shows that they are not the eye witness of the occurrence and, therefore, the prosecution case solely rests on evidence of informant PW3 and in the background of the fact that there is delay of one month in lodging of F.I.R. and no explanation has been given and as such the evidence of PW3 informant does not appear to be reliable. Further submission of learned *Amicus Curiae* is that there is case and counter case between the parties and certain documents have also been brought on record, which shows that the land, on which, the alleged occurrence took place is the khaiyani land



of the appellant and the informant wanted to grab the said land, for which the appellant side had also filed a case. However, the trial court failed to appreciate these aspects of the case and has convicted the appellant under Section 323 of the IPC, which is not just and proper.

9. On the other hand, learned counsel appearing on behalf of the respondent – State has supported the finding of guilt recorded by the Trial Court and submitted that even if it is believed that PW1 and PW6 are not the eye witness of the occurrence, PW2 and PW3 had given the detailed description of the occurrence and stated about assault to PW3 by the appellant and co-accused and the same has also been corroborated by the evidence of doctor, who has found injuries on the person of informant and, therefore, there is no infirmity in the impugned judgment of trial court and conviction of appellant under Section 323 of the IPC is just and proper.

10. Heard rival contentions of the parties, from perusal of evidence, it appears that PW3 is the informant and injured in this case and he has supported the prosecution case and has stated that he was assaulted by Ram Nath Singh and Ram Nagina Singh (since died). No doubt in this case, there is delay of one month in lodging the F.I.R and no explanation has been given for the same but the evidences of PW2 and PW3 are consistent and although PW1 and PW6 does not appear to be eye witness of the occurrence but they reached at the place of occurrence just after the occurrence and found PW3 in injured condition and the evidence of these witness has also been corroborated by



the evidence of PW5, Dr. Ramsshish Singh, who examined the injured and found following injuries:-

- (i) Profusely bleeding lacerated wound of size 1" x ¼" skull deep reaching upto bone on the left side of skull on posterior part.
- (ii) Swelling with pinkish bruise 3" x ½" on the left shoulder.
- (iii) Swelling with pinkish bruise 2" x ½" on the dorsum of left hand including index finger.

11. The evidence of doctor disclosed that the injuries were caused by hard and blunt substance and injury no. 1 was grievous in nature and as such the evidence of witnesses found full corroboration from the medical evidence. However, there is nothing available on record to show what is the basis of arriving at a finding that injury no. 1 is grievous and perhaps due to that the Trial Court has not convicted the appellant under Section 325 of the IPC.

12. In view of above discussions, it appears that prosecution has been able to prove its case and, therefore, I find no infirmity in the finding arrived at by Shri Baleshwar Prasad Singh, Presiding Officer, Additional Court No. 1, (Fast Track Court), Sasaram in Sessions Trial No. 13/91, 273/2002 and accordingly the conviction of appellant under Section 323 of the IPC is hereby affirmed.

13. So far sentence of the appellant, a submission has been put forth by learned counsel for the appellant that the appellant has remained in judicial custody for two months during trial from the



period 5.2.97 to 6.3.97 and further from 28.7.97 to 19.8.97 and occurrence is of the year 1989 and since then 29 years have passed and as such, no fruitful purpose will be served to send him behind the bars to serve the remaining sentence, as there is nothing on record to show that he was previously convicted in any other case or has ever misused the privilege of bail.

14. This Court finds force in the submission of learned *Amicus Curiae* for the appellants and also considering the fact that the case is very old one and as appellant has remained in judicial custody for two months, I deem it appropriate to reduce the period of sentence, which has already undergone by the appellant in judicial custody.

15. With the above modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.08.2018
Transmission Date	13.08.2018

