

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.401 of 2003

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

- =====
1. Jag Narayan Ojha, son of Moti Ojha
 2. Guddu Ojha, son of Moti Ojha
 3. Moti Ojha, son of Subhlayak Ojha, all are resident of village Manopali, P.S.
Baniyapur, District Saran, Chapra

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Umesh Kumar Mishra, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-07-2018

All the three appellants have been convicted under Sections 307/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years and a fine of Rs.1000/- each with default clause vide judgment dated 30.7.2003 and order dated 31.7.2003 passed by Sri Binoda Nand Mishra, the then XIth Additional Sessions Judge, Saran at Chapra in Sessions Trial No. 69 of 1997.

2. Prosecution case as per complaint petition filed by Chandrawati Devi, in short, is that on 12.5.1996 the appellants came to the shop of the complainant and demanded Litti and meat and complainant refused to give the same as there was previous dues of Rs.45/- against them. The appellants annoyed and appellant Moti Ojha ordered other appellants to kill her, on which other appellants started



assaulting her. It has been alleged that appellant Guddu Ojha caught her hair and overpowered her and appellant Jag Narayan Ojha assaulted the complainant by fists and leg on her abdomen and put pressure over her abdomen due to which her clothes were torn and disrobed and as complainant was in family way and due to pressure on her abdomen her pregnancy was miscarriage. She went to the police station for lodging case but she was sent to hospital and her husband gave information to the police station and on the basis of that Complaint Case bearing No. C 691 of 1996 was lodged and sent for enquiry and after inquiry summons were issued against the appellants and on their appearance the case has been committed to the court of sessions, which ultimately traveled to the file of Sri Binoda Nand Mishra, the then XIth Additional Sessions Judge, Saran at Chapra for trial and disposal.

3. During trial accused appellants were charged under Sections 307/34 IPC and prosecution in order prove its case has examined altogether six witnesses, they are PW 1 Rajesh Sah, son of complainant, PW 2 Rama Shankar Sah, husband of complainant, PW 3 Shailesh Ojha, independent witness, PW 4 Chandrawati Devi, the complainant and injured, PW 5 Dr. Devendra Kumar, who has examined the complainant (PW 4) and PW 6 Md. Mustaque, a formal witness. Learned trial court has convicted the appellants under



Sections 307/34 IPC and sentenced them as stated above.

4. Learned counsel for the appellants has assailed the judgment on the ground that no such occurrence took place and case has been lodged at the instance of PW 3 Shailesh Ojha, who has lodged a case earlier against the appellants being Complaint Case No. 715 of 1995, which fact has been admitted by PW 3 in his cross examination, complaint case has marked as Ext.A and signature on complaint petition has been marked as Ext.B. It has further been submitted that all the witnesses except PW 3 are family members and PW 1 is son of complainant, PW 2 is husband of complainant and so far PW 3 Shailesh Ojha is concerned, he is inimical to the appellants from before and learned trial court has convicted the appellants only on the basis of evidence of related and inimical witnesses without any corroboration. Further submission is that the Doctor, who has examined the complainant, has found two injuries on her person, they are (1) Bruise on the left side of chest, 2" x 1". This injury was simple in nature caused by hard and blunt substance, (2) Pervaginal done by Grade-I nurse, bleeding with watery discharged. This injury was grievous caused by hard substance. Doctor has opined that opinion would be based on the basis of report of Grade-I nurse, who has not been examined and there is any report available on record. Learned trial court has found some irregularities in the hospital register and in



spite of that he has convicted the appellants under Section 307/34 IPC which is not just and proper.

5. On the other hand, learned counsel for the State has supported the judgment of guilt and submitted that the injuries were found on the person of complainant and due to that she miscarried her pregnancy and Doctor opined that injury No.2 is grievous in nature, as such conviction of the appellants under Sections 307/34 IPC is just and proper which does not require any interference by this Court.

6. Having heard both sides and on perusal of the evidence adduced on behalf of the parties it appears that PW 4 is complainant and she has supported the allegation in her evidence in court and in spite of her cross examination there is nothing to doubt about credibility of her evidence, which has been supported by PWs 1 and 2, who happen to be son and husband of the complainant and PW 3 is independent witness who has also supported the evidence of PW 4. No doubt, PWs 1 and 2 are related witnesses and PW 3 is inimical to the appellants as he has admitted in his evidence he has lodged a case earlier against the appellants. So far submission of learned counsel for the appellants that present case has been lodged at the behest of PW 3 Shailesh Ojha is concerned, evidence has been adduced except that he was inimical from before. Evidence of PWs 1 and 2 is concerned,



though they are related witnesses but there is consistent evidence that PW 4 was assaulted by the appellants and except minor contradiction there is nothing in their evidence to doubt their credibility. Rather the evidence of PWs. 1 and 2 corroborates the evidence of PW 4, informant. However, on perusal of evidence of PW 5, Doctor it appears that he has given opinion on the injury on the basis of report of Grade-I nurse and complainant was carrying last month pregnancy and he has proved carbon copy of injury report as Ext.1. However, this witness has been cross examined and in his cross examination he has stated that his report was based on the report submitted by Grade-I nurse but neither the Grade-I nurse was examined by the prosecution nor the report of Grade-I nurse is available on record. On the other hand, learned trial court has found certain irregularities in the hospital register and in spite of the aforesaid inconsistency in the evidence the learned trial court has convicted the appellants under Sections 307/34 IPC, which does not inspire confidence as the Doctor himself has stated that opinion is based on the report of Grade-I nurse and the nurse has not been examined in this case. No doubt, evidence available on record to show that PW 4 was assaulted by the appellants. However, on the basis of aforesaid materials at best the appellants should be convicted under Sections 324/34 IPC.

7. Considering the entire discussions made above, so far



conviction of appellants under Sections 307/34 IPC is concerned, it is modified to the conviction under Sections 324/34 IPC.

8. Learned counsel for the appellants has further submitted that the occurrence is of the year 1996 and 22 years have passed and appellant No.1 has remained in custody for about eight months and appellants Nos. 2 and 3 have remained in custody for about two months and as such ends of justice would be served if the sentence of R.I. for four years and fine of Rs.1000/- is modified to Sections 324/34 IPC to the period already undergone by them.

9. I find force in the submission of learned counsel for the appellants. In such view of the matter, instead of confirming the sentence of four years R.I. and fine of Rs.1000/- under Section 307/34 IPC the same is modified to the period already undergone by them under Sections 324/34 IPC.

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

(Vinod Kumar Sinha, J)

spa/-

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