

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.328 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

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Birendra Paswan @ Batoran Paswan, son of Parmeshwar Paswan, resident of
village Alawalpur, P.S. Sarai, District Vaishali

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Lakshmi Kant Tiwary with
Mr. Nitesh Kumar, Advocates

For the State : Mr. Bipin Kumar, APP

For the Informant : Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 27-03-2018

Sole appellant Birendra Paswan @ Batoran Paswan stands convicted under Sections 307, 447 and 341 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years under Section 307 IPC, one year under Section 447 and six months under Section 341 IPC and all the sentences were directed to run concurrently vide judgment dated 20.6.2003 and order dated 21.6.2003 passed by Sri Singheshwar Prasad, the then 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 402 of 1999.

2. Prosecution case, in short, is that in the intervening night of 10/11.4.1999 the informant Dharmendra Kumar Bhagat @ Pappu Kumar Bhagat (PW 6) was sleeping by the side of his Chicken Poultry Firm and at about 1.15 A.M. he heard some sound and woke



up and when he went near the firm he found that one person was fleeing away. He identified the person and tried to caught hold of him but accused appellant assaulted the informant by “Hasuli” as a result of which he received several injuries on his neck, near ear, on the stomach, on head, on right hand and on the thumb of his left hand. It is further alleged that on alarm raised by informant for his rescue, witnesses Ramashankar Bhagat, Chandrakishore Chaudhary and Bipin Kumar Bhagat came there and on seeing them the accused appellant fled away from the place of occurrence. It is also alleged that all the persons brought him to Sadar Hospital, Hajipur where he was treated by a Doctor.

3. On the basis of aforesaid fardbeyan Sarai P.S.Case No. 36 of 1999 was registered under Sections 341, 324 and 307 IPC. Police after investigation submitted charge sheet and after commitment, the case traveled to the file of the learned Trial Judge for trial and disposal.

4. In this case the charges have been framed against the accused appellant under Sections 447, 341 and 307 IPC.

5. During trial, in order to substantiate its case the prosecution has examined altogether eight witnesses, they are PW 1 Bipin Kumar Bhagat, who claims to be an eye-witness to the occurrence, PW 2 Chandrakishore Chaudhary, who also claims to be



an eye-witness to the occurrence, PW 3 Anil Kumar Singh, who is a formal witness and has proved the formal FIR (Ext.1), PW 4 Ramashankar Bhagat, who claims to be an eye-witness to the occurrence, PW 5 Harendra Bhagat, who claims to be an eye-witness to the occurrence, PW 6 Dharmendra Kumar Bhagat @ Pappu Kumar Bhagat, who is informant and injured in this case, PW 7 Birendra Kumar Singh, who is I.O. of this case and PW 8 Dr. S.A.Moniuddin Asarfi, who has examined the informant (PW 6) in the hospital.

6. Apart from that, the prosecution has brought on record the following documents, they are Ext.1- FIR, Ext.2- signature of informant on fardbeyan, Ext.3- writing of fardbeyan, Ext.4- letter to I.O. of Sarai P.S. and Ext.5- injury report.

7. On behalf of defence four witnesses have been examined, they are DW 1 Ram Pravesh Paswan, DW 2 Sujit Kumar Singh, DW 3 Kishun Paswan and DW 4 Sanjay Kumar in order to defend the prosecution case.

8. Apart from that, the defence has brought on record several letters purported to have written by one Sanju Kumari to the appellant Birendra Paswan as Exts. A to A/18.

9. Learned trial court on conclusion of trial has convicted the appellant and sentenced him as stated above.

10. Contention of learned counsel for the appellant is that the



learned trial court has not considered the defence case that there was love affairs between the appellant and niece of the informant and for that this false and concocted case has been lodged, which will appear from the fact that all the witnesses appeared at the place of occurrence, in spite of that the accused has fled away, which looks improbable and even if prosecution evidence is believed in toto that does not make out a case under Section 307 IPC as the evidence discloses that intention of the appellant was not to kill the informant rather to escape from the place of occurrence in order to avoid arrest, as such conviction of the appellant under Section 307 IPC is not sustainable in the eye of law. Further submission of learned counsel is that there are several contradictions in between the evidence of the witnesses and that has not been considered by learned trial court and on that ground also the conviction is bad in law.

11. On the other hand, learned counsel for the State and informant have defended the impugned judgment on the ground that evidences of all the witnesses are consistent and they have supported the prosecution case and submitted that informant was severely assaulted by the appellant by Hasuli causing several injuries to him and the same has been corroborated by the evidence of Doctor, who has found altogether 10 injuries on neck, head, and other parts of the body and that clearly shows the intention of the appellant, as such, the



conviction of the appellant under Section 307 and other Sections of the IPC is just and proper and does not require any interference by this Court.

12. Having heard the parties and from perusal of the record it appears that in this case PW 6 is the informant and he has stated in his evidence that at about 1 A.M. in the night he was sleeping in the poultry firm and he woke up on hearing some sound and saw the appellant entered inside the firm and while he tried to catch him he was assaulted by “Hasuli” on neck, head, hand and other places and on hulla witnesses came and they also tried to catch him but the appellant succeeded in fleeing away. His evidence further shows that he was taken to hospital where he was treated.

13. PW 8 is Doctor and he has treated the informant (PW 6) on 11.4.1990 in hospital and found the following injuries :

- “(1) Incised wound 2” x 1/6” x 1/6” on the right side of forehead,**
- (2) Incised wound 3” x 1/6” x skin deep over right cheek,**
- (3) Incised wound 4” x 1/4” x 1/6” over right side of the neck upper part,**
- (4) Incised wound 5” x 1/6” x skin deep over right arm,**
- (5) Incised wound 1” x 1/6” x skin deep over right arm,**
- (6) Incised wound 3” x 1/6” x skin deep over left forearm,**
- (7) Incised wound 6” x 1/6” x skin deep over middle of left side of abdomen,**
- (8) Incised wound 2” x 1/6” x skin deep over left of upper abdomen,**



**(9) Incised wound 1-1/2" x 1/6" over left thumb lower part,
(10) Abrasion 1/4" x 1/4" over the chin."**

His evidence shows that all the injuries are simple in nature and caused by sharp cutting weapon, except injury No.1 which is caused by hard and blunt substance. His evidence further shows that out of nine injuries six were found skin deep and rests were 1/6" deep.

14. So far evidence of PWs. 1, 2 4 and 5 is concerned, they have also supported the prosecution case on the point of time of occurrence and manner of occurrence

15. On the other hand, defence has also examined four witnesses and also brought on record Ext.A to A/18, which are letters in 33 pages in order to show that there was love affairs between appellant and Sanju Kumari, sister of PW 1 and as informant and other witnesses were annoyed for the same, this false case has been lodged, by manufacturing the injuries, which are self created injuries to the person of PW 6. However, defence has failed to prove that Sanju Kumari was sister of PW 1 and even if Sanju Kumari is sister of PW 1 there was no occasion for the informant to cause self-inflicting injuries for sister of PW 1 and that itself doubts the defence story. On the other hand, as stated above, the prosecution evidence is consistent on the manner of assault.

16. Submission of learned counsel for the appellant is that no



offence is made out under Section 307 IPC.

17. On consideration of entire evidence it appears that, as a matter of fact, occurrence took place while appellant entered into the poultry firm of the informant and when informant tried to catch him along with other witnesses he was assaulted, as such, intention was not to commit murder as had it been any intention to kill he would have straightaway gone to him and killed him in the night. However, evidence shows that while informant was trying to catch hold the appellant he assaulted him in order to escape himself from the arrest. Further evidence of Doctor shows that the injuries found on the person of informant are all simple in nature which clearly falsifies the intention of the appellant to commit murder of the informant. However, learned trial court has failed to consider aforesaid aspects of the matter while convicting the appellant under Section 307 IPC.

18. In the facts and circumstances, as discussed above, it appears that at best it is a case under Section 324 IPC against the appellant. So far conviction under Sections 447 and 341 IPC is concerned, that appears to be just and proper. Accordingly, the conviction of the appellant under Section 307 IPC is modified to a conviction under Section 324 IPC and conviction under Sections 447 and 341 is upheld.

19. Learned counsel for the appellant has submitted that



appellant has already remained in custody for six months 23 days and, as such, he has suffered a lot and occurrence is of the year 1999, 18 long years have passed, as such, lenient view may be taken and sentence may be reduced to the period already undergone by him in custody.

20. I find sufficient force in the submission of learned counsel for the appellant. As such, the sentence is modified to the period already undergone by him in custody.

21. With the above modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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