

=-IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.181 of 2003

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

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Arjun Sah son of Bindeshwari Sah, resident of village Sattar, P.S. Bihra, District Saharsa

.... Appellant

Versus

State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 196 of 2003

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

- =====
1. Baleshwar Sah son of Munni Sah (since abated)
 2. Ashoka Sah son of Baleshwar Sah
 3. Soswa Sah son of Baleshwar Sah
 4. Yogendra Sah son of Ramjee Sah
 5. Anant Sah son of Ramjee Sah
 6. Vikram Sah son of Ramjee Sah
 7. Kirat Rai son of Dhogai Rai
 8. Arun Sah son of Bindeshwari Sah

All are resident of village Sattar, P.S. Bihra District Saharsa.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No.181 of 2003)

For the Appellant : Mr. Krishna Pd.singh, Sr. Adv.
Mr. J. Upadhyay,Adv.
Mrs. Meena Singh, Adv.

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

(In CR. APP (SJ) No.196 of 2003)

For the Appellants : Mr. Krishna Pd. Singh, Sr. Adv.
Mrs. Meena Singh, Adv.

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-04-2018

Heard the parties.



2. Appellant Arjun Sah of Cr. Appeal No.181 of 2003 has been convicted under Section 307 of the Indian Penal Code and sentenced to undergo R.I. for four years and appellants Baleshwar Sah, Ashoka Sah, Soswa Sah, Yogendra Sah, Anant Sah, Vikram Sah, Kirat Rai and Arun Sah of Cr. Appeal No.196 of 2003 have been convicted under Section 324 of the Indian Penal Code and sentenced to undergo R.I. for two years by judgment dated 10.03.2003 and order dated 11.03.2003 passed by Sri Krishna Mohan Shrivastava, Sessions Judge, Saharsa in Sessions Trial No.43 of 1995.

3. As both the Appeals arise out of the same judgment and order so they are taken up together for disposal and are being disposed of by a common judgment.

4. In this case a supplementary affidavit had been filed on behalf of the petitioners stating that the appellant No.1 Baleshwar Sah of Cr. Appeal No.196 of 2003 died during the pendency of the appeal on 2.11.2017. The death certificate is also attached. In such view of the matter, the Appeal with respect to appellant no.1 Baleshwar Sah of Cr. Appeal No.196 of 2003 stands abated.

5. The prosecution case in short is that Badri Sah (P.W.12) lodged a report to the effect that on 22.6.1992 in the morning hours while he was sleeping at his *Darwaza* at about 4.00 A.M., he woke up after hearing sound of rattling noise and flashed torch and saw the



accused Baleshwar Sah, Yogendra Sah, Bikram Sah and Arjun Sah standing there and Arjun Sah exhorted to lift him, following which accused Bikram Sah closed his mouth by *Gamcha* and all the accused persons lifted him and took him towards western side in the lonely place. It is also the prosecution case that other accused persons Ashok Sah, Arjun Sah, Soswa Sah and Anant Sah were also present there. Accused Arjun Sah again exhorted whereupon accused Ashok Sah and Anant Sah caught hold the informant's neck. It is also the case of the prosecution that accused Arun Sah closed his mouth and accused Baleshwar Sah, Soswa Sah and Anant Sah started assaulting him by *lathi* and also pressed his neck. Accused Arjun Sah assaulted Bahuri Sah by *Khanti* causing injury on his head and chest, thereafter on *hulla*, the witnesses arrived and the accused persons fled away. The reason behind the occurrence is that Bindeshwari Sah was cutting ridge of the field of the informant and the informant stopped the accused persons due to which the occurrence took place.

6. On the basis of the aforesaid fardbeyan Saharsa (Bihra) P.S.Case No.361 of 1995 was registered, the charge-sheet has been submitted, cognizance of the case has been taken and the case has been committed to the court of Sessions, which ultimately came to the file of Sri Krishna Mohan Shrivastava, Sessions Judge, Saharsa for trial and disposal.



7. In this case altogether 13 witnesses have been examined and they are P.W.1 Raghuni Yadav declared hostile, P.W.2 Tumar Sharma tendered for cross examination, P.W.3 Prithwi Sah declared hostile, P.W.4 Ashok Yadav claims to be eye witness, P.W.5 Harihar Sah claim to be eye witness, P.W.6 Mahendra Yadav tendered for cross examination, P.W.7 Bhupendra Yadav claims to be eye witness, P.W.8 Bhupendra Choudhary claims to be eye witness, P.W.9 Dayanand Yadav tendered for cross examination, P.W.10 Ramnath Ray claims to be eye witness, P.W.11 Basudeo Yadav , P.W.12 Badri Sah informant of the case and P.W.13 Dr. Shivmangal Singh, who treated the injured in the hospital.

8. It appears from the evidence that P.Ws. 4, 5, 7, 10, 11 and 12 claim to be eye witness. Further if the earliest prosecution version is believed it appears that Badri Sah who claims himself to be eye witness and he is injured also has stated that on *hulla* other persons assembled as such the aforesaid witness certainly can not be eye witness. Further appears that in this case second injured Bahuri Sah has not been examined for the reasons best known to the prosecution.

9. The defence of the accused persons is of false implication due to enmity as a large number of cases are going on between the parties.



10. The learned trial court on conclusion of the trial has convicted Arjun Sah under Section 307 of the IPC and other appellants under Section 324 of the IPC.

11. The learned counsel for the appellants has assailed the above judgment on the ground that in this case Bahuri Sah has not been examined by the prosecution and the I.O. has also not been examined in this case. In such a situation, conviction of Arjun Sah under Section 307 of the IPC for the assault to Badri Sah does not appear to be sustainable in the eye of law.

12. Further submission of the learned counsel for the appellant is that so far other accused persons are concerned, they have been convicted under Section 324 of the IPC and in the trial court a compromise petition was filed by the parties and the learned trial court has disbelieved the compromise petition on the ground that the compromise under Section 307 of the IPC is not maintainable in the eye of law. It is also submitted on behalf of the appellants that in this case witnesses were not present at the place of occurrence rather they have come on *hulla* and further Bahuri Sah who received injuries has not been examined and in the background of the fact that there is litigation between the parties, conviction of the appellants only on the basis of the evidence of Badri Sah does not inspire confidence and is not sustainable in the eye of law.



13. On the other hand learned counsel for the State has defenced the judgment of guilt and submitted that P.W.12 Badri Sah has supported the prosecution case and so far manner of occurrence and genesis of the occurrence is concerned, other witnesses have also stated that they had seen P.W.12 in the injured condition receiving injuries. In such a situation, conviction of the appellants under Section 307 of the IPC is just and proper and does not require any interference by this Court.

14. In the background of the aforesaid contention of both the parties it appears that P.W.12 Badri Sah is the eye witness of the occurrence and he has supported the prosecution case and stated that the accused persons caught him and closed his mouth. He has stated that the occurrence took place at 4.00 A.M., while he was sleeping and when he woke up he saw the appellants standing there and appellant Arjun Sah exhorted to lift him and took him towards the western side in the lonely place, where the other accused persons were also present. His evidence also discloses that appellant Arjun Sah assaulted and Baleshwar Sah, Seswa Sah and Anant Sah pressed his neck, due to which he fell down and Arun Sah closed his mouth and he started writhing in pain. His evidence also discloses that accused Baleshwar Sah, Seswa Sah and Anant Sah assaulted by *lathi* in the meanwhile Bahuri Sah reached there and accused Arjun Sah



assaulted him by *Khanti* on head and chest. there is nothing in his cross examination to doubt the testimony. So far the evidence of P.Ws. 4, 5, and 7 are concerned it discloses that they are eye witness of the occurrence and they have also supported the prosecution case and there is nothing in their evidence to doubt their testimony. Similarly, P.Ws. 8, 10 and 11 are concerned, they have also supported the prosecution case as stated in the fardbeyan.

15. P.W.13 is the Doctor who has examined the injured and found following injuries on the person of Badri Sah :

“i. Mark of swelling and tenderness of whole left ankle region and lower half of leg below knee joint. X-ray done at Radha X-ray clinic, Saharsa No.L-22-6-92 shows fracture of Fibula ankle joint caused by hard and blunt substance and grievous in nature.

ii (a). Swelling 6”x3/2” on the left gluteal region later on vidially.

(b) swelling 4” X 3/2” on the left gluteal region above downwards.

(c)Swelling 6”X1” on the back of chest right half.

And following injuries were found on the person of Bahuri Sah :

“i. Sharp cut would 4” X 1/4” bone deep on the left side of parital region of head anterior-posteriorly.

ii. Incised wound 6” X skin deep X 1/4” on the left side of chest.

iii. Marked swelling and tenderness of Rt. Index finger caused by hard and blunt substance and simple in nature.

16. However in this case neither Bahuri Sah has been



examined nor the I.O. has been examined in this case. It further appears from perusal of the judgment that a compromise petition has also been filed in the lower court but the same has been rejected on the ground that under Section 307 of the IPC it is not compoundable.

17. It further appears from the judgment of the lower court that Arjun Sah Sah been convicted under Section 307 of the IPC for assault to Bahuri Sah but Bahuri Sah has not been examined, as such no explanation has been given for non-examination of Bahuri Sah and as such great prejudice has been caused to the defence for non-examination of Bahuri Sah and if had he been examined, the defence has examined about the place of occurrence, time of occurrence and the genesis of the occurrence and non-examination of the I.O. is also vital as the I.O. has not been examined and had he been examined, he could prove the statement of Bahuri Sah.

18. No doubt the learned trial court has not considered this aspect of the matter but has convicted the appellant Arjun Sah under Section 307 of the IPC on the basis of evidence of the other witnesses, in which they have disclosed that Bahuri Sah was assaulted by *lathi* and the Doctor has found injuries on his person, however, in case of the non-examination of Bahuri Sah and also the I.O. the appellant Arjun Sah deserve benefit of doubt in the present case.



19. So far other appellants are concerned, there is absolutely nothing available on the record to show that Badri Sah was not assaulted by the sharp cutting weapon rather it appears that he was assaulted by *lathi* and his mouth was tied and they were trying to strangle him and nowhere it is mentioned that any sharp cutting weapon has been used as such their conviction under Section 324 of the IPC does not inspire confidence rather at best they should be convicted under Section 323 of the IPC.

20. In this case in the background of the fact that a compromise petition had been filed before the learned trial court, but the said compromise petition has been rejected by the learned trial court on the ground that under Section 307 of the IPC it is not sustainable.

21. Considering the entire discussions made above, it appears that conviction of the appellants under Section 307 of the IPC in absence of non-examination of Bahuri Sah or non-examination of the I.O. does not inspire confidence. As such conviction and sentence of appellant Arjun Sah are set aside.

22. Similarly conviction of the other appellants under Section 324 of the IPC is also not sustainable in the eye of law, as such conviction and sentence of other appellants under Section 324 of the IPC is set aside and his conviction is modified under Section 323



of the IPC.

23. It appears that the occurrence is of the year, 1992 and earlier a compromise petition had been filed between the parties and the appellants have remained in custody for about 1-2 days, in such view of the matter, the sentence is reduced to the period already undergone by them and fine of Rs.1,000/- by the appellants Ashoka Sah, Soswa Sah, Yogendra Sah, Anant Sah, Vikram Sah, Kirat Rai and Arun Sah.

24. With the aforesaid modification in the result of Cr. Appeal No.181 of 2003, it is allowed.

25. So far Criminal Appeal No.196 of 2003 is concerned, the same is disposed of with the aforesaid modification in conviction and sentence.

(Vinod Kumar Sinha, J)

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