

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.30 of 2003

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

Ashok Choudhary @ Tikua, son of Late Ram Nath Choudhary, resident of village Sadha Mathia, P.S. Chapra Mufassil, District Saran

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant/s : Mr. Ranbir Singh, Advocate (amicus curiae)

For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 05-02-2018

The sole appellant stands convicted under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years by the judgment of conviction dated 13.12.2002 and order of sentence dated 18.12.2002 passed by Sri Md. Shakir Hasan, the then Additional District and Sessions Judge, Presiding Officer of Additional Court II, FTC, Saran, Chapra.

2. Prosecution case is based on Chapra Mufassil P.S.Case No. 146 of 1998 registered on the basis of the fardbeyan of Govind Manjhi (P.W.3), stating inter alia therein that while he was going to the house of Dipak Babu for working as mason along with Sheo Balak Manjhi and Sunil Choudhary at about 8 A.M. on 29.4.1998 and when he reached in front of house of Dr. N. Ahmad he saw the appellant Ashok Choudhary coming and on enquiry as to whether he was coming after tapping of palm tree he became angry and assaulted the informant by fasuli on the neck causing injury and again accused appellant assaulted the informant by fasuli and when he saved himself



his both hands were injured and thereafter he was taken to hospital by Sheo Balak Manjhi (P.W.1) and Sunil Choudhary (P.W.2).

3. After investigation police has submitted charge sheet against the appellant, cognizance has been taken and the case has been committed to the court of sessions, which ultimately came to the file of Sri Md. Shakir Hasan, the then Additional District and Sessions Judge, Presiding Officer of Additional District and Sessions Court II, FTC, Saran, Chapra for trial and disposal.

4. During trial altogether six witnesses have been examined on behalf of prosecution, they are P.W.1 Sheo Balak Manjhi, FIR named eye-witness, P.W.2 Sunil Kumar Choudhary, FIR named eye-witness, P.W.3 Govind Manjhi, informant and injured, P.W.4 Dr.Md. Ekbal Ahmad, who has examined the informant, P.W.5, Kailash Chaudhary, who is Investigating Officer in this case and P.W.6 Jagarnath Prasad, who is S.I. and recorded the fardbeyan (Ext.2).

5. Apart from that, the following documents have been admitted into evidence, they are Ext.1, injury report, Ext.2 Fardbeyan, Ext.3 FIR, Ext.4 injury slip issued to the Doctor for injury report.

6. It appears that no ocular or documentary evidence has been adduced on behalf of defence and the defence is false implication and innocence as no such occurrence has taken place.

7. Contention of learned amicus curiae Mr. Ranbir Singh is that in the facts and circumstances of the case no case is made out under Section 307 IPC as occurrence took place due to exchange of



hot words between the parties and injuries are simple in nature and Doctor has not found that the injuries are dangerous to life, Further submission is that there is no motive for causing such injuries, rather in course of enquiry by the informant from the appellant the present occurrence occurred. Further he has assailed the judgment on the ground that there are some contradictions in the evidence of witnesses from the previous statement made before the police and that also shows that the evidence of witnesses is exaggerated and not free from reasonable doubt and, as such, conviction of the appellant under Section 307 IPC does not appear to be sustainable in the eye of law.

8. On the other hand, learned counsel for the State has defended the judgment on the ground that the informant has supported the prosecution case and described the manner of assault as per description given by him in fardbeyan, which was his earliest version and Doctor has also found injuries on neck and both hands on the person of informant and the allegation is further found corroborated by the evidence of P.Ws. 1 and 2, who are FIR named eye-witnesses and their presence at the place of occurrence cannot be ruled out and, as such, there is no infirmity in the impugned judgment, which appears to be sustainable in the eye of law.

9. In the background of the rival contentions of parties, on consideration of evidences of the witnesses, it appears that P.W.3 is the informant in this case and he has stated in his evidence that while he was coming to the house of Dipak Babu for working as mason



along with Sheo Balak Manjhi and Sunil Choudhary and when they reached near the house of Dr. N. Ahmad, he saw the accused appellant coming and on enquiry made by the informant, he became angry and assaulted the informant by fasuli which caused injuries on his neck and both the hands and thereafter he was taken to hospital. However, this witness had admitted in his cross examination that at the time of occurrence appellant Ashok Choudhary was carrying with “lotha” and “fakchi” in one hand and fasuli in other hand. His evidence in cross examination shows that he had also a toddy shop. So far this witness is concerned, his evidence regarding assault remains intact.

10. P.W.4 is Doctor, who has treated the injuries on the person of informant and found the following injuries as Ext.1 :

“(i) Incised wound 5” x ½” x ½” cutting of the underneath muscles in bleeding state extending from middle portion of the left side of the neck to back of neck,

(ii) Incised wound on inter digital fold of right thumb and index finger about 1-1/2” x ½” x ¼” in size,

(iii) Incised wound on inter digital fold of left thumb and index finger 3” x ½” x ¼” in size.

All injuries were found simple in nature caused by sharp cutting instrument, may be of Fasuli.”

11. P.Ws. 1 and 2 are FIR named witnesses, who claim to be eye-witnesses to the occurrence and they have also supported the prosecution case so far genesis and manner of occurrence are concerned. However, in cross examination of the witnesses it has come that the informant has not become unconscious and he went to his shop on foot.

12. P.W.6 is Sub-Inspector of Police, who has recorded the



fardbeyan of the informant. P.W.5 is the I.O. in this case. No doubt evidence of P.W.5 shows that there are some contradictions in the evidence of Sheo Balak Manjhi so far assault on the left side of neck is concerned but the aforesaid contradiction does not appear to be vital so as to falsify the whole evidence of P.W.1 Sheo Balak Manjhi. However, as he was deposed after long time, it is natural that there is some contradiction in the evidence of witness.

13. Considering the discussions made above, it appears that there are cogent and consistent evidence available on record about the manner of assault and the evidence of witnesses disclosed that appellant assaulted by fasuli on the neck of informant and against caused injuries by fasuli on his both hands and Doctor has found the injuries on the person of injured informant.

14. Evidence also shows that injuries are simple in nature and further it appears that there is nothing available on record to show as to why appellant assaulted the informant. At best it can be said that on enquiry he became angry and assaulted the informant and there was no intention on the part of accused appellant to kill him or attempted to commit murder of him, rather it appears that due to heat of passion, he assaulted the informant, no doubt twice and injuries caused by him on the person of informant are simple in nature found by the Doctor and on considering the evidence in totality, that does not make out a case under Section 307 IPC and learned trial court has not considered this aspect of the matter while convicting the appellant



under Section 307 IPC.

15. Considering the entire discussions made above, the conviction of the appellant under Section 307 IPC is modified to the conviction under Section 324 IPC and appellant has also been sentenced to undergo R.I. for five years and it is disclosed by learned amicus curiae that appellant has remained in custody for five months during trial and three months during pendency of this appeal, as such, he remained in custody for eight months and he has sufficiently been punished and finding force in his submission the sentence of appellant is reduced to the period already undergone by him.

16. With the above modification in the judgment of conviction and order of sentence, this appeal is partly allowed.

(Vinod Kumar Sinha, J)

spa/-

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