

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.218 of 2003

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Surendra Yadav, Son of Dilchandra Yadav, Resident of Village –
Rampur Tilak, Police Station – Jankinagar, Banmankhi, District –
Purnea.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Mallick, Adv.
Mrs. Anamika, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-02-2018

Challenge in this appeal is of judgment of conviction and order of sentence dated 31.03.2003, passed by Shri Jai Prakash Singh, the then 1st Additional Sessions Judge, Purnea, in Sessions Trial No. 551/96 / 08/98, by which sole appellant – Surendra Yadav stood convicted under Sections 307 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo R.I. for seven years with a fine of Rs. 1,000/- having default clause.

2. Prosecution case as per the written report of informant – Kailash Prasad Yadav (P.W. 6), that he, at the relevant time, was the student in T.P. College at Madhepura, where he used to live in the hostel. On the alleged date of occurrence at 9 ‘O’ Clock, appellant came to him and on the request of the appellant, he came to his



house to have *prasad*. Thereafter, the appellant took him to *nahar* (Canal) on the pretext of opening water to irrigate the Maize field. At that time the appellant was carrying a spade in his hand. It was alleged that when they reached near the canal, appellant started assaulting him indiscriminately by the said spade, with an intention to kill him, causing injuries to the informant and blood started oozing out and on alarm being raised by the informant, villagers assembled and appellant fled away. On the basis of the said written statement, Banmankhi (Jankinagar) P.S. Case No. 83 of 1996 was registered against the appellant.

3. Post investigation, charge sheet was submitted. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Jai Prakash Singh, the then 1st Additional Sessions Judge, Purnea, for trial and disposal. Charge was framed under Section 307 of the IPC, to which the appellant denied the charge and claimed to be tried.

4. In order to prove its case, prosecution has examined altogether 07 witnesses. They are:-P.W. 1 – Satto Mahto, P.W. 2 – Bisho Mahto, P.W. 3 – Sarjug Mahto, P.W. 4 – Devendra Kumar Mahto, P.W. 5 – Kamleshwari Mahto, P.W. 6 – Kailash Chandra Yadav and P.W. 7 – Doctor, Amrendra Kumar, who treated and examined the injured. Out of



which, P.W. 2 to 5 have been declared hostile by the prosecution and there is nothing relevant in the evidence of these witnesses.

5. From the side of defence also two witnesses have been examined. They are; Chandeshwari Yadav and Girdhar Yadav.

6. Defence of the accused as per statement under Section 313 Cr.P.C as well as from the trend of cross-examination is of denial of occurrence and the informant was assaulted by the villagers in some other manner and not by the appellant.

7. Learned Trial Court after considering the evidence available on record convicted the appellant under Section 307 of the IPC and sentenced him in the manner as stated above.

8. Contention of learned counsel for the appellant that evidence of defence witnesses categorically show that the manner of occurrence is completely different as compared to the prosecution version and there is no corroboration of the evidence of informant (P.W. 6) from the medical evidence as in the medical evidence, the injury was not caused by any sharp cutting weapon rather the same were caused by hard and blunt substance. Further submission is that no case under Section 307 of the IPC is made out as



there was no concrete motive has been assigned by the prosecution and a complete vague reason for the occurrence that at some point of time, the informant had abused the father – in –law of the informant, has been assigned and even if the prosecution story is believed to be true, appellant had no intention to cause the death of the deceased, which will appear from the evidence of doctor that all the injuries were caused by hard and blunt substance and the trial court without considering these aspects, has convicted the appellant under Section 307 of the IPC, which is not sustainable in the eye of law.

9. On the other hand, learned counsel for the State supported the finding of guilt recorded by learned Trial Court and submitted that there is consistent evidence of informant, who is injured in this case, with regard to repeated assault on him by the appellant, which has also been corroborated by the medical evidence, in which altogether six injuries were found on the person of the injured and further P.W. 1 has also supported the case of prosecution with regard to assault on the injured and, therefore, there is no infirmity in the judgment of trial court and conviction of appellant under Section 307 of the IPC is just and proper.

10. Heard the rival contentions of the parties.



11. It appears that P.W. 6 is the informant and injured in this case and he has stated in his evidence that he was brought by the appellant on the occasion of *Chophara Prasad* in his house and, thereafter, the appellant asked him to come to the canal in order to irrigate the Maize field. Appellant lifted a spade and this witness proceeded along with him. It has further been stated the appellant in the way started assaulting this witness, causing injuries to his left side of the chest, both arms and hands. This witness has been cross-examined and it appears that there is nothing in his cross-examination to doubt the veracity of evidence of this witness.

12. P.W. 1 has stated in his evidence that on hearing the sound of *hulla*, he went to the place of occurrence and found P.W. 6 in an injured condition and blood was oozing out and on enquiry, he disclosed that appellant had assaulted him by *kudal* (spade).

13. P.W. 7 is the doctor, who treated and examined P.W. 6 and found following injuries:-

- (i) A lacerated wound about 4 cm long x 3 cm wide and scalp deep over the left temporal region.
- (ii) Lacerated wound 4 cm long ½ cm wide ½ cm deep over lateral aspect of upper position of left upper arm.



- (iii) Lacerated wound 3 cm long, ½ cm wide, 2 cm deep touching bone position over frontal lateral aspect of left elbow joint.
- (iv) Lacerated wound 2 cm long, ½ cm wide, skin deep over dorso-middle aspect of left four finger.
- (v) Lacerated wound 4 cm long, 2 cm wide, ½ cm deep over left side of chest well below left nipple.
- (vi) Lacerated wound 3 cm long, ½ cm wide, 2 cm deep with oozing blood and compound fracture of right humerus bone confirm by x-ray of right upper arm.

In the opinion of this witness, injury no. 6 was grievous in nature.

14. This witness has also been cross-examined and it appears that he has found all the injuries lacerated caused by hard and blunt substance. Further he has found altogether six injuries on the person of injured and one of them was also grievous in nature.

15. From the side of defence also two witnesses, were examined, namely, Chandeshwari Yadav and Girdhar Yadav, who evidence shows that the informant was assaulted but they had stated that he was assaulted by the villagers in some other manner and not by this appellant.



16. Heard the rival contention of the parties. In the background of above submission as well as the evidence adduced on behalf of the parties. P.W. 6 is the informant and injured and he has stated in his evidence that appellant, repeatedly assaulted him by means of spade, said evidence of P.W. 6 has also been corroborated by the evidence of P.W. 1, who found P.W. 6 in an injured condition and he has stated in his evidence that it was disclosed by the P.W. 6 – injured himself that It was the appellant, who assaulted him by spade. Further doctor has also found altogether six injuries on the person of P.W. 6, out of which one was also found to be grievous in nature. No doubt defence has also brought the evidence of two witnesses, to show that the occurrence took place in some other manner and P.W. 6 was assaulted by the villagers and not by the appellant and thus a question arise as to whether P.W. 6 was assaulted by the appellant – Surendra Yadav or by the villagers but as stated above, P.W. 6 being the injured himself and he has categorically stated about the assault by the appellant and, therefore, is nothing to question the veracity of evidence of P.W. 6 and it also a well settled principle of law that the evidence of victim always be on higher footing. However, it is also an admitted fact that the doctor has not found any sharp cutting injury



on the person of the injured rather all the injuries were found to be caused by hard and blunt substance and appears to have been caused by the blunt portion of the spade and a submission has rightly been made by the counsel for the appellant that had there been the intention of the appellant to kill the injured, he would have also used the sharp portion of the spade and further no concrete motive has been assigned by the prosecution, which led the appellant to commit such an offence and, therefore, in absence of motive as well as intention, there will be no application of Section 307 of the IPC.

17. However, there are consistent evidence of P.W. 6 that he was assaulted several times by the appellant by means of spade and doctor has also found as many as six injuries on the person of P.W. 6 and in such a situation, the appellant could have more appropriately be convicted under Section 325 of the IPC.

18. Accordingly, considering the facts and circumstances of the case and also the fact that appellant has remained in custody for one year and the occurrence is of the year 1996 and 22 long years have passed since then and, therefore, no fruitful purpose will be served to sent the appellant behind the bars to serve the remaining sentence. As such conviction of the appellant under Section 307 is modified to



a conviction under Section 325 of the IPC and his sentence is reduced to the period already undergone by him in judicial custody.

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

(Vinod Kumar Sinha, J)

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