

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.432 of 2003

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1. Sunil Kumar Singh , Son of Baleshwar Singh, resident of S.D.O. Road,1 P.S. Town District – Vaishali.
2. Vijay Shekhar, Son of Haridwar Singh, resident of Rajendra Chauk, P.S. Hajipur Town, District – Vaishali
3. Raj Kumar Singh, Son of Radhey Krishna Singh, resident of Mohalla – Andar Kila, P.S. – Hajipur Town, District – Vaishali.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shri Nandan Prasad Singh, Adv.
Mr. Naresh Nandan, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 24-07-2018

Rd: Interlocutory Application No. 155 of 2018

The present Interlocutory Application, has been filed for a declaration that appellant no. 1 Sunil Kumar Singh was juvenile on the date of occurrence and, therefore, the matter may be remanded back to the Juvenile Justice Board for consideration afresh.

However, during argument the said I.A. application has not been pressed by learned counsel for the appellant no. 1.

Hence this Interlocutory Application is dismissed as not pressed.

In Criminal Appeal (SJ) No.432 of 2003:

Appellants, Sunil Kumar Singh, stood convicted under Section 324 and the appellants Raj Kumar Singh and Vijay Shekhar



stood convicted under Section 324/34 of the Indian Penal Code (hereinafter referred to as the “IPC”) and appellant Sunil Kumar Singh was sentenced to undergo rigorous imprisonment of two years under Section 324 of the IPC and appellants Raj Kumar Singh and Vijay Shekhar were sentenced to undergo R.I. for one year under Section 324/34 of the IPC, by the judgment of conviction and order of sentence dated 28.08.2003 passed by Anil Kumar Srivastava, Additional District & Sessions Judge – VI, Hajipur in Sessions Trial No. 17/93.

2. Prosecution case in brief is that on 27.06.91 at 4.10 P.M. , Inspeccor of Town Police Station received information from Navin Talkies that one person has been stabbed with dagger inside the cinema hall and for that three persons have been caught, on which, he proceeded towards the place of occurrence and by the time, he could reach the place of occurrence, the injured was already taken to hospital for treatment. He brought the three apprehended persons to the police station. Thereafter, the police went to the sadar hospital to record the statement of the injured but as the condition of the injured was not well, the statement could not be recorded. Thereafter the police again went to the injured to record his statement but as he was referred to the Patna Medical College and Hospital (PMCH), he could not record his statement and in absence of statement of the injured, the S.I. Rajendra Pratap Singh, got his own statement recorded.



3. On the basis above, a case bearing, Hajipur Town P.S. Case No. 175/91 was registered and post investigation, charge-sheet has been submitted and cognizance of the offence was taken. Accordingly the case was committed to the court of sessions, which ultimately came to the file of Anil Kumar Srivastava, Additional District & Sessions Judge – VI, Hajipur for trial and disposal.

4. Charges were framed under Sections 307/34 of IPC and to prove the charge, prosecution has examined altogether six witnesses. They are; P.W. 1 – Raj Kumar Chaudhary, staff of the cinema hall, P.W. 2 – Md. Munna, staff of the cinema hall and declared hostile, P.W. 3 – Sudin Singh, P.W. 4 – Rudal Rai, the injured, P.W. 5 – Naresh Paswan, eye witness of the occurrence, P.W. 6 – Rajendra Pratap Singh, Investigating Officer, P.W. 7 –Dr. Chandra Shekhar Azad, doctor of the sadar hospital Hajipur, where the injured was first treated, P.W. 8 –Satish Kumar, a formal witness and P.W. 9 – Dr. Ashok Kumar Sinha, the doctor, who has examined the injured at PMCH.

5. Evidence of injured Rudal Rai P.W. 4 shows that while he along with Umakant Chaudhary, Naresh Paswan and Sudin Singh was watching the movie in Naresh Talkies, appellants were sitting behind them and appellant Raj Kumar put his leg on the seat of this witness, on which, hot exchange of words took place, thereafter, all the accused persons started assaulting by means of fists and slaps and



appellant Raj Kumar Singh exhorted, on which, appellant Sunil Kumar Singh gave a dagger blow on the left chest of this witness and the blood started oozing out. This witness has been cross-examined also but there is nothing in his cross-examination to doubt his testimony.

6. P.W.3 and P.W.5 are also the eye witness of the occurrence and they have also been named by the injured Rudal Rai P.W.4 as the persons, who were watching move along with him. P.W. 1 is the staff of cinema hall and did not claim to be eye witness of the occurrence. P.W. 2 has been declared hostile and P.W. 8 is a formal witness. P.W. 6 is the Investigating Officer and he has also stated that he has registered the case on the basis of information received by him on telephone on 27.06.91 and, thereafter, he had gone to the cinema hall and taken the apprehended accused persons into custody and he tried to record the statement of the injured but as the condition of the injured was not well, he could not record his statement and after one month his statement was recorded and the explanation has also been given that as his condition was not well, he could not speak.

7. P.W. 7 is the doctor, who examined the injured in the Sadar Hospital, Hajipur and found the sharp cut injury of $\frac{3}{4}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " and opined that the injury was simple in nature.

8. P.W. 9 is also a doctor and assistant professor of surgery and he had stated in his evidence that on 27.06.97, he was posted at PMCH



and at 7.50 P.M. on that day, he examined the injured Rudal Rai aged about 18 years, who had been referred from the district hospital and the patient was operated upon 28.06.1997.

9. The defence of the accused persons is of false implication and of innocence.

10. Learned Trial Court after conclusion of trial convicted the appellant no. 1 under Section 324 of the IPC and appellant nos. 2 and 3 under Section 324/34 of the IPC and sentenced them in the manner aforesaid.

11. Learned counsel for the appellant has assailed the judgment of trial court on the ground that so far allegation of stabbing by the appellant no. 1 is concerned, there was a hot exchange of words and scuffle between the parties before the actual incident of stabbing took place. There is, therefore, provocation and the incident happened at the spur of the moment and it was not premeditated and the appellants and the injured Rudal Rai were students at the time of occurrence and there is no clear evidence that who assaulted the injured Rudal Rai and so far appellant nos. 2 and 3 are concerned, only allegation against them that they instigated the appellant no. 1 to stab the injured Rudal Rai and they are certainly entitled for benefit of Section 360 of the Indian Penal Code and the learned Trial Court without considering these facts convicted the appellant no. 1 under Section 324 of the IPC and appellant no. 2 and 3 under Section 324/34 of the IPC, which is



not sustainable in the eye of law.

12. On the other hand, learned counsel appearing on behalf of the respondent – State has supported the finding of guilt recorded by the Trial Court and submitted that there is consistent evidence available on record so far assault to the injured Rudal Rai by means of dagger by appellant no. 1 is concerned and the same has also been corroborated by the evidence of Doctor PW5 and PW9 and it further appears that the injured was operated upon. In such a situation, conviction of the appellant no. 1 under Section 324 of the IPC and appellant no. 2 and 3 under Section 324/34 of the IPC is just and proper and does not require any interference.

13. Heard rival contentions of the parties, in the background of submission of the parties and from perusal of the evidence of witnesses as discussed above, it appears that the so far allegation of assault is concerned, it is against appellant no. 1 by dagger to the injured Rudal Rai but so far appellant nos. 2 and 3 are concerned, there is allegation that they exhorted appellant no. 1. Prosecution evidence is corroborated by the medical evidence and evidence of PW6, who is informant of the case and the evidence of I.O. also disclosed that appellants were arrested from cinema hall. The Doctor PW5 has found the injury caused to the injured Rudal Rai, simple in nature and another Doctor PW9 has not stated about the nature of injury though he has stated that injured was operated upon. In such a



situation, so far conviction of appellant no. 1 under Section 324 of the IPC and conviction of appellant nos. 2 and 3 under Section 324/34 is concerned, I find no infirmity in the impugned judgment of Trial Court and the same is hereby affirmed.

14. So far sentence of the appellants is concerned, it appears that they have remained in custody for five days and occurrence is of the year 1991 and it further appears that the occurrence took place on the spur of the moment and there is nothing available to show that the appellants were on inimical terms with the injured Rudal Rai from before and at the time of occurrence both appellants and the injured Rudal Rai were students. In such a situation, instead of confirming the sentence, this Court deems it appropriate to reduce the sentence of the appellants to the period already undergone by them in judicial custody and they are directed to pay fine of Rs. 2,000/- each.

15. With the above modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

sunil/-

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