

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.345 of 2003

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

- =====
1. Jai Ram Sah
 2. Jai Lal Sah
 3. Rudal Sah (since dead), All sons of Late Punit Sah, residents of village
Babhnaulia, P.S. Kathiya, District Muzaffarpur

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Vindhya Keshari Kumar, Sr. Advocate
with Mr. Shankar Pathak, Advocate

For the Respondent/s : Mr. S.A.Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 03-07-2018

This appeal has been preferred by three appellants. Appellant No.1 has been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years under Section 324 IPC, whereas appellant Nos.2 and 3 have been convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for one year respectively vide judgment and order dated 25.6.2003 passed by Sri Zubairul Hassan, the then 2nd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 298 of 1992.

2. During the pendency of this appeal a report was called for from the Sr.Superintendent of Police, Muzaffarpur and report has been received from which it appears that appellant No.3 Rudal Sah has died. In the said circumstances, the appeal stands abated as against



appellant No.3 Rudal Sah.

3. Prosecution case, in short, is that while informant (PW 6) was returning from his field he was surrounded by the appellants variously armed near the darwaja of appellant Jai Ram Sah and appellant Jai Ram Sah gave farsa blow on the head of the informant and he fell down and blood was oozing out. Thereafter appellants Nos. 2 and 3 assaulted the informant by lathi and musal and the reason behind the occurrence was with respect to a dispute relating to refusal of making roof of the house of the appellants by the informant.

4. On the basis of aforesaid fardbeyan Kathaiya P.S. Case No. 26 of 1991 was registered and post investigation charge sheet has been submitted and cognizance has been taken and on committing the case to the court of sessions the case ultimately traveled to the file of Sri Zubairul Hassan, the then 2nd Additional Sessions Judge, Muzaffarpur for trial and disposal.

5. During trial charge has been framed under Section 307/34 and other sections of the Indian Penal Code.

6. In order to substantiate its case the prosecution has examined altogether eight witnesses, they are PW 1 Jhapas Pandit, PW 2 Ganesh Pandit, PW 3 Ashok Kumar Mishra, PW 4 Saguni Pandit, PW 5 Visuni Pandit, PW 6 Baiju Pandit, who is informant and injured, PW 7 Dr. Kamal Prasad, who has examined the informant



Baiju Pandit (PW 6) and PW 8 is Subodh Kumar Tiwari, I.O. of this case.

7. On examination of evidence it appears that PWs 1 to 5 are the eye-witnesses to the occurrence and PW 6 is injured, who has supported the prosecution case about assault and evidence of PW 6 has been corroborated by evidence of PWs 1, 2, 4 and 5 and Doctor (PW 7) has found injuries on the person of informant as simple in nature.

8. Learned trial court, on conclusion of trial acquitted the appellants from the charge under Sections 307/34 IPC, however, convicted the appellant No.1 under Section 324 IPC and other appellants under Section 323 IPC and sentenced them as stated above.

9. Learned counsel for the appellants has confined his argument only on the point of sentence on the ground that the occurrence is of the year 1991 and long 27 years have passed and appellants Nos. 1 and 2 are aged about 55 years and 45 years respectively at the time of judgment and they are by now must be of the age of about 70 years and 60 years and as such sentence of appellant No.1 may be reduced to the period already undergone by him in custody as he has remained in custody for 55 days and appellant No.2 may be released on execution of bond of Rs.1000/- for a period of six months to maintain peace.



10. Learned counsel for the State, on the other hand, has supported the impugned judgment of conviction of guilt and submitted that there is sufficient evidence in support of the prosecution case of assault and the same is sustainable in the eye of law, which does not require any interference by this Court.

11. I find force in the submission of learned counsel for the appellants. Case is 27 years old and appellants by now are old age and appellant No.1 has remained in custody for 55 days during pendency of trial, as such, conviction of appellant No.1 is confirmed under Section 324 IPC but the sentence is reduced to the period already undergone by him in custody. Appellant No.2 is concerned, his conviction is affirmed under Section 323 IPC. However, in place of confirming the sentence he is directed to be released on execution of bond of Rs.1000/- for a period of six months to maintain peace.

12. With the above modification in the order of sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

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