

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.350 of 2003

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

- =====
1. Laljee Singh, son of Kapil Singh
 2. Kapil Singh
 3. Sri Bhagwan Singh, both sons of Late Ramphal Singh
 4. Ramjee Singh
 5. Bharat Singh (since dead), both sons of Rameshwar Singh
 6. Saroj Singh, son of Ram Gobind Singh, all residents of village Amnaur, P.S.
Amnaur, District Saran

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr.Dr. Rajesh Kumar Singh, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 05-07-2018

All the appellants have been convicted under Sections 323/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months vide judgment and order dated 27.6.2003 passed by Sri Shyam Nandan Prasad Verma, the then Adhoc District and Sessions Judge, Fast Track Court No.1, Saran, Chapra in Sessions Trial No. 1329 of 1994.

2. It appears from perusal of the record that a report has been received from the Superintendent of Police, Saran that appellant No.5 Bharat Singh has died during the pendency of this appeal. Accordingly, this appeal with respect to appellant No.5 stands abated.

3. Prosecution case as per statement of PW 2 Rukmini Kuer,



in short, is that while she was sitting on the southern side of her verandah, all of a sudden accused Laljee Singh came there and entered in her house and took out sword from her house and started to cut Jamun tree and on objection, accused Laljee Singh dragged her to his house near the guava tree and pushed her down on the ground and asked other accused persons to assault her, thereupon accused Kapil Singh, Sri Bhagwan Singh and Ramjee Singh tied her hands and legs by rope. Accused Sri Bhagwan Singh pulled out her sari and thereafter accused Bharat Singh (since dead) and other accused persons started assaulting her by fists and legs and on alarm raised by her, neighbours came and the appellants fled away.

4. On the basis of aforesaid statement, Amnour P.S.case No. 94 of 1993 was registered. Post investigation charge sheet has been submitted, cognizance has been taken and after commitment the case ultimately traveled to the file of Sri Shyam Nandan Prasad Verma, the then Adhoc District and Sessions Judge, Fast Track Court No.1, Saran, Chapra for trial and disposal.

5. During trial charges were framed under Sections 307/34 and other sections of the Indian Penal Code.

6. In order to substantiate its case prosecution has examined altogether four witnesses have been examined, they are PW 1 Uma Shankar Pd. Singh, Advocate clerk, who has proved Ext.1, PW 2



Rukmini Devi, informant and injured, PW 3 Amarnath Singh, son of informant and PW 4 Dr. Sunil Kumar Singh, who has examined the informant (PW 2).

7. In this case I.O. has not been examined.

8. Doctor (PW 4) has found four injuries on the person of informant, they are (i) pain and tenderness over both shoulder joints, (ii) pain and tenderness over chest 5" from axial, (iii) complain of pain in rest body, more in lower abdomen and (iv) bruise and depressed mark over both wrist joint and above the ankle joint of both legs. All the injuries, according to Doctor, are simple in nature, injuries (i), (ii) & (iii) were caused by hard and blunt substance and injury No.(iv) was caused by rope like substance.

9. PW 2 was the sole eye-witness to the occurrence and she in her evidence in court has stated that while she was sitting in her verandah, accused Laljee Singh, Kapil Singh, Sribhagwan Singh, Ramjee Singh, Bharat Singh (since dead) and Saroj Singh came to her courtyard and started cutting the Jamun tree. Accused Ramjee Singh was armed with Tangi and accused Kapil Singh was armed with Dab and accused Laljee Singh took out sword from house of informant. Further she has stated that accused Laljee Singh caught hold of her lock of hair and dragged her to his place and there her legs and hands were tied by means of plastic rope and accused Kapil Singh, Ramjee



Singh and Bharat Singh (since dead) assaulted her by fists, slaps and legs. She further stated in her evidence that accused Sribhagwan Singh sprinkled petrol over her body and set her on fire, but in the meantime, accused Sribhagwan Singh himself got burnt and the fire did not affect her. She further stated that accused Sribhagwan Singh disrobed her by opening her sari. Even in her cross examination, her evidence remains unrebutted but she has not narrated the incident of sprinkling petrol and set her on fire in the fardbeyan, which is her initial version and there is also some contradictions in her statement. Doctor, who has examined the informant-injured, has found four injuries on her person, all simple in nature. PW 3, son of the informant, has supported the prosecution case and his evidence is corroborated by the evidence of PW 2.

10. Learned trial court on conclusion of trial has not found the appellants guilty under Sections 307/34 IPC, hence acquitted all the appellants under Sections 307/34 IPC. However, learned trial court has convicted the appellants under Sections 323/34 IPC and sentenced them, as stated above.

11. Submission of learned counsel for the appellants is two fold, firstly it has been submitted that there is contradiction in the statement of PW 2 from her earlier statement and secondly learned trial court has not given the benefit of Section 360 Cr.P.C. to the



appellants and even no reason has been assigned for the same, which is provided under Section 361 Cr.P.C.

12. Learned counsel for the State has supported the finding of guilt against the appellants and submitted that the judgment of conviction and order of sentence are just and proper but he conceded that learned trial court has not given any reason for not giving benefit of Section 360 Cr.P.C.

13. Having heard both sides and from perusal of evidence, as discussed above, it appears that though there is some contradictions with respect to manner of occurrence and place of occurrence but so far manner of occurrence is concerned, the evidence of PW 2 was corroborated by evidence of PW 3 and PW 4, Doctor found four injuries on the person of informant-injured, one of which bruise and depressed mark over both wrist joint and above the ankle joint of both legs which shows that she has been tied by rope.

14. Considering the facts and circumstances, the conviction under Sections 323/34 IPC appears to be just and proper. However, learned trial court in spite of having nothing available, has not given benefit under Section 360 Cr.P.C. and for that no reason has been assigned as provided under Section 361 Cr.P.C.

15. Considering the entire discussions made above, the conviction of the appellants under Sections 323/34 IPC is confirmed.



So far sentence is concerned, instead of confirming the sentence for six months R.I., the appellants are directed to be released on furnishing bonds of Rs.2000/- each for a period of six months to maintain peace and harmony.

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

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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