

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.623 of 2002

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

- =====
1. Bijay Kumar @ Bijay Prasad son of Late Jagarnath Prasad
 2. Anand Deo Prasad son of Yamuna Prasad
- Both are resident of Mohalla Naya Bazar (Pokhara), Siwan, Police Station
Siwan Town Distt. Siwan.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Akhileshwar Kumar Shrivastava, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-01-2018

Both the appellants were convicted under Sections 323 and 447/34 of the Indian Penal Code (hereinafter to be referred as 'the I.P.C.) and sentenced to undergo imprisonment for three months under Section 323 of the I.P.C. and to undergo imprisonment for 15 days under Section 447/34 of I.P.C. vide judgment and order of conviction dated 03.10.2002 passed by Sri Ashok Kumar Pathak, Additional District & Sessions Judge (Fast Track Court No.IV), Siwan in Sessions Trial No.174 of 1990/82 of 2002. Both the sentences were directed to run concurrently,

2. The appellants along with four other accused persons have been charged under Section 323 & 447/34 of the I.P.C. and appellant no.1 Bijay Kumar @ Bijay Prasad and appellant no.2



Anand Deo Prasad have been charged under Sections 337 and 447/34 of the I.P.C. and appellant no.1 Bijay Kumar @ Bijay Prasad and one Jagarnath Prasad have been charged under Section 307 and 447/34 of the I.P.C.

3. All the appellants have been charged under the aforesaid facts on the basis of fardbeyan lodged by Muneshwar Bhar, who died during the pendency of the trial; alleging that while he was constructing a House Latrine in his house, the accused persons entered into his house and assaulted.

4. It appears that during the pendency of the trial, the accused Jagarnath Prasad died, as such the case has been dropped against him. So far other accused persons are concerned, they have been acquitted from the charges levelled against them.

5. It further appears from perusal of the record that six witnesses have been examined in this case and they are P.W.1 Sanjay Kuamr, P.W.2 Pappu Bhar, P.W.3 Rajwatia Devi, P.W.4 Dr. Jai Nr. Prasad, P.W.5 Dr. Kalika Saran Singh and P.W.6 Sakaldeo Singh. It appears that I.O. has not been examined in this case and the informant died during the pendency of the trial, as such he has not been examined in this case.

6. The impugned judgment has been assailed by the



appellants on the ground that there are case and counter case between the parties, they are *patidar* and no such occurrence has been taken place, as alleged by the prosecution and the counter case filed by the appellants' side has been compromised and in this case appellants have been convicted under Sections as stated above.

7. It has further been submitted that as the I.O. has not been examined, as such the place of occurrence has not been established and the informant has also not been examined, as such the earliest version of the prosecution has not been legally brought on the record and in spite of that, the appellants have been convicted in this case, which is not sustainable in the eye of law.

8. Heard learned counsel for the State, who has supported the impugned judgment on the ground that there is consistent evidence available on the record that these appellants have assaulted Rajwatia Devi (P.W.3) and wife of the informant and P.W.5 Dr. Kalika Saran Singh has also found injuries on the person of the injured. Though the informant has not been examined and he has died during the pendency of the appeal but the evidence of the witnesses also show that the occurrence has taken place while the informant was constructing Latrine, as such the place of occurrence has also been established. It has also been submitted that considering the above



submissions, it appears that evidence of P.Ws. are consistent on the point of assault by the appellants to Rajwatia Devi supported by medical evidence and on the point of place of occurrence, hence there is no inconsistency in their evidence.

9. Having heard both sides and in view of considering evidence available on the record against these appellants of causing assault to P.W.3, supported by evidence of Doctor Kalika Saran Singh (P.W.5), who found injuries on his person, this Court finds no infirmities in the impugned judgment.

10. However, it appears from perusal of the record that they are *patidar* and the occurrence took place with respect to construction of a Latrine, there are case and counter case, in which counter case has been compromised between the parties. The learned trial court has considered the aforesaid aspect of the matter but not granted benefit of Section 360 of Cr.P.C. on the ground that the lady has been assaulted but the learned trial court has also failed to consider that not only the above fact but, apart from the above, the case is of the year 1989, as such 28 years has passed and during such a long period, the appellants had suffered the rigors and ignominy.

11. Considering this aspect of the matter, instead of confirming the sentence against the appellants, they are directed to be



released by the learned trial court on due admonition by the learned trial court for executing bond of Rs.3,000/- with two sureties for keeping peace behaviour for a period of six months.

12. Accordingly, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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AFR/NAFR	09.01.2018
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