

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.38 of 2004

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

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Mohan Choudhary

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 05-02-2018

1. No one appears on behalf of the appellant on repeated call. Learned Additional Public Prosecutor Mr. Sujit Kumar Singh is present. Ms. Shahin Begum advocate is present in court and on request, she agreed to render her services as amicus curiae on behalf of the appellant..

2. Accordingly, Ms. Shahin Begum advocate is appointed amicus curiae for the appellant.

3. Heard amicus curiae Ms. Shahin Begum for the appellant as well as learned Additional Public Prosecutor Mr. Sujeet Kumar Singh Advocate for the States and perused the record.

4. This Criminal appeal has been preferred against the judgment of conviction dated 20.11.2003 and sentence



order dated 21.11.2003 passed by Additional Sessions Judge VIII, Munger in Session case no.121 of 1999 by which and whereunder he convicted the sole appellant for the offence punishable under section 324 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for two years for the above stated offences.

5. It would appear from perusal of the record that Suryagarha P.S.Case no. 97 of 1998 was registered under section 307 and other minor sections of the Indian Penal Code against the appellant on the basis of statement made by PW-5 Ramjee Yadav, who stated in his written statement that on 07.05.1998 at about 7.30 p.m his son Ravindra Kumar Yadav had gone to the house of appellant for demanding money for milk but he was abused and assaulted by the appellant by means of Fasuli. As a result of which Ravindra Kumar Yadav sustained injury on his hand and leg.

6. After investigation, charge sheet was submitted and accordingly, after cognizance commitment was made. The appellant was put on trial and he was charged for the offences punishable under section 307 of the Indian Penal Code. In course of trial, prosecution examined, altogether,



eight witnesses and also got exhibited the injury report of the victim (PW-4). The statement of appellant was recorded under section 313 of the Cr. P.C in which he denied the prosecution story. The learned court below having relied upon the testimony of PW-4 (victim) came to the conclusion that prosecution miserably failed to prove the charge framed under section 307 of the Indian Penal Code. However, the learned trial court came to the conclusion that the prosecution succeeded to prove the charge under section 324 of the Indian Penal Code against the appellant and, accordingly, the trial court convicted and sentenced the appellant in the manner as I have already stated in this judgment.

7. Learned counsel appearing for the appellant submits that except the informant and victim not a single prosecution witness has supported the prosecution case and, moreover, there are several contradictions in the deposition of prosecution witnesses but, even then, the trial court convicted the appellant. She further submitted that according to prosecution case itself, the alleged occurrence took place in the year 1998 and more than 19 years have already been passed and the alleged occurrence is said to have taken place



on account of trivial dispute and, therefore, even if, this Court confirms the judgment of conviction, then also, this Court may interfere into the sentence order by setting off the period already undergone by the appellant in course of trial as well as during pendency of this appeal.

8. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order.

9. Having heard the contentions of both the parties, I went through the record. I find that the victim has very clearly stated that it was appellant, who assaulted him by means of Fasuli and the aforesaid statement of victim is corroborated by the statement of PW-6 Doctor. Therefore, I do not find any ground to interfere into the judgment of conviction. However, in my view, learned amicus curiae rightly submitted that the appellant may be sentenced for the period already undergone by him.

10. Admittedly, the occurrence took place on trivial issues in the year 1998 and only single blow of Fasuli was been given by the appellant. Furthermore, I find that the appellant was remanded in this case on 09.05.1998 and



remained in jail till 04.06.1998. Therefore, in my view, the period already undergone by the appellant in course of trial would be sufficient to meet the ends of justice. Accordingly, the appellant is sentenced to period already undergone by him.

11. In view of the aforesaid discussions, this criminal appeal stands dismissed with modification in sentence order in the manner as stated above.

12. The copy of first page and last page of the judgment be handed over to the learned amicus curiae for needful.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
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