

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.34 of 2009

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Ramraj Yadav S/o Chhabila Yadav, resident of village-Khargi Rampur, P.S.
Ziradai, Dist. Siwan.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Mrigendra Kumar and Mr. A.L.Prasad,
Advocates.

For the Respondent/s : Mr.Bal Mukund Pd. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 06-04-2018

This appeal arises out of judgment of conviction dated 19.12.2008 and order of sentence dated 22.12.2008 passed by Additional District and Sessions Judge, Fast Track Court III in Sessions Trial No. 237 of 2000, arising out of Hussainganj P.S. case no. 129 of 1999 by which the sole appellant has been convicted under Sections 307, 447 and 324 of the Indian Penal Code. The learned Trial Court has sentenced the appellant to undergo R.I. for a period of 07 years and also pay a fine of Rs. one thousand for the offence under Section 307 of the IPC and in default of payment of fine to further undergo R.I. for one year, to undergo imprisonment for one month for the offence under Section 447 of the IPC, to further undergo imprisonment for two years for the offence under Section 324 of the IPC. All



the sentences have been ordered to run concurrently.

The prosecution case in brief as per the 'fardbeyan' of Nandlal Mishir recorded in Sadar Hospital, Siwan in injured condition on 05.08. 1999 is that he along with wife and sister-in-law came on leave to his village and was sleeping in the house. He heard the sound of crying of female. The family members told him that Baijnath Mishir aged about 85 years was sitting on the Darwaja and this appellant gave a knife blow to him causing injury on the left side of his chest and there was bleeding. The informant raised alarm and chased him. He threw chilly powder on the informant. The appellant also gave knife blow to the informant causing injury in his left palm. The sister-in-law of the informant came for his rescue then appellant gave her also knife blow causing injury on her left hand. The informant has alleged that due to injury his grand father Baijnath Mishir was feeling difficulty in breathing. The learned Court below charged the appellant for the offence under Sections 307, 447 and 324 of the Indian Penal Code.

The prosecution in altogether has examined seven witnesses. Informant Nandlal Mishir has been examined as PW-7. He has stated that at the time of occurrence he was sleeping in his house. He heard the sound of crying of female member



of his family. They were crying that Ram Raj Yadav, the appellant has come to kill their grand father. The informant came near the door and saw that his grand father Baijnath Mishir was sleeping in the veranda of the door. The appellant gave knife blow to him causing injury on his left chest. He tried to save him. Then appellant threw chilly power on his eyes and gave knife blow on his left palm. The sister-in-law of the informant Sita Kumari came to save him then appellant gave repeated blow to his sister-in-law with knife on her left hand below shoulder. Thereafter the informant caught hold the accused and snatched the knife but the appellant pushed the informant and fled away.

Sita Kumari (PW5) is sister-in-law of the informant. She has also supported the prosecution case corroborating the evidence of the informant.

Ajay Kumar Mishir (PW1) has stated in his evidence that on the alleged date of occurrence he came out from his house on hulla and saw that appellant had given knife blow to Baijnath Mishir and when the informant Nand Lal Mishir caught hold him from behind the appellant also gave knife blow on the left palm of the informant. The sister-in-law of the informant came to save him then appellant gave knife blow on the left arm



above the kehuni of the sister-in-law of the informant.

Bidya Bhushan Shukla PW-2 has stated that on hulla he came to the door of Baijnath Mishir and saw that Nand Lal and his sister-in-law had caught hold the appellant Ramraj Yadav. Ramraj Yadav was having knife in his hand. This witness has stated that when he reached there he saw the accused was running away.

Radhey Shyam Mishir (PW4) in his evidence has stated that on the date of occurrence he was ploughing his land . He came to the house of the informant on hulla and saw that blood was oozing from the left chest of Baijnath Mishir. He had received knife injury and he saw that appellant was standing there with knife. He has further stated that the informant ran towards appellant. He gave knife blow on him. The sister-in-law of the informant came to save him then the appellant gave knife blow to her. All the three injured persons were brought to the Sadar Hospital, Siwan for treatment.

Dr. Suresh Prasad Sah (PW6) has examined the injured. He has examined Sita Kumari Pandey and found incised wound on left arm size 2" x 1" x muscle deep. He has found the nature of injury to be simple and caused by sharp cutting substance and the weapon may be knife. He has also examined



the informant Nandlal Mishir and found one incised wound on left palm in first web. Size 1 ½” x ½” x throw and throw 1 ½” x ½” dorsal and palmer surface of 1st web respectively. He has opined the aforesaid injury to be simple in nature caused by sharp penetrating weapon. This witness has also examined Baijnath Mishir and found an incised wound on the left side of the chest size 1” x ¼” x cavity deep and after X-ray he opined the injury to be grievous in nature caused by sharp penetrating weapon.

Gyaneshwar Mishir (PW3) has been declared hostile. He has stated that he knows nothing about the occurrence.

The defence has also examined four witnesses in this case.

DW-1 Yogendra Yadav has stated in his evidence that on the alleged date and year the mental condition of appellant was bad and at that time he used to assault and abuse any person due to his bad mental condition. He also got treatment in Banaras for mental ailment.

DW-4 Dr. Arun Kumar Gupta has identified his hand writing and signature on prescription of the appellant which has been marked as Ext. A.

Learned Additional Sessions Judge has mentioned in the



impugned judgment that the doctor failed to prove as to what was the condition of the appellant at the time of occurrence and therefore he has not believed the story that the appellant at the relevant time was suffering from insanity. The learned Additional Sessions Judge has mentioned in the impugned judgment that presumption under Section 84 of the I.P.C. is rebuttable and the accused has rebutted by placing all the relevant evidence. The onus to prove the plea of insanity was on the accused. But the trial Court was not satisfied with the evidence of the defence witnesses in support of the defence of the accused that he was suffering from insanity on the date of occurrence. The learned Trial Court has mentioned in the impugned judgment that in the statement under Section 313 Cr. P.C. also there is no specific plea taken by the accused that he was suffering from insanity. The learned Trial Court has on the basis of aforesaid evidence convicted the appellant for the offence punishable under Sections 307, 447 and 324 of the I.P.C.

This Court, on perusal of the evidence, finds that one of the injured Baijnath Mishir on whom the doctor has found grievous injury was not examined in the Court below. This Court further finds from the injury report of all the three injured



that there was no repetition of blow. The prosecution has not proved any motive for committing the offence with the informant with intention to kill Baijnath Mishir or the other members of the family of informant. The injury on the other member of family of the informant i.e. informant and his sister-in-law is on non- vital part of the body i.e. arm and left palm. One injury is alleged to have been caused to Baijnath Mishir on chest which was opined to be grievous by the Doctor but Baijnath Mishir himself did not appear in the Court below to give evidence. It further appears from the injury report that he has sustained only one injury on left side of the chest size 1" x ¼" x cavity deep.

For conviction under Section 307 of the I.P.C. the necessary ingredient is to prove that the assault has been done by the accused with intention to kill the victim. In the instant case, this Court does not find any motive brought by the prosecution to assault the injured person with intention to kill. The injury of the two persons, namely, informant and his sister-in-law are on non- vital part of the body. There was one injury to Baijnath Mishir on the chest said to be caused by sharp penetrating weapon. Therefore, there was no repetition of blow by the appellant even on Baijnath Mishir with intention to kill.



Therefore, the conviction of the appellant for the offence under Section 307 of the I.P.C. is set aside.

The learned Court below has convicted the appellant for the offence under Sections 447 and 324 of the IPC also. The aforesaid conviction is hereby affirmed. It is stated that petitioner has remained in custody during trial for about one and half years. In such circumstances, the sentence passed by the Court below is modified to the period of custody already undergone by the appellant.

In the result, the appeal is allowed in part with modification in conviction and sentence.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
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