

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.25 of 2011

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Tuntun Pandit, Son of Hero Pandit, Resident of Village Sikandarpur, P.S.
Deep Nagar, District Nalanda

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant	:	Mr. Binit Kumar, Advocate
		Mr. Raj Kishore Prasad, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP
for the Informant	:	Mr. Satya Ranjan Sinha, Advocate
		Ms. Seems Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 15-02-2018

Heard learned counsel for the parties.

2. This appeal is preferred against the judgment of conviction and order of sentence dated 26.11.2010 and 01.12.2010 respectively, passed by learned Additional District & Sessions Judge, Fast Track Court No.4, Nalanda, Bihar Sharif in Sessions Trial No.475 of 2000, arising out of Deep Nagar P.S. Case No.87 of 1999, whereby the appellant has been convicted under Sections 325 IPC and sentenced to undergo 5 years of RI and fine of Rs.2000/- and in case of becoming defaulter to further undergo 6 months of simple imprisonment and 1 month simple imprisonment under Section 341 IPC however, both the sentences shall run concurrently.



3. In the said sessions trial, the present appellant Tuntun Pandit along with three co-accused, namely, Haro Pandit, Akaisa Pandit and Kusum Devi were put on trial and all were charged under Sections 307, 341 and 323/34 IPC and Tuntun Pandit was also charged under Sections 307 and 325 IPC and Kusum Devi and Akaisa Pandit also charged separately under Section 323 IPC. The trial court acquitted all the accused persons including the present appellant Tuntun Pandit for the offence under Section 307 IPC but Tuntun Pandit has been convicted under Section 325 IPC and Kusum Devi and Akaisa Pandit have been convicted under Sections 323 and and convicted under Sections 341/34 IPC but no substantive punishment was awarded to other accused rather after admonition they were released by the trial court giving benefit under Section 3 of Probation of Offenders Act.

4. The short fact giving rise to the case is that Haro Pandit and Tuntun Pandit were engaged in gambling in front of the shop of the informant, so objected then Haro Pandit started throwing the articles kept in his shop, entered into scuffle, in the meanwhile, Tuntun Pandit picked up a spade and gave one blow over the head of the informant. Daughter of the informant came to his rescue then Haro Pandit, Kusum Devi, wife of Haro Pandit assaulted her and police after completion of investigation submitted charge-



sheet under Section 307 and other Sections of the Indian Penal Code against all the accused persons and after taking cognizance case was committed to the court of sessions for trial and on its conclusion the present judgment was passed.

5. Altogether seven witnesses have been examined by the prosecution and some documents have been brought on record by proving as exhibits including *fardbeyan* of the informant (Ext.1), the endorsement of the SHO of Deep Nagar Police Station (Ext.1/2), FIR itself (Ext.2) and injury report (Ext.3 series). X-ray report was also marked Y for identification. At the very out set, learned counsel for the appellant submits that he does not assail the conviction part rather gives emphasis to modify the sentence on two counts. First, that both sides are co-villagers and no previous conviction has been proved against the appellant and much time has elapsed since the said occurrence. In course of trial, the prosecution has proved that the appellant had given a blow by the back of the spade on the head of the informant but there was no repetition. Only a single blow was given at the head besides another injury is found on the shoulder but the Dr. M. Dubey (PW7) found injury on the head grievous one as there was fracture of the frontal bone, so the charge under Section 325 of the Indian Penal Code has been framed against the appellant. The trial court



has sentenced five years of RI and Rs.2000/- fine however, the sentence appears excessive. The punishment for voluntarily causing grievous hurt under Section 325 of the Indian Penal Code is the imprisonment which may extend to seven years and fine, so the minimum period of imprisonment is not prescribed under the law. Moreover in the case at hand much time has elapsed after occurrence approximately more than 18 years and there is nothing on record to show that the appellant was earlier convicted in any other case, hence, his sentence is reduced to period already undergone and fine of Rs.5000/- and that is to be paid to the informant, in case of default in making payment of fine to further undergo sentence of three months of simple imprisonment.

6. With the aforesaid modification in sentence, the appeal stands dismissed.

(Arun Kumar, J)

S.KUMAR/-

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