

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.392 of 2015**

Arising out of P. S. Case No. -72 Year- 2011 Thana –Sono, District- JAMUI

- =====
1. Sahebjan Mian, S/o Late Jumman Mian
 2. Shabina Khatoon @ Samina Khatoon, W/o Sahebjan Mian
 3. Israil Mian
 4. Sahid Mian, both are S/o Sahebjan Mian
 5. Sahnaz Khatoon, W/o Israyil Mian, all are resident of village-Panjiya, Police Station-Sono, District Jamui.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Amrendra Kumar-Advocate

For the Respondent/s : Mr. Sujeet Kumar Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 09-03-2018**

Appellants Sahebjan Mian, Shabina Khatoon @ Samina Khatoon, Israil Mian, Sahid Mian and Sahnaz Khatoon have been found guilty for an offence punishable under Section 341 of the I.P.C. and sentenced to undergo S.I. for one month, under Section 323 of the I.P.C. and sentenced to undergo S.I. for six months, under Section 324/34 of the I.P.C. and sentenced to undergo S.I. for two years vide judgment of conviction and sentence dated 22.05.2015 passed by the 4th Additional Sessions Judge, Jamui in Sessions Trial No.368 of 2011/ 52 of 2014.

2. During course of argument, it has been submitted by the learned counsel for the appellants that considering the nature of



the allegation in consonance with the motive so assigned for commission of the occurrence did not justify the sentence having been recorded against the appellants. It has also been submitted that appellants have got no criminal antecedent. While appellants Sahebjan Mian and Shabina Khatoon @ Samina Khatoon are elderly aged about more than 75 years and in likewise manner, the remaining appellants happen to be, apart from the fact that appellants have faced rigour of trial since 2011. Furthermore, it has also been submitted that from the evidence available on the record, more particularly that of doctor (PW-7), the injuries happens to be superficial in nature, which exposes the activity of the appellants, even considering the nature of allegation attributed against them. Apart from this, it has also been submitted that both the parties are close *Pattidar* and dispute arose on account of partition of a land, which the prosecution party was not inclined to accept.

3. On the other hand, learned Additional Public Prosecutor submitted that appellants should not be allowed to avail the anvil of Probation of Offenders Act in the background of the fact that they have brandished the deadly weapon during course of occurrence irrespective of nature of injuries having over the person of injured.

4. PW-4 Md. Sattar Mian filed written report on



13.07.2011 alleging inter alia that on the same day at about 5.30 p.m. while he along with his wife Rijwana Khatoon (PW-5) was coming to his house after taking bath in a river and as soon as reached near the house of Sahebjan Mian, Sahebjan Mian inquired from him over partition of a land over which he replied that as the land has been exclusively purchased by him on account thereof, he will not accede to his request. Furthermore, he also disclosed that Panch had given its verdict in his favour, over this, Sahebjan Mian provoked his both sons to assault as a result, Israil Mian came with sword and Sahid Mian came with lathi and began to assault. It has further been disclosed that Israil Mian gave sword blow over head causing injury thereupon. Sahid Mian assaulted with lathi over his right hand causing injury thereupon. Furthermore, Sahnaj Khatoon armed with Khurpi and Sabina Khatoon armed with axe came and began to assault Rijwana Khatoon. On hue and cry, villagers came, whereupon accused persons fled away and during course thereof, they have also snatched away a chain from Rijwana Khatoon.

5. After registration of Sono (Charkapathar) P. S. Case No.72 of 2011, investigation commenced and concluded by way of submission of chargesheet, whereupon trial proceeded and culminated in a manner, subject matter of instant appeal.

6. Defence case, as is evident from mode of cross-



examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Three DWs have been examined to substantiate such plea.

7. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, Ayub Mian, PW-2, Rahmat Mian, PW-3, Md. Kalim Mian, PW-4, Md. Sattar Mian, PW-5, Rijwana Khatoon, PW-6, Birendra Kumar, I.O. and PW-7, Dr. Manish Kumar as well as had also exhibited as Exhibit-1, signature of informant over written report, Exhibit-2 series, requisition issued by the Police, Exhibit-3 series, injury report of respective injured. Defence had also examined three DWs viz. DW-1, Ahmad Mian, DW-2, Tabarak Mian and DW-3, Samsul Haque. No documentary evidence has been adduced on behalf of defence.

8. From the evidence, it is apparent that both the parties are close agnate as admitted by PW-4, informant, under Para-5. In likewise manner, PW-1, PW-2 and PW-3 are also close agnate of the informant as is evident from evidence of PW-2 under Para-2. Furthermore, from the Exhibit-3 series, it is evident that PW-4 **Md. Sattar Mian** had sustained following injuries:-

- i) Three (3) lacerated deep cut wound on left side of scalp interiorly size 3" x ½", 1 ½" x ½", 1" x ½".*
- ii) Swelling over left eye.*
- iii) Abrasion on right shoulder.*



iv) Lacerated wound over right arm anteriorly size 3" x ½".

v) Swelling and tenderness over left forearm.

While PW-5, **Rijwana Khatoon** had sustained following injuries:-

i) Cut wound on right thumb size 1" x ½".

ii) Swelling over left dorsum of hand, bodyache.

It is also evident that PW-4 as well as PW-5, both the injured have supported their case, although there happens to be some sort of deficiency in the evidence of remaining PWs.

9. Taking into account the activity of the appellants, learned lower Court ruled out applicability of Section 307/34 of the I.P.C. and convicted the appellants as indicated hereinabove. Considering the nature of the injuries as well as evidence, more particularly that of PW-4 and PW-5, it looks proper to accede with the prayer having been made on behalf of appellants and that being so, maintaining the conviction recorded by the learned lower Court, instead of sentence as inflicted by the learned lower Court, all the appellants are found to have access of getting the benefit of Probation of Offenders Act and that being so, modifying the sentence having recorded by the learned lower Court, they are directed to be released on due admonition in accordance with Section 3 of the Probation of Offenders Act and for that, all the appellants will appear before the learned lower Court within four weeks till then, the privilege of bail



being enjoyed by the appellants are hereby extended. In case of fault at the end of the appellants, the learned lower Court will be at liberty to proceed against the appellants in accordance with law. In terms thereof, the appeal is disposed of.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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