

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.558 of 2015**

Arising Out of PS.Case No. -92 Year- 2009 Thana -BHAGWAN BAZAR District- SARAN

=====

Santosh Kumar Pandey, son of Late Radha Krishna Pandey, resident of Mohalla-Daulatganj Gaddi, Police Station- Bhagwanpur Bazar in the District of Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Sharma-Advocate

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

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 08-08-2018

Appellant Santosh Kumar Pandey has been found guilty for an offence punishable under Section 307 of the I.P.C. and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for two months, additionally, vide judgment of conviction and order of sentence dated 13.08.2015 passed by the 4th Additional Sessions Judge, Saran at Chhapra in Sessions Trial No.59 of 2010/ 1759 of 2014.

2. Bidya Bhushan Pandey (PW-2) filed written report on 27.04.2009 disclosing therein that his father happens to be three brothers. Late Laxmi Pandey, his father, Late Krishna Pandey of whom, Pawan Kumar is the son and Radha Krishna Pandey, who has two sons, Santosh Kumar Pandey and Rajesh Kumar Pandey. They



have got joint house at Mohalla-Daulatganj Gaddi wherein his uncle Radhakrishna Pandey along with his sons constructed septic tank after encroaching the area more than their share. When he was fencing his land, his cousin brother Santosh Kumar Pandey, Rajesh Kumar Pandey and Radhakrishna Pandey armed with lathi, bhala, garasa came and then, assaulted him with garasa over his head as a result of which, he sustained cut injury. He became unconscious and fell down over the ground. They have also assaulted his cousin brother Pawan Kumar with lathi. They have also taken away ornaments belonging to his wife and a box. He has been taken to Sadar Hospital for treatment and then thereafter, came to police station where submitted written report.

3. After registration of Bhagwan Bazar P.S. Case No.92 of 2009, investigation commenced and after concluding the same, chargesheet has been filed. It is further evident that Radhakrishna Pandey died on account thereof, trial proceeded against Santosh Kumar Pandey and Rajesh Kumar Pandey, out of whom, Santosh Kumar Pandey has been held guilty and sentenced in a manner, as indicated above while Rajesh Kumar Pandey has been found guilty for an offence punishable under Section 323 of the I.P.C. and let off after giving benefit of Probation of Offenders Act.

4. 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. Both parties are own family members and there was dispute amongst the parties relating to partition. Furthermore, on the alleged date of occurrence, Smt. Asmita Devi, wife of Santosh Kumar Pandey, appellant was assaulted, for that a criminal case has been instituted and to counter-meet the allegation, this false case has been instituted.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, Manju Devi, PW-2, Bidya Bhushan Pandey, PW-3, Pawan Kumar, PW-4, Sunita Kumari, PW-5, Dr. Alok Bihari Saran, PW-6, Jai Shankar Singh and PW-7, Sanjay Kumar Singh. Side by side, had also exhibited signature of the informant over F.I.R. as Exhibit-1, written report as Exhibit-1/1, injury report Exhibit-2, signature of PW-6 over formal F.I.R. as Exhibit-3, Bed-head ticket as Exhibit-4, admission register as Exhibit-5. Defence had also adduced three DWs, who are DW-1, Smt. Asmita Devi, DW-2, Chandini Kumari and DW-3, Dr. Anuradha Pathak.

6. Learned counsel for the appellant has submitted that from the evidence available on the record, it is apparent that both the parties are descendants from common ancestor, they are residing in the same house, they are in touch with each other in day to day affair as there happens to be no partition wall. From the evidence available on the record, it is evident that whatever allegation has been, is an outcome of spur of moment without any pre-meditation or pre-



meeting of mind, pre-determination. It has also been submitted that it was bad-luck for the appellant that he inflicted farsa blow, but without any intention or knowledge and that happens to be reason behind that the injuries whatever been found at the end of doctor (PW-6), that happens to be indicative of the fact that the blow was given without any knowledge or intention. So, in the facts and circumstances of the case, it is a fit case wherein in worst case, there would be applicability of Section 324 of the I.P.C. and for that, considering the occurrence of the Year 2009, presence of case and counter-case and other surrounding circumstances as indicated above the finding be modified, the sentence be reduced as already undergone enhancing the quantum of fine of which, certain amount be allowed to be paid to the informant/ injured by way of compensation, which is found permissible in terms of Section 357 of the Cr.P.C.

7. On the other hand, learned Additional Public Prosecutor fairly concedes on that very score and submitted that it will be a step forward in giving an opportunity of re-union, that means to say, restoration of peace and harmony.

8. Considering the evidence in its totality and the surrounding circumstances, it is apparent that both the parties are descendants of common ancestor occupying the ancestral house jointly, having common ingress and egress without any specific demarcation. It is further evident from the objective finding of the I.O.



(PW-6), that there happens to be absence of demarcation identifying separate identity, absence of blood stain at the P.O., as per evidence of doctor, PW-5, single sharp cut injury has been found having dimension 3” x 2” over right side of scalp in consonance with the oral evidence whereunder, no repetition of blow has been alleged coupled with occurrence took place on account of putting asbestos, did not justify application of Section 307 I.P.C. Hence, same is erased. However, considering the evidence in its entirety along with medical evidence, the allegation attracts Section 324 of I.P.C. and is accordingly, held so.

9. Furthermore, so far sentence part is concerned, the period having undergone will meet the ends of justice enhancing the fine appertaining to Rs.50,000/- (fifty thousand). If deposited, Rs.30,000/- (thirty thousand) will be paid to the informant on proper identification. In default thereof, appellant to undergo R.I. for nine months as per Section 65 of the I.P.C.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	10.08.2018
Transmission Date	10.08.2018

