

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.362 of 2003

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

- =====
1. Hari Shanker Upadhyay, son of Late Saryu Upadhaya, resident of village Kachnar, P.S. Siswan, District Siwan
 2. Ram Ekbal Bhagat, son of Late Ramashray Bhagat, resident of village Kachnar, P.S. Siswan, District Siwan

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Bamdeo Pandey with Mr. Jitendra Pandey,
Advocates

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 28-03-2018

A supplementary affidavit has been filed on behalf of appellant No.2 Ram Ekbal Bhagat annexing photo copy of death certificate, which shows that appellant No.2 Ram Ekbal Bhagat has died on 17.4.2009 itself.

2. In the said circumstances, this appeal against appellant No.2 Ram Ekbal Bhagat stands abated.

3. Both the appellants Hari Shankar Upadhyay and Ram Ekbal Bhagat (since died) stand convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year vide judgment and order dated 9.7.2003 passed by Sri A.P. Srivastava, the then Ad hoc District and Sessions Judge, Presiding Officer, 1st Additional, Fast Track Court at Siwan in Sessions Trial No. 96/86/310/2002.



4. Prosecution case as per fardbeyan of informant Bishnudat Upadhyay (PW 7) recorded by police at hospital, in short, is that while he was sitting at his darwaja accused persons came there armed with Bhala and Farsa respectively and it is alleged that appellant Hari Shankar Upadhyay exhorted by saying that it was the informant who was the root cause of all the troubles and it was at his instance, gun of the informant was deposited at the police station. Further case is that appellant Hari Shankar Upadhyay hurled Bhala aiming at the informant which hit his stomach and appellant Ram Ekbal Bhagat (since died) hurled Farsa aiming at the neck of the informant which hit his left hand causing injury. The informant fell down and he raised alarm. Further case is that other accused persons came there armed with lathi and assaulted the informant by lathi, causing injuries to him. Thereafter the informant was taken to hospital.

5. On the basis of aforesaid fardbeyan Siswan P.S. Case No.06 of 1985 was registered and trial proceeded against the appellants and other accused persons also. During trial charges have been framed against the accused persons, under Sections 147 and 307/149 IPC.

6. In order to establish its case the prosecution during trial has examined altogether eight witnesses, they are PW 1 Sheojee Singh, who is co-villager, PW 2 Prem Shankar Singh, PW 3 Babhu Nand Yadav, who is a formal witness, PW 4 Baijnath Chaudhary,



who is a formal witness, PW 5 Rama Kant Upadhyay, PW 6 Kali Kant Singh, PW 7 Bishnudat Upadhyay, who is informant and injured and PW 8 Mehdi Abbas. In this case neither I.O. nor Doctor has been examined.

7. Learned trial court has convicted the appellants under Section 324 IPC, however acquitted other accused persons from the charges leveled against them.

8. Learned counsel for the appellant has assailed the judgment on the ground that in this case there was enmity between the parties from before and a proceeding under Section 107 Cr.P.C. was initiated between them. Further submission is that neither Doctor nor I.O. has been examined in this case, as such prosecution has failed to prove the place of occurrence and manner of occurrence beyond all shadow of reasonable doubts and in such a situation the conviction of the appellant under Section 324 IPC does not appear to be sustainable in the eye of law.

9. On the other hand, learned counsel for the State has defended the judgment on the ground that several injuries were caused to the informant by the accused persons, including the appellant and he has drawn my attention towards paragraph-10 of the impugned judgment in which injuries sustained by the informant were mentioned and one of the injuries was grievous in nature and, as such the conviction is just and proper and does not require any interference



by this Court.

10. Having heard both sides and on perusal of evidence of PW 7, who is informant of this case, it appears that he has supported the prosecution case so far assault and injuries caused to him by appellant by means of Bhala, Farsa and Lathi and other accused persons are concerned and the evidence of PW 7 has been corroborated by the evidence of PWs 1, 5, 6 and 7 so far manner of occurrence is concerned, as they had also stated that appellant Hari Shankar Upadhyay hurled Bhala blow on the abdomen of the informant and Ram Ekbal Bhagat (since dead) gave Farsa blow on informant causing injury to him. Though Doctor has not been examined but injury report (Ext.4) has been brought on record in this case, which has been proved by PW 8. It has come that the Doctor has died during pendency of the appeal. However, there is nothing available on record to show that PW 8 was working with the Doctor at that time and injury report was written in his presence. In such view of the matter, the injury report has not legally been brought on record and that cannot be looked into.

11. However, ocular evidence on record is consistent that appellant Hari Shankar Upadhyay assaulted the informant by Bhala and caused injury to his abdomen, as such, the conviction of appellant under Section 324 is sustainable in absence of evidence of Doctor and the same is affirmed.



12. Learned counsel for the appellant has submitted that appellant Hari Shankar Upadhyay has remained in custody for six and a half months during trial and occurrence is of the year 1985, i.e., 33 years old and appellant was aged 55 years at the time of conviction, as such by now he must be at the age of more than 70 years. In such view of the matter, lenient view may be taken and sentence be reduced to the period already undergone by him in custody.

13. I find force in the submission of learned counsel for the appellant in the given facts and circumstances. The sentence is reduced to the period already undergone by the appellant Hari Shankar Upadhyay in custody.

14. With the above modification in sentence, the appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

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