

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.245 of 2003**

Sessions case no. 654/2000 arising Out of Jagdishpur P.S. case no. 167/1997
District- BHAGALPUR

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1. Opiya @ Upendra Mandal Son of Late Shital Mandal
2. Rajesh Das Son of Sri Ayodhiya Rabidas
Both resident of village Satghara P.S. Jagdishpur Dist. Bhagalpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs Nutan Sahay.

For the Respondent/s : Mr. Syed Ashfaque Ahmad

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT

Date: 06-02-2018

1. No one appears on behalf of the appellants on repeated call. Learned Addl. Public Prosecutor is present.

2. In the aforesaid circumstance, Mrs. Nutan Sahay is appointed as amicus curiae so that she could place the case of appellants and give assistance to this court.

3. I have heard Mrs. Nutan Sahay appearing as amicus curiae for the appellants and Sri Syed Ashfaque Ahmad for the State and perused the record.

4. This criminal appeal has been preferred against the judgment of conviction and sentence order dated 10.2.2003 passed by the Addl. Sessions Judge FTC, Bhagalpur in Sessions case no. 654/2000 (Trial no.164/2002)



by which and whereunder he convicted the appellants for the offences punishable under sections 341 and 323 of the Indian Penal Code and sentenced them to undergo simple imprisonment for one year under section 323 of the Indian Penal Code and simple imprisonment for one month under section 341 IPC. Both the sentences were ordered to run concurrently and the Addl. Sessions Judge also directed for setting off the period already undergone by the convicts.

5. Jagdishpur P.S. case no. 167/1997 for the offences punishable under sections 341, 323 and 307/34 of the Indian Penal Code was registered against the appellants and one Ashok Das on the basis of fardbeyan of the informant Lallu Das who stated in his fardbeyan that on 18.9.1997 FIR named accused Ashok Das was cutting the wall of his house and having learnt the aforesaid fact, he went there and forbade him to do so but accused Ashok Das assaulted him with fists and slaps. Furthermore, on the same day at 8.45 p.m. accused Ashok Das along with the appellants came at his house and assaulted him by lathi as a result whereof he sustained injury on his testicles and other parts of the body.

6. Police after investigation submitted charge sheet against the appellants and accused Ashok Das. The



cognizance of the offence was taken but due to abscond of FIR named accused Ashok Das, case of the appellants was separated. Accordingly, they were put on trial before the learned Sessions Judge. Appellants were charged for the offence punishable under sections 307/34 and 341 of the Indian Penal Code.

7. In course of trial, altogether, seven witnesses were examined but PW1, PW2, PW3, PW4 and PW5 were declared hostile as they did not support the prosecution case. PW6 (informant) was examined and he supported the prosecution case and stated about incident of assault. PW7, Investigating officer, was also examined. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they claimed their false implication. No evidence was adduced by the appellants in support of their case. Learned court below, after scrutinizing the evidences available on record, convicted and sentenced the appellants in the manner as stated above having relied upon the sole testimony of PW6, informant as well as injured of the present case.

8. Learned Amicus curiae appearing for the appellants submitted that admittedly, there was land dispute



between the parties and, therefore, it was unsafe to convict the appellants on the sole testimony of PW6, informant of this case but even then learned court below convicted and sentenced the appellants.

9. Learned Additional Public Prosecutor appearing for the State submitted that now, it is well settled principle of law that if the statement of sole witness inspires confidence to the court, conviction can be passed on testimony of the sole witness and, therefore, there is no illegality into the impugned judgment of conviction and sentence order.

10. Having heard the contentions of both parties, we went through the record. I do agree with the submissions of learned Addl. Public Prosecutor and, in my view, judgment of conviction can be passed even on testimony of the sole witness, if statement of said witness inspires confidence to the court. In the present case, PW 6, specifically, stated the manner of occurrence as well as injury sustained by him and PW7 has proved the place of the occurrence and, therefore, I do not find any scope to interfere into the impugned judgment of conviction. So far as sentence order is concerned, it is obvious that the appellants were sentenced simple imprisonment for one year under section 323 of the Indian



Penal Code and simple imprisonment for one month under section 341 IPC.

11. The lower court record goes to show that appellant no.1, namely, Opiya @ Upendra Mandal was remanded in another case in the year 1998 and thereafter, he was remanded in the present case in the year 2000 and remained in jail custody till disposal of Sessions case no. 654/2000 and subsequently, he was granted provisional bail by this court vide order dated 20.5.2003. Therefore, it is obvious that appellant no.1 has remained in custody for more than the period which was awarded to him by passing the sentence order.

12. Since the court below has already directed to set off the period already undergone by the convicts, there is no need to modify the sentence order in respect of appellant no.1. So far as appellant no.2, namely, Rajesh Das is concerned, it would appear from perusal of the record that he was remanded before submission of the charge sheet and subsequently, he was granted bail and, therefore, in my view, ends of justice would be met, if appellant no.2 is sentenced to the period already undergone by him.

13. Accordingly, this appeal stands dismissed with



modification in the sentence of appellant no.2.

14. Let first and last page of the copy of this judgment be handed over to Mrs Nutan Sahay for needful.

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
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