

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.126 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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Fakir Mian @ Fakira Mian, son of Ikbal Mian, resident of village Ghiwadhar, P.S.
Harsidhi, District East Champaran

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Shanti Suman Kumar, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-02-2018

The sole appellant has been convicted under Section 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months, that apart appellant has been acquitted from the charges under Sections 307/34 and 504 IPC and all other appellants (not appellants here) have been acquitted from all the charges leveled against them by the judgment and order dated 30.1.2003 passed by Sri Bimal Kumar, the then Presiding Officer, FTC No.3, Additional District and Sessions Judge, East Champaran, Motihari.

2. Prosecution case as per narration given by one Panna Lal Sah (not examined) recorded at Rajkiya Hospital, Harsidhi on 6.5.1989 during his treatment and treatment of his father, who was in unconscious condition, in short, is that his pumping set was in the



field of Mahboob Mian as about 10-12 days before appellant Fakira Mian got his field irrigated by the said pumping set and there was previous dues of Rs.50/- with him and in the morning of 6.5.1989 at about 7 A.M. the appellant Fakira asked his younger brother Rambilash Sah to irrigate his field on which they demanded the arrear and he refused to watering unless the previous dues was cleared. Thereafter some hot exchange of words took place between them and on hulla son of appellant Ijhar Mian became annoyed and after some time father and brother of informant, namely, Nagina Sah and Babu Lal Sah came there and thereafter appellant Fakira Mian armed with Chura, Ijhar Mian armed with Chura, Miyajan Mian armed with Nalkati and Bhulai Mian armed with lathi came and started to abuse them and villagers came there and when father of informant Nagina Sah tried to pacify the matter Miyajan ordered his men to give him lesson and also told to kill him. There upon all the four accused persons started to assault his father by stabbing Chura blows 4 to 5 times due to which he became badly injured and unconscious. Further case is that accused Tahir Mian assaulted with Garasa on his brother Babulal Sah with intention to kill him which hit upper portion of the forehead and accused Ijhar Mian assaulted him on his neck by Chura and accused Miyajan Mian fired with his Nalkati on his brother Motilal Sah which could not hit him and after seeing the grievous



injury on the person of injured the accused persons fled away.

3. On the basis of the aforesaid fardbeyan Harsidhi P.S. Case No. 39 of 1989 was registered on 6.5.1989 under Sections 324, 323, 504 and 307/34 IPC and after investigation charge sheet has been submitted against the accused persons, including the appellant and after cognizance the case has been committed to the court of sessions, which ultimately traveled to the file of Sri Bimal Kumar, the then Presiding Officer, FTC No.3, Additional District and Sessions Judge, East Champaran, Motihari for trial and disposal.

4. In course of trial altogether 11 witnesses have been examined on behalf of prosecution, they are P.W.1 Mohan Sah, P.W.2 Babu Lal Sah, P.W.3 Daya Sah, P.W.4 Hiranman Singh, P.W.5 Baij Nath Sahoo, P.W.6 Yusuf Ansari, P.W.7 Moti Lal Sah, P.W.8 Prabhu Sah, P.W.9 Chulahi Sah, P.W.10 Rambilas Sah and P.W.11 Nagina Sah. Out of them P.W.4 is a formal witness, who has proved some document. P.Ws. 5, 6 & 8 have been declared hostile.

5. In the present case, I.O., Doctor and informant have not been examined and only injury report has been brought on record.

6. On behalf of defence no ocular or documentary evidence has been adduced and their defence as per cross examination and statement under Section 313 Cr.P.C. is of innocence and complete denial of the occurrence.



7. Learned trial court on considering the evidence available on record and also realizing the fact that Doctor has not been examined and injury report has also not brought on record has acquitted all other accused persons and also acquitted the appellant under Sections 307/34 and 504 IPC. However, considering the facts and circumstances and also considering the evidence on record the appellant has been convicted under Section 323 IPC and sentenced to undergo R.I. for six months.

8. Contention of learned counsel for the appellant is that neither I.O. nor Doctor has been examined and even informant has not been examined in this case and in such a situation the sole basis for initiation of the proceedings has not been established by the prosecution and furthermore as the Doctor has not been examined it cannot be said as to what type of injuries the injured were carrying apart from several discrepancies in the evidence of witnesses from the earlier statement made before police and also there is intra contradiction between the evidence of witnesses.

9. On the other hand, learned counsel for the State has defended the judgment on the ground that though informant has not been examined but P.W.2 and P.W.11 are injured in this case and they have given the full description of assault which clearly shows that appellant Fakira Mian assaulted the injured Nagina Sah by Chaku and



other witnesses, P.Ws. 1 and 3 have supported the prosecution case and in such a situation only because the informant has not been examined their evidence cannot be brushed aside and hence the conviction of the appellant under Section 323 IPC is just and proper which does not require any interference.

10. In the background of submissions raised by both sides, on evaluation of evidence it appears that though informant has not been examined and P.Ws. 2 and 11 are injured in this case and they have supported the prosecution case in toto. It further appears that appellant has given chura blow on Nagina Sah and other witnesses P.Ws. 1 and 3 have also supported the prosecution case. So far intra contradiction between the evidence of witnesses and from the previous statements is concerned, they are not so vital so as to disbelieve the whole evidence of P.Ws. 2 and 11. It further appears that learned trial court considering the entire evidence has only convicted the appellant under Section 323 IPC and acquitted all the accused persons, including the appellant from the other charges leveled against them and hence learned trial court has taken a lenient view and convicted the appellant only under Section 323 IPC and, as such, I find no infirmity in the impugned judgment of conviction and the same is affirmed.

11. The impugned judgment shows that the appellant has



been sentenced to undergo R.I. for six months and submission of learned counsel for the appellant is that appellant has remained in custody for more than one month during trial and the occurrence is of the year 1989 and furthermore the age of the appellant is also 75 years and, as such, a lenient view may be taken and sentence of the appellant may be reduced to the period already undergone by him.

12. I find force in the submission of learned counsel for the appellant. As such, considering the same, the sentence of the appellant is modified to the period already undergone by him.

13. With the above modification in the order of sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

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