

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.18 of 2003

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

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Vijay Singh son of Ramashish Singh of village Umdha P.S. Chapra Muffasil,
Disttict Saran

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Bishwajeet Singh, Adv.
Mr. Kundan Kumar Singh, Adv.
For the Respondent : Mr. Bipin Kumar, APP
For the Informant : Mr. Lakshmi Kant Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-01-2018

The sole appellant was convicted under Section 307 of the Indian Penal Code (hereinafter to be referred as 'the IPC') and sentenced to undergo R.I. for five yeas and fine of Rs.1,000/- with default clause. At the very outset it is submitted that fine has already been deposited by him.

2. The prosecution case as per the Fardbeyan of Arjun Singh (P.W.2) in short is that the appellant has assaulted P.W.4 Suresh Singh by *dagger* on the scalp region and his neck, causing cut injury, thereafter he was taken to the hospital. The above Fardbeyan led to registration of Muffasil P.S.Case No.155 of 1999 and after investigation, the police submitted charge-sheet, cognizance of the case has been taken and the case was committed to the court of



Sessions, which ultimately came to the file of Sri Anwar Ahmed, the then District & Sessions Judge, Saran, for trial and disposal.

3. In course of the trial, six witnesses were examined on behalf of the prosecution, their details are as follows : P.W.1 Suraj Singh, father of the injured, P.W. 2 Arjun Singh, informant, P.W.3 Upendra Kumar Singh, brother of the injured, P.W.4, Suresh Singh, injured, P.W.5. Dr. Sanat Kumar Singh, who has treated the injured, and P.W.6 Ram Chandra Singh, who is Investigating Officer. Apart from the above, the following documents have been admitted into evidence and they are : Ext. 1 Signature of witness Arjun Singh on Ferdbeyan, Ext.2 Injury Report, Ext.3 Fardbeyan & Ext.4 Formal FIR.

4. On behalf of the defence, one formal witness has been examined as D.W.1 Ram Niwas Tiwary, who has proved the complaint petition filed by the mother of the appellant against Suresh Singh for the occurrence on the same day.

5. As per the ocular and documentary evidence of denfence, it appears that their defence is of false implication and of innocence and no such occurrence, as alleged by the informant, has taken place rather the informant and 2-3 others entered inside his house in drunken condition and started misbehaving with the female members and during that an altercation took place and Suresh Singh assaulted by *dagger*, causing injury to himself.



6. The learned trial court has convicted the appellant under Section 307 of the IPC and sentenced him to undergo RI for five years with a fine of Rs.1,000/- in default clause.

7. The contention of the learned counsel for the appellant is that the learned trial court has failed to understand that P.W.1, who happens to be father-in-law of the injured, and P.W. 2, who is the informant, have given a complete different manner of occurrence in the court as they have stated that wife and sister of the appellant caught hold the injured and thereafter the appellant has assaulted by *dagger* whereas in the FIR there is no such story and simply it is stated that the appellant has assaulted by *dagger*, as such there is difference between the evidence of P.Ws. 1 & 2 and FIR. It is further stated that the presence of the father-in-law does not appear to be probable in the facts and circumstances of the case. So far P.W.3 is concerned, he is brother of the injured and apart from that no independent witness has been examined in this case. It has also been submitted that the appellant has brought on record the complaint case filed by the mother of the appellant that shows a different manner of occurrence and in such view of the matter, non-availability of the blood stain mark at the place of occurrence by the I.O., also creates suspicion in the manner of occurrence, hence, the conviction of the appellant is not sustainable in the eye of law, moreover no case is



made out under Section 307 of the IPC, even according to the FIR, the appellant has assaulted him and his chain was broken by someone and even blow was not on the vital part of the body and both the injuries are simple in nature. Further the learned trial court has convicted the appellant under Section 307 of the IPC.

8. On the other hand the learned counsel for the State/Informant has supported the judgment stating that all the evidences have categorically stated about the assault by the appellant and the same has found support from the medical evidence of the Doctor, who has found two injuries on the person of the injured and both the injuries were of sharp cutting weapon and the I.O. has also been examined, hence, no infirmities have been found in the impugned judgment and it is sustainable in the eye of law.

9. On the close scrutiny of the evidence, it appears that P.W.2 is the informant in this case and no doubt in his evidence in the court, he has come with a different manner of occurrence as the sister and mother of the appellant had caught hold the injured and thereafter appellant has assaulted, which is not the prosecution story. It further appears that P.W.1 has also stated that mother and sister of the appellant had caught hold to the injured and thereafter the appellant has assaulted and it further appears that no proper justification about his presence has been mentioned, however, P.W.3 (Upendra Kumar



Singh), who is the brother of the injured, has supported the prosecution case and moreover P.W.4 is the injured himself and he has supported the prosecution case and stated about the assault by the appellant by *dagger* twice. The Doctor (P.W.5), who has examined the injured, has found following injuries on the person of the injured, they are :

***“i. One incised wound on the left arm 7” X 1 ½” X bone deep;
ii. One incised wound on the supra spines area of left scapula.
Both wounds were bleeding profusely. Nature simple caused by sharp cutting weapon by Chhura or knife.”***

10. The injury report has also been brought on record as Ext.2 and that shows that injuries are simple in nature.

11. Considering the evidence as above, it appears that there are sufficient and cogent material available on the record to show that the appellant has assaulted to the injured by the *dagger* causing two injuries to him, however, submission of the learned counsel for the appellant is that no case is made out under Section 307 of the IPC in this case as the occurrence has taken place on the petty issue and the injuries are not on the vital part of the body and these are simple in nature.

12. On examination of the evidence as stated above, it



appears that the injuries on the person of Suresh Singh (injured) appears to be simple in nature on the scapular region and arm and they are not on the vital part of the body. Further, it appears that motive as alleged in the FIR itself shows that the chain of the appellant was broken, as such he has assaulted. In such a situation, it can not be said that there was intention of the appellant to cause such injuries which are dangerous and he has not assaulted on the vital part of the body moreover, the injuries are simple in nature.

13. Considering the aforesaid aspect of the matter, conviction of the appellant under Section 307 of the IPC does not appear to be sustainable in the eye of law rather the appellant can be convicted under section 324 of the IPC, hence, conviction of the appellant under Section 307 of the IPC is modified to sentence under Section 324 of the IPC.

14. The appellant was to undergo RI for five years and fine of Rs.1,000/- and the appellant has made payment for it. The appellant has remained in custody during the pendency of the trial for more than 18 days and the occurrence is of the year, 1995 and further the FIR took place in the spur of moment, considering all aspect of the matter and also the age of the appellant, which appears to be 35 years at the time of the judgment, I think that sentence of the appellant be reduced to the period undergone and the fine of Rs.1,000/- be enhanced to



Rs.6,000/-, which shall be payable to the injured (Suresh Singh).

15. With the aforesaid modification in the conviction and sentence of the appellant, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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