

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.645 of 2002

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Garib Sah, son of Satya Narayan Sah, resident of Village- Bhawanipur, Police
Station- Kurhani, District- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
Criminal Appeal (SJ) No. 8 of 2003

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1. Satya Narain Sah, s/o- Pradeep Sah
2. Amir Sah @ Amir Nath Sah, S/o- Satya Narain Sah, both resident of
Bhawanipur, P.S. Kurhani, District- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Manindra Kishore Singh, Advocate
Mr. Manish Kumar-3, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 05-01-2018

As both these appeals arise out of a common judgment rendered by the 1st Additional Sessions Judge, Muzaffarpur on 22/23.11.2002 in Sessions Trial No. 104/98, both the appeals are being disposed of by this common judgment.

It is the case of the prosecution that Baleshwar Sah, the first informant, had reported that there was a Semal tree in



his field. Appellant Satya Narain Sah is said to have sold the tree and took the money. When Baleshwar Sah demanded the money from Satya Narain Sah, he promised that the money will be given after the measurement. Accordingly, on the date of the incident i.e. on 08.06.1997 at about 2:00 P.M. the government Amin was called and the process of measurement was going on. There arose certain disputes in the matter of measurement, scuffle took place and according to the prosecution in a fight which ensued for a long period of time the accused appellant herein Garib Sah is said to have assaulted Baleshwar Sah with a Bhala on his forehead. It is said that accused Satya Narain Sah assaulted Baleshwar Sah in the back with a lathi. No specific overt act is attributed to the other appellant Amir Sah.

Based on the evidence and material that came on record, the appellant Garib Sah has been convicted for the offence under Section 307 I.P.C. and sentenced to undergo R.I. for 4 years and a fine of Rs. 1,000/- and appellants Satya Narain Sah and Amir Sah have been convicted for an offence under Section 323 I.P.C. and sentenced to undergo 6 months' simple imprisonment.

Learned counsel for the appellants took me to the evidence that have come on record, particularly the statement of



the doctor concerned P.W. 9 and the injury indicated by the doctor. He argues that the doctor's report has not been proved nor brought on record. The doctor gives an oral statement that he found one punctured wound over the right parietal region of the head of the informant. As far as Injury No. 2 is concerned, it was found that there is no such injury on the body.

Learned counsel for the appellants argues that in the backdrop of the nature of injury found apart from the fact that the injury report has not been proved in accordance with law, the statement given by the doctor goes to show that there was a punctured wound on the parietal region which would result in oozing of blood and by referring to the statement of the Investigating Officer he points out that no blood stain was found in the place of the incident, no blood was collected and there is no forensic evidence with regard to the blood having come out from the injury in question. That apart, he points out that the incident took place in the scuffle that happened due to dispute in the measurement and the statement of the informant Baleshwar Sah goes to show that immediately after the incident he was unconscious for four days and regained consciousness in the hospital after four days. On the contrary, the case diary and the statement of the Investigating Officer goes to show that it was



Baleshwar Sah himself who reported to the Police Station immediately and lodged the First Information Report. That being so, learned counsel argues that the case of the prosecution becomes doubtful.

Having heard learned counsel for the parties and on a perusal of the records, it is clear that apart from various lacunae inasmuch as the injury report and other material evidence with regard to collection of blood and other material from the place of the incident are lacking. Even if the injury sustained as pointed out by the doctor P.W. 9 in his statement is accepted in its totality, it would clear that the only injury sustained is a simple injury on the parietal region on the head of Baleshwar Sah and there is nothing to indicate that it was dangerous to or put proved fatal if not treated properly. That apart, there is no medical evidence available on record to show that the other two appellants Satya Narain Sah or Amir Sah caused any injury on the person of the informant.

That being so, as far as the appeal filed by Garib Sah (Cr. Appeal No. 645 of 2002) is concerned, his conviction under Section 307 I.P.C. cannot be sustained looking to the nature of evidence that has come on record i.e. the statement of the doctor. It would be a case of his causing a simple injury on



the informant and, therefore, his conviction has to be under Section 323 I.P.C. only and as far as other two appellants Satya Narain Sah and Amir Sah @ Amir Nath Sah in Cr. Appeal No. 8 of 2003 is concerned, no specific overt act or injury caused by them is proved from the evidence that has come on record.

Keeping in view the aforesaid, Cr. Appeal (S.J.) No. 8 of 2003 filed by Satya Narain Sah and Amir Sah @ Amir Nath Sah is allowed, their conviction set aside, they are acquitted of the charges levelled against them and are discharged from the liability of their respective bail bonds.

As far as appellant Garin Sah in Cr. Appeal (S.J.) No. 645 of 2002 is concerned, the evidence as indicated hereinabove shows that he is guilty for an offence under Section 323 I.P.C. Now, the question of imposition of punishment on the said appellant has to be considered.

The incident took place more 20 years back on 08.06.1997. The appellant Garib Sah has been in jail for more than three months, as is evident from the records and now after such a long period of time it is not in the interest of justice to send him to undergo any further jail sentence, instead, interest of justice would be met in case he is convicted for the jail sentence already undergone by him and a fine of Rs. 1,000/- is



enhanced to Rs. 2500/- which should be paid to the informant.

With the aforesaid, both the appeals stand disposed
of.

(Rajendra Menon, CJ)

P.K.P./-

AFR/NAFR	N.A.F.R.
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