

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.11 of 2003

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

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Shambhoo Lal, son of Late Suraj Lal, resident of village Rasulpur, P.S. Amnour,
District Saran, Chapra

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Surinder Kumar, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-04-2018

Sole appellant stands convicted under Sections 447 and 307/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.5000/- with default clause under Sections 307/34 IPC and no separate sentence was passed under Section 447 IPC. vide judgment and order dated 20.12.2002 and 23.12.2002 passed by Sri Bipin Dutta Pathak, the then 11th Additional Sessions Judge, Saran, Chapra in Sessions Trial No. 141 of 1997. It further appears that other accused persons were acquitted from the charges leveled against them.

2. Prosecution case, in short, is that while the informant Ashok Shrivastav (PW 4) was sitting at the darwaja accused persons, including the appellant came there and assaulted him by fists and slaps and upon protest being made, appellant gave a Gupti blow on his right "Panjra" causing bleeding and he fell down. Further prosecution case is that people assembled and accused persons fled away and



informant was taken to Marhowrah Government Hospital and thereafter he was taken to Chapra Sadar Hospital as well as P.M.C.H. for his treatment.

3. On the basis of aforesaid Fardbeyan, Amnaur P.S. Case No. 69 of 1996 was registered. After investigation charge sheet was submitted, cognizance was taken and after commitment the case traveled to the file of the learned Trial Judge for trial and disposal.

4. During trial altogether seven witnesses have been examined on behalf of prosecution, they are PW 1 Kiran Devi, sister-in-law of the informant (bhabhu), PW 2 Awadh Kishore Singh, PW 3 Umrawati Devi, wife of informant, PW 4 Ashok Shrivastava, informant, PW 5 Sunil Shrivastava, formal witness, PW 6 Dr.S.N.Prasad, who has treated the informant and PW 7 Roop Narayan Singh, formal witness.

5. Defence of the accused persons is of innocence and of false implication and further appears from cross examination and their argument that there was a counter case but nothing has been brought on record in support of the same.

6. Submission of learned counsel for the appellant is that there are several contradictions in the evidence and furthermore independent witnesses have been examined and PWs 1 and 3 are sister-in-law and wife of the informant and PW 2 is a chance witness who has come at the place of occurrence on hulla. Further submission is that prosecution has failed to prove the genesis of the occurrence as



the evidence is not consistent so far pelting of stones and appellant was outsider lived at Bombay and evidence further shows that he has purchased the land near the place of occurrence as such he has been implicated by the accused persons considering him as an outsider. It has also been submitted that in any view of the matter even if the evidence is to be believed, no case under Section 307 IPC is made out as there is no repetition of blow and further nothing has come on record to show that finding of the Doctor that injury was dangerous to life has any basis, as such material finding of the Doctor is not based on solid ground and hence no offence under Section 307 IPC is made out and learned trial court in spite of the aforesaid discrepancy has convicted the appellant under Sections 307/34 IPC as well as Section 447 IPC, which appears to be not sustainable in the eye of law.

7. On the other hand, learned counsel for the State has supported the finding of guilt arrived at by learned trial court and submitted that the witnesses are consistent about assault and their evidence is corroborated by medical evidence and as such there is no infirmity in the impugned judgment which does not require any interference by this Court.

8. Considering the argument of rival parties and on examination of the evidence it appears that PW 4, who is informant of the case, has supported the prosecution case that while he was sitting at the door accused persons arrived at and assaulted him by fists and slaps and then Kiran Devi and Umrawati Devi arrived and they asked



from the accused person as to why they were assaulting then accused persons pushed away to the females who fell down and appellant gave Gupti blow in the right abdomen of informant. In his cross examination he has stated that Gupti blow was given on the right side of his back and in paragraph 13 he has stated that where he was sitting there was 'Bathan of Mahadeo Sah and in the north there was house of the appellant and in the east there was door and Sahan of the informant.

9. PWs 1 and 3 happen to be 'Bhabhu' and wife of the informant respectively and they have supported the manner of occurrence as well as place of occurrence and there is nothing in their evidence to doubt the credibility of their evidence.

10. It further appears that PW 6 is Doctor who has examined the informant and found the following injury on the person of informant (PW 4) :

“(i) one sharp cut wound $\frac{1}{2}$ ” x $\frac{1}{4}$ ” x $1\frac{1}{2}$ ” deep at back lower parts. Nature of injury was dangerous for life and it was caused by some sharp pointed substance. Age of injury was within six hours.”

10. The aforesaid evidence corroborates the prosecution evidence, so far manner of occurrence is concerned and Doctor found the injury as dangerous to life but the Doctor has not given any reason for coming to the finding that injury was dangerous to life. Further the evidence shows that there was no repetition of Gupti blow. It further appears that occurrence took place due to pelting of stones and



informant went to make complaint and occurrence took place at the darwaja of the appellant and in such a situation it cannot be said that appellant has come and assaulted the informant with an intention to kill him. Had he carrying any intention to kill him, he would have repeated the blow. Blow is also on the right side of back which is not vital part of body. Further I.O. has not been examined and PW 4 has stated that place of occurrence is Angan but other evidence shows that place of occurrence is at darwaja and it appears that there is vital contradiction in the prosecution story and it also appears that intention of the appellant was not to be caused death, rather it appears that there was altercation between the parties in which informant was assaulted by Gupti and there is no repetition of blow. Moreover, in this case it appears that half of the prosecution story has been disbelieved by learned trial court as the learned trial court has acquitted other accused persons who are alleged to have caught hold of the informant. In such a situation, learned trial court ought to have considered this aspect of the matter that the appellant had assaulted the informant at the spur of moment and it was not intentional. Learned trial court has not considered aforesaid aspect of the matter.

11. Considering the aforesaid aspect of the matter, to my opinion, the appellant cannot be held guilty for the offence under Section 307 IPC rather at best it would be a case under Section 324 IPC, as such conviction of the appellant under Section 307 IPC is modified to the conviction under Section 324 IPC. However,



conviction under Section 447 IPC remains.

12. Submission of learned counsel for the appellant is that appellant has remained in custody during trial and also during pendency of appeal for about five months and occurrence is of the year 1996, as such, a lenient view may be taken and the sentence may be reduced to the period already undergone.

13. In such view of the matter, the sentence is reduced to the period already undergone in custody under Sections 324 and 447 of the Indian Penal Code.

14. This appeal is disposed of with the above modification in the conviction and sentence.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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