

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.650 of 2002

1. Shashi Kant Das, son of Late Medni Das
2. Sunaina Devi, wife of Shashi Kant Das, both resident of Mohalla-Bishunpur Chandanichowk, P.S. Town, District- Begusrai

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nirmal Kumar Sinha Sinha, Advocate
For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 13-01-2018

Heard Mr. Nirmal Kumar Sinha, learned counsel for the appellants and Mr. Parmeshwar Mehta, APP appearing on behalf of the State.

2. This appeal has been directed against the judgment and order dated 10th October, 2002 passed by the Additional Sessions Judge, Fast Track Court –IV, Begusarai in Sessions Trial No. 280 of 1994/58 of 2002 whereby the appellants have been convicted under Section 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one year.

3. Mr. Nirmal Kumar Sinha, counsel appearing for the appellants submits that during the pendency of this appeal appellant No. 2, Sunaina Devi has died.

4. Therefore, the appeal, so far as the appellant no. 2 is concerned, stands abated.



5. The prosecution case in brief, is that on the fardbeyan of the informant, Kunti Devi, recorded by the IO on 29.11.1993 in the clinic of Dr. Ashok Kumar Sharma, on 28.11.1993, the informant returned home after taking holy dip in Ganga along with her husband. The informant after reaching home offered breakfast to her husband. After breakfast her husband went to his shop and the informant proceeded to a temple near her house. Meanwhile, appellants came and began to assault her. They dragged the informant from the temple and assaulted her on her head, eyes, chest mercilessly. She raised alarm and thereafter people of the locality came and brought her to the clinic of Dr. Ashok Kumar Sharma. The cause of incident is that Sunaina Devi, appellant No. 2 prior to occurrence had snatched a silver chain from the informant and when the matter was enquired by the husband of the informant from appellant no. 1, Shushil Kant Das, he became furious and was in search of taking revenge.

6. On the basis of the aforesaid statement police took up investigation and submitted charge sheet against the appellants under Sections 307/34, 325, 341 and 504 of the Indian Penal Code. Thereafter cognizance was taken, the case was committed to the court of sessions and on the appellants pleading not guilty, they were put on trial.



7. Learned counsel for the appellants submits that appellants and the husband of the informant are the brothers, both sides filed cases against each other. The informant as well as the appellant have also sustained injury. The incident is of the year 1993 and now 24 years has elapsed.

8. Mr. Nirmal Kumar Sinha, learned counsel for the appellant submits that in a case like the present one the learned court below was required to adopt the pragmatic approach as the dispute was between the two brothers. He submits that after the incident of 1993 for the last 24 years there is total peace and harmony in the family of the informant and the appellant and as such he submits that in the totality of the fact situation when the appellant has become now more than 56 years old, this court may take lenient view.

9. Mr. Parmeshwar Mehta, learned APP appearing on behalf of the State also admits the fact that the appellant and the informant's husband are full brother and the incident is of 1993 and the appeal remained pending for nearly 15 years. In view of the fact that the trial court has convicted the appellant under Section 323 of the Indian Penal Code and out of the two appellants one has died, he admits that the appellant is not harden criminal and as such in the totality of the fact situation no penalogical purpose



would be achieved by sending the appellant in jail custody to serve the remaining sentences.

10. In the instant case the court finds that the appellant is aged about 56 years and own brother of the informant's husband and considering the fact that there was case and counter case and both sides have sustained injuries, in order to give quitus to the controversy and to encourage cordial relationship between the brothers, in the ends of justice, the appeal deserves to be disposed of considering the fact that it remained pending for 15 long years and during the intervening period the appellant has suffered ordeal of trial.

11. Accordingly, the appeal is disposed of while upholding the conviction, the sentence of the appellant is reduced to the period already undergone. Since the appellant is on bail, he is discharged from the liability of the bail bonds.

(Anil Kumar Upadhyay, J)

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