

**IN THE HIGH COURT OF JUDICATURE AT PATNA****Criminal Appeal (SJ) No.664 of 2002**

Sessions trial no. 54/1996 arising out of Barahara P.S. case no. 58/1994  
District- PURNIA

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Chandra Deo Mehta son of Late Ganesh Mehta resident of village Rajghat P.S.  
Barahara Dist. Purnea

.... .... Appellant/s

Versus

State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Vikram Deo Singh  
Mr. Manoj Kumar

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

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

**ORAL JUDGMENT**

**Date: 02-02-2018**

1. Heard learned counsel for the appellant as well as learned Addl. Public Prosecutor for the State and perused the record.

2. This criminal appeal has been preferred by the sole appellant against the judgment of conviction and sentence order dated 09.10.2002 and 11.10.2002 respectively passed by the Addl. Sessions Judge FTC IV, Purnea in Sessions trial no. 54/1996 ( Trial no. 46/2002) by which and whereunder he convicted appellant for the offences punishable under sections 307 and 341 of the Indian Penal Code and accordingly, sentenced him to undergo rigorous imprisonment for ten years and also to pay fine of Rs 2,000/-



and in default of payment of fine, he was further directed to undergo simple imprisonment for three months for the offence punishable under section 307 of the Indian Penal Code. No separate sentence was awarded for the offence punishable under section 341 of the Indian Penal Code.

3. It is pertinent to note here that along with appellant other co-accused Mohan Mehta was also convicted for the offences punishable under sections 323 and 341 of the Indian Penal Code and he was released after due admonition under sections 360(3) of the Cr.P.C read with section 3 of the Probation of Offenders Act, 1958.

4. Barahara P.S. case no. 58/1994 was registered on the basis of exhibit 1, fardbeyan of PW4 who made his statement before the police official to this effect that on 9.4.1994 at about 11.30 A.M., a quarrel had taken place between her husband as well as appellant Chandradeo Mehta on account of plucking of fruit and in course of the aforesaid quarrel, appellant came running having farsa in his hand and gave farsa blow causing head injury to her husband who having received the aforesaid injury, fell down on the ground. The FIR named accused Ganeshi Mehta ordered others to kill her husband and thereafter, co-accused Mohan Mehta



mercilessly assaulted her husband who subsequently, became unconscious. She raised alarm which attracted villagers and her husband was taken to police station. She, further, stated that Ashrafi Mehta (PW5), Bholu Mehta (PW1), Laxman Mehta (PW2) and Anuplal Mehta (not examined) had witnessed the aforesaid occurrence.

5. Formal FIR was drawn up and after investigation, charge sheet was submitted. After cognizance and commitment, appellant and co-accused Mohan Mehta and Ganeshi Mehta were put on trial. Accordingly, appellant along with Mohan Mehta and Ganeshi Mehta were charged for the offence punishable under section 341 of the Indian Penal Code. Mohan Mehta was separately charged for the offence punishable under section 323 of the Indian Penal Code and appellant was separately charged for the offence punishable under section 307 of the Indian Penal Code. However, in course of trial, accused Ganeshi Mehta died and accordingly, his case was abated.

6. In course of trial, prosecution examined, altogether, seven witnesses and got exhibited some documents. The defence also got examined one witness namely, Rajendra Prasad Mehta and got exhibited some



documents. In the statement recorded under section 313 of the Code of Criminal Procedure, appellant and other accused denied the prosecution story and claimed their false implication.

7. It would appear from perusal of the record that PW1 (Bhola Mehta), PW 3 (Punam Devi), PW 4 (Asha Devi) and PW 5 (Ashrafi Mehta) claimed themselves to be eye witnesses of the alleged occurrence and the aforesaid witnesses, specifically, stated that it was the appellant who gave farsa blow causing head injury to husband of PW4. PW 2, Laxman Mehta stated that he reached at the place of the occurrence having heard noise and found injured Anandi Mehta lying on the ground having sustained injury. PW 2 stated that while he was going on the place of occurrence, he saw the appellant having farsa in his hand returning from the place of the occurrence. He, further, stated that Asharfi Mehta (PW5) and Bhola Mehta (PW1) had told him that the appellant had assaulted injured Anandi Mehta by means of farsa.

8. Although there are some minor contradictions in the depositions of these witnesses but the aforesaid minor contradictions do not go to the root of the prosecution case



rather almost all the above stated witnesses have not only proved the place of the occurrence but also manner of occurrence and there is nothing in the testimonies of these witnesses to disbelieve them.

9. PW 6, Dr. Ashok Kumar Thakur proved the injury report of the injured Anandi Mehta and stated that he found scalp cut injury (severe) 8” x 1” with fracture of left frontal bone flooded with blood clots and brain matter was coming out. This witness proved the injury report of the deceased as exhibit 2. This witness admitted that he has not mentioned the width of the injury found on the person of injured Anandi Mehta, though length and depth of the injury have been mentioned. This witness admitted that he has given his finding in respect of the injury of injured Anandi Mehta on the basis of his clinical examination and no x-ray report was obtained. However, it is established from the testimony of PW 6 that on 9.4.1994 when PW 6 examined the injured Anandi Mehta, there was fracture injury on the scalp of injured Anandi Mehta.

10. PW 7 is a formal witness. This witness has proved formal FIR as exhibit 1. The appellant and other accused also adduced evidence in course of trial and DW 1



was examined on behalf of the defence who proved Panchnama as exhibit A as well as order dated 30.8.1996 passed by the Judicial Magistrate in CA no. 363/1994 and the order passed by SDM, Damdaha in Case no. 315M/1993 as exhibit B series just to show that there was enmity between the injured as well as appellant for the land which had fallen in the share of the appellant.

11. Learned counsel appearing for the appellant submitted that the prosecution witnesses have made contradictory statements and PWs 1, 2 and 3 clearly admitted that their statements were not recorded by the Investigating officer in course of investigation and they first time made statement before the court much after the alleged occurrence and hence, no reliance could have safely been placed on the statements of the aforesaid witnesses but even then learned court below relied upon the aforesaid prosecution witnesses. He, further, submitted that admittedly, injured of this case was not examined though it is said that the injured died during the pendency of the aforesaid trial but non-examination of injured was fatal to the prosecution case. He, further, submitted that similarly, Investigating officer has also not been examined and, therefore, it can easily be said that



the prosecution failed to prove its case. Lastly but not least, he submitted that materials available on record go to show that there was land dispute between the parties and even if it assumed that alleged occurrence took place, then it is obvious that alleged occurrence had taken place on account of land dispute and childish quarrel. He, further, submitted that appellant has already remained in jail custody near about 17 months in course of trial as well as during the pendency of this criminal appeal and moreover, only single blow is said to have been given by the appellant and, therefore, at best, appellant could have been convicted for the offence punishable under section 326 of the Indian Penal Code. He, also, submitted that alleged occurrence took place in the year 1994 and at the time of pronouncement of judgment, appellant was aged about 41 years and, therefore, it is obvious that presently, appellant is more than 60 years of age. So, it would not be proper to send him into jail custody to serve out such a harsh punishment.

12. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that the prosecution has proved its case and adequate sentence has



been imposed to appellant.

13. As I have already discussed that prosecution witnesses very clearly claimed to have seen the appellant giving farsa blow to the injured Anandi Mehta and it is established by the testimony of PW6 (Doctor) that grievous injury was found on the scalp of injured Anandi Mehta.

14. No doubt, injured has not been examined but admittedly, it has come in course of trial that during the pendency of trial, injured died and, therefore, there is sufficient explanation of non-examination of injured. So far as non-examination of I.O is concerned, there is nothing on record to show that any prejudice has been caused to the defence due to non-examination of the I.O and therefore, non-examination of I.O is not fatal to the prosecution.

15. On the basis of the aforesaid discussions, I am of the opinion that learned court below rightly convicted the appellant for the offence punishable under section 307 of the Indian Penal Code.

16. So far as order of sentence is concerned, learned court below has awarded ten years rigorous imprisonment to the appellant for the offence punishable under section 307 of the Indian Penal Code coupled with fine of Rs 2,000/-. In my



view, in the facts and circumstances of the case, sentence awarded to the appellant seems to be very harsh and, in my view, the appropriate sentence would be period already undergone by him in course of trial as well as during the pendency of this appeal and, therefore, present appeal stands dismissed with modification in the sentence order and accordingly, sentence order of appellant is modified to this extent that he is sentenced to the period already undergone by him during pendency of trial and appeal with direction to him to deposit the amount of fine before the lower court within three months from today and the amount of fine shall be handed over to the informant of the case.

17. In the aforesaid manner, this criminal appeal stands disposed of.

**(Hemant Kumar Srivastava, J)**

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| AFR/NAFR          | NAFR     |
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