

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.444 of 2003

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

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Surendra Baitha, son of Punjab Baitha, resident of village Assaon, P.S. Assaon,
District Siwan

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr.Manohar Prasad Singh (amicus curiae)

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 02-08-2018

Sole appellant has been convicted under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years vide judgment and order dated 29.8.2003 passed by Sri Bimal Kumar, the then Additional District and Sessions Judge-V, Siwan in Sessions Trial No. 88 of 1992. By the said judgment other co-accused has been acquitted from the charges leveled against him.

2. None appears on behalf of the appellant to argue this appeal, as such, Mr. Manohar Prasad Singh, Advocate has been appointed as amicus curiae to assist this Court.

3. Prosecution case, in short, is that PW 6 Adalat Ansary made his statement at Assaw Dispensary on 5.6.1990 at about 9 P.M. before police that in the evening at about 7 P.M. when he was returning to his house and reached to his verandah, accused persons, namely, Surendra Kumar Baitha, Birendra Kumar Baitha and Punjab



Baitha, all caught hold of him and appellant Surendra Kumar Baitha assaulted him by knife on his back on Panjra and thigh, due to which he became injured and when his daughter-in-law Nazima Khatoon came there to rescue him she was also assaulted by knife and when Kamaruddin came on hue and cry he was also assaulted by knife on his head, causing serious injury to him. Further case is that when Nanhku Mian, Idrish Mian, Allauddin Mian and others came to rescue him, the accused persons fled away.

4. On the basis of the aforesaid fardbeyan, Assaw P.S. Case No. 23 of 1990 was registered under Sections 341, 307 and 324/34 IPC and after investigation charge sheet has been submitted, cognizance has been taken and after commitment the case traveled to the file of Sri Bimal Kumar, the then 5th Additional District and Sessions Judge, Siwan for trial and disposal.

5. Charges were framed under Sections 109, 341 and 307/34 IPC against accused Birendra Baitha and Punjab Baitha and against appellant Surendra Baitha charges were framed under Sections 341 and 307 IPC.

6. In order to establish its case, altogether nine witnesses have been examined on behalf of prosecution, they are PW 1 Idrish Mian, PW 2 Allahuddin, PW 3 Nanahak Mian, PW 4 Kamaruddin Mian, PW 5 Nazama Khatoon, PW 6 Adalat Ansari, PW 7 Maksud Alam and PWs. 8 and 9 are formal witnesses. In this case I.O. and



Doctor have not been examined.

7. On behalf of defence no ocular evidence has been adduced but FIR of counter case being Assaw P.S.Case No. 22 of 1990 has been brought on record as Ext.A.

8. Learned trial court on conclusion of trial has convicted the appellant under Section 324 IPC and acquitted other accused Birendra Kumar Baitha. It is relevant to mention here that one of the accused has died during the pendency of the trial, as such the proceeding has been abated against him.

9. Mr. Manohar Prasad Singh, learned amicus curiae has assailed the judgment on the ground that in this case I.O. and Doctor have not been examined and though injury report has been brought on record but no opportunity was given to the defence to cross examine the Doctor and in absence of that, conviction of the appellant under Section 324 IPC is not sustainable in the eye of law. Further submission is that there is contradiction in the evidence of witnesses from their earliest statement, i.e., FIR and as such conviction is not sustainable in the eye of law.

10. On the other hand, learned counsel for the State has defended the judgment of guilt and submitted that PWs. 4, 5 and 6 have received injuries and their evidence is consistent on the point of assault and the same has been corroborated by the injury report and injury report shows that there is incised injury on the person of



informant (PW 6), as such conviction of the appellant does not require any interference by this Court.

11. Having heard both sides and on perusal of the evidence it appears that PWs. 4, 5 and 6 are injured and their names have been mentioned in the FIR and their evidence clearly disclosed that appellant assaulted them by knife, causing injuries and as such the evidence is consistent on the point of assault by knife by the appellant and in such a situation, even if Doctor has not been examined, the evidence of injured witness is consistent on the point of assault by knife to PWs. 4, 5 and 6. It is well settled that evidence of injured witness is always considered on high pedestal than other witnesses and their presence at the place of occurrence cannot be doubted and as such their evidence cannot be brushed aside. I.O. has not been examined but there is nothing available on record to show that any prejudice has been caused to the defence for his non-examination. On the other hand, evidence of PWs 4 to 6 establishes the place of occurrence, i.e., verandah of the informant (PW 6). Though defence has brought Ext.A, the FIR of counter case but no evidence has been brought on behalf of the defence in support of that, as such, much importance cannot be given to Ext.A in view of the fact that evidence of prosecution witnesses is consistent on the point of assault.

12. Considering the aforesaid facts and circumstances, so far conviction of the appellant under Section 324 IPC is concerned, the



same appears to be just and proper and does not require any interference by this Court.

13. Considering the discussions made above, the conviction of appellant under Section 324 IPC is affirmed.

14. On the point of sentence, learned amicus curiae has submitted that occurrence is 28 years old and appellant was 40 years old at the time of judgment and he must be by now at the age of 55 years and he has remained in custody for one month, as such, his sentence may be reduced to the period already undergone.

15. I find force in the submission of learned amicus curiae as the occurrence is of the year 1990 and appellant has faced mental agony for the last 28 years both during trial and appeal, as such, the sentence of two years under Section 324 IPC is reduced to the period already undergone in custody.

16. With the aforesaid modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.8.2018
Transmission Date	10.8.2018

