

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.265 of 2003

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

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1. Santosh Sah Son of Nami Sah		
2. Nami Sah, Son of Late Dhanushdhari Sah		
Both residents of Village – Jamudhi, Police Station – Piro, District - Bhojpur		Appellant/s
	Versus	
State of Bihar		 Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Adv.
Mrs. Meena Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-02-2018

Challenge in this appeal is of judgment of conviction and order of sentence dated 07-05-2003, passed by Sri Lakshman Ram, the then Additional Sessions Judge – cum- Presiding Officer, Fast Track Court No. -III, Arrah Bhojpur, in Sessions Trial No. 180/92, by which the appellants were held guilty and convicted under Sections 307/34 and 323 of the IPC and were sentenced to undergo R.I. for 07 years under Section 307/34 of the IPC and R.I. for 01 year under Section 323 of the IPC. Appellant Santosh Sah was further convicted under Section 354 of the IPC and was sentenced to undergo R.I. for one year. All the sentences were directed to run concurrently.

2. Prosecution case as per the fardbeyan of informant Sankar Sah, in short is that on 18.01.90 at about 7.30 P.M., appellant caught hold the sister of the informant, namely, Anita Kumari and tried to outrage her



modesty and on alarm being raised by the Anita Kumari, her brother and other people came there and appellant Santosh Sah fled away. Thereafter, the brother of the Anita Kumari along with villagers went to the house of Santosh Sah to protest, they were abused by the appellant Santosh Sah and when the brother of Anita Kumari objected, then appellant Nami Sah assaulted the brother of informant on his left chest and appellant Santosh Sah assaulted him on his head and co-accused Dhanushdhari Sah assaulted the informant with lathi on his head. Further prosecution story is that the said occurrence was witnessed by Sheo Jee Sah, Shastri Sah and Sesha Singh and others. On the basis of the above, fardbeyan of informant Piro P.S. Case No. 8/90 was registered against the accused persons for the offence punishable under Section 307, 354 and 323/34 of the IPC.

3. Police after investigation submitted charge-sheet against the appellants and one co-accused Dhanushdhari Singh, who died during pendency of the case. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately traveled to the file of Sri Lakshman Ram, the then Additional Sessions Judge – cum- Presiding Officer, Fast Track Court No. -III, Arrah Bhojpur.

4. Charges were framed under Section 307/34 and 323 of the IPC against the appellants and charge was also framed under Section 354 of the IPC against the appellant under Section 354 of the IPC.

5. In order to prove its case, prosecution has examined altogether 05 witnesses, they are; P.W. 1 - Jhunnu Sah (brother of informant), P.W. 2 – Sheo Jee Sah, P.W. 3 –Sastri Sah, P.W. 4 – Anita Kuamri



and P.W. 5 – Shankar Sah (informant).

6. Fardbeyan has been brought on record and marked as Ext. 1 but injury report has not been brought on record. It further appears that in this case neither I.O. nor doctor has been examined.

7. Defence of the accused persons as per statement under Section 313 Cr.P.C and as per trend of cross-examination, is of false implication and of innocence.

8. Learned Trial Court after considering the evidence available on record, convicted both the appellants under Section 307/34 and 323 of the IPC and further convicted the appellant Santosh Sah under Section 354 of the IPC and sentenced them in the manner as stated above.

9. Contention of learned counsel for the appellants is that out and out false and fabricated allegations have been made, which will appear from the fact that in this case neither I.O. nor doctor has been examined, which itself casts a serious doubt about the veracity of prosecution case. Further the injury report has also not been brought on record so as to show the gravity of assault to the injured and nature of injuries caused to them by the said assault. It has also been submitted that so far allegation of outraging the modesty of sister of informant is also false and concocted and has been levelled against the appellant Santosh Sah only with a view to settle the previous score, coupled with the fact that there are contradictions amongst the evidence of witnesses and the trial court without considering all these facts has convicted the appellants under Section 307/34 and 323 of the IPC and further appellant Santosh Sah under Section 354 of the IPC,



which is out and out erroneous and not sustainable in the eye of law.

10. Learned counsel for the respondent - State defended the judgment of trial court and submitted that there are ample evidence available on record that on the alleged date of occurrence, Santosh Sah tried to infringe the modesty of the sister of the informant and when informant along with his brother and some persons went to protest, appellant Nami Sao assaulted to P.W. 1 - Jhunnu Sah by *bhala* on his chest and appellant Santosh Sah assaulted him by means of lathi on his head, which is a vital part of the body and there is evidence also that appellant Santosh Sah tried to outrage the modesty of the sister of the informant and, therefore, there is no infirmity in the judgment of Trial Court and conviction of appellants under Section 307/34 and 323 of the IPC as well as conviction of appellant Santosh Sah under Section 354 of the IPC is just and proper and does not require any interference.

11. On the background of rival contention, from perusal of the evidence, it appears that all the witnesses have supported the prosecution case and the have stated about assault by Nami Sah and Santosh to the brother of informant by *bhala and lathi* on his chest and head respectively and they have also stated about assault to informant by the co-accused Dhanushdhari Singh. However, it appears that no injury report has been brought on record and even doctor has not been examined. In such a situation, there is nothing available on record to substantiate the allegation of assault and the nature of injury and severity of assault to the injured. In this case I.O.



has also not been examined and the place of occurrence and manner of occurrence is also under shade of doubt. it further appears that there was enmity between the parties from before and there is also nothing available on record to show that the appellants assaulted the injured with such intention or requisite knowledge that by causing such injury, if death is caused, they would be guilty of murder. Doctor, who treated the injured has also not been examined nor injury report has been brought on record to show whether injury was grievous or dangerous to life in ordinary course or on vital part of body. However, the learned Trial Court has not considered the aforesaid aspect of the matter and has convicted the appellants under Section 307/34 of the IPC in a very casual manner.

12. So far conviction of the appellant Nami Sah under Section 323 of the IPC and appellant Santosh Sah under Section 354 of the IPC is concerned, there are sufficient cogent materials available on record as such conviction of the appellants under the aforesaid section appears to be just and proper.

13. Accordingly conviction and sentence of appellants under Section 307/34 of the IPC is set aside. Conviction of appellant Nami Sah under Section 323 of the IPC and Conviction of appellant Santosh Sah under Section 323 and 354 of the IPC is affirmed. Further it appears that the appellants had been sentenced to undergo R.I. For 1 year under Section 323 of the IPC and appellant Santosh Sah had been sentenced to undergo R.I. for 1 year under Section 354 of the IPC and both sentences were directed to run concurrently and that they have



already remained in custody for more than a month during trial as well as during pendency of appeal and the occurrence is of the year 1990 and 27 long years have elapsed since then and at the time of conviction appellant Nami Sah was aged about 60 years and appellant Santosh Sah was aged about 28 years, considering the age and as there is nothing available on record to show that they were also convicted in connection with any other case and were of bad conduct, as such, no fruitful purpose will be served to send them back behind the bars to serve the remaining sentence, accordingly, their sentence are modified to the period already undergone by them in judicial custody.

14. With the aforesaid modification in sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

