

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.95 of 2003

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

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Sunil Pandey, son of Sundeshwar Pandey, resident of village Chaita, P.S.
Anagarghat, District Samastipur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Jitendra Narain Sinha with
Kumari Vandana, Advocates

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 17-01-2018

The sole appellant has been convicted under Section 308 of the Indian Penal Code by judgment and order dated 6.1.2003 passed by Sri A.S.Lal, Presiding Officer, Fast Track Court No.1, Samastipur in Sessions Trial No. 89/26 of 1999/2001. However, instead of passing order of sentence the appellant was released on execution of bond of Rs.5000/- with two sureties of like amount and to appear to receive sentence when called upon.

2. Prosecution case, in short, is that when the informant injured, namely, Hari Kishore Pandey (P.W.4) had gone to his field he was assaulted by accused persons and specific allegation against the appellant Sunil Pandey is that he assaulted him by farsa on his head causing injury to him.



3. On the basis of aforesaid fardbeyan FIR was registered vide Angarghat P.S. Case No. 10 of 1997 under Sections 447, 341, 342, 323, 307, 379, 503 and 34 of the Indian Penal Code and after investigation charge sheet submitted and the case was committed to the court of sessions, which ultimately came to the file of Sri A.S.Lal, Presiding Officer, FTC-I, Samastipur for trial and disposal.

4. During trial altogether eight witnesses have been examined on behalf of prosecution, they are P.W.1 Ram Bhajan Rai, P.W.2 Ram Udgar Pandey, P.W.3 Rajendra Pandey, P.W.4 Hari Kishore Pandey (Informant and injured), P.W.5 Satendra Kumar Sharma (Investigating Officer), P.W.6, Triloki Pd. Singh (formal witness), P.W.7 Dr. Rati Raman Jha, who examined the informant injured at Samastipur Hospital and P.W.8 Binda Pd. Singh, who is a formal witness. No defence witness has been examined in this case.

5. Learned trial court on conclusion of trial has acquitted other accused persons, however convicted the sole appellant under Section 308 IPC and instead of passing of sentence released him on execution of bond.

6. Submission of learned counsel for the appellant is that the evidence available on record shows that at best it is a case under Section 324 IPC and hence conviction of appellant under Section 308 IPC does not appear to be sustainable in the eye of law. Further



submission is that though P.W.4, informant injured, has stated that though the hospital was close to the place of occurrence but he was examined in Nursing Home at Gayatri Rest House, Samastipur and the Doctor examined him is a Government Doctor, which creates a doubt about the prosecution case. However, learned counsel submits that there is allegation against the appellant that he assaulted by farsa on the head of informant and that evidence has been corroborated by the Doctor Ram Udgar Pandey as he has found incised injury on the head.

7. On the other hand, learned APP appearing on behalf of State has supported the judgment stating that appellant has rightly been convicted by the trial court as he is the main author to cause injury on the head of the informant.

8. On perusal of record it appears that evidence of P.W.4 shows that he has been assaulted by appellant Sunil Pandey by farsa on his head and other witnesses have supported the aforesaid allegation and the same has been corroborated by the evidence of Doctor and even if no independent witness has been examined in this case, the evidence of witnesses appears to be consistent, as such there are ample cogent and sufficient evidence available on record to show that appellant assaulted on head, which is vital part of body, by farsa which has been corroborated by Doctor's evidence. The learned trial



court has taken a lenient view in this and convicted the appellant only under Section 308 IPC and instead of order of sentence released him on probation.

9. Considering the above, I find no merit in this appeal. Hence, this appeal is dismissed. The order of conviction under Section 308 IPC is upheld.

(Vinod Kumar Sinha, J)

spa/-

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