

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.580 of 2002

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

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Sone Lal Singh @ Sonelal Mahto & Ors

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar Singh, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-01-2018

By way of present appeal, appellants seek to challenge the Judgment of conviction and order of sentence dated 25.09.2002, passed by Shri Sri Krishna Sinha, learned Additional District & Sessions Judge, Fast Track Court No. 4, Samastipur in Sessions Trial No. 374/1993/ 5 of 2002, by which the appellant- Sonelal Mahto was held guilty under Section 447 and 324 of the Indian Penal Code (hereinafter referred to as "the IPC") and was sentenced to undergo R.I. for one month and R.I. for six months under each Section respectively and appellants, Krishna Deo Mahto, Ram Narayan Mahto and Suraj Mahto were convicted under Sections 447 and 323 of IPC and were sentenced to undergo R.I. for one month and R.I. for three months under each Section respectively. All the sentences were directed to run concurrently. It further appears that all the appellants were also charged under Section 307/34 of the IPC, however, they had all been acquitted from the charge under Section 307/34 of IPC.



2. Prosecution case in short is that while informant (P.W. 2) was taking meal at his *darwaza*, accused persons armed with *lathi* and *farsa* and appellant-Sonelal Mahto asked as to why he has lodged a case against him and, thereafter, he assaulted him by means of *farsa* on him causing injury on his head and other appellants assaulted him by means of *lathi*. On hulla persons assembled and the appellants fled away. Thereafter, the injured was taken to hospital, where his fardbeyan was recorded, on the basis of which F.I.R was registered against the appellants. Police after investigation submitted charge-sheet against the appellants under Sections 447, 323 and 307/34 of IPC.

3. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Sri Krishna Sinha, learned Additional District & Sessions Judge, Fast Track Court No. 4, Samastipur, for trial and disposal.

4. During the trial, altogether three witnesses were examined from the side or prosecution, out of which P.W. 1- Rampreet Mahto, who was examined twice, P.W. 2 – Janak Mahto is the injured and informant of this case, P.W. 3- Dr. Mahesh Chandra Thakur, the doctor, who examined the injured. It appears that in this case I.O. has not been examined.

5. Apart from that following documents have been brought on record and marked as: Ext. 1- Signature of informant on fardbeyan, Ext. 2- Injury report of P.W. 2.



6. When examined under Section 313 Cr.P.C., appellants pleaded not guilty and completely denied the occurrence and further contended that the present case is a counter blast of a case lodged by appellant Ram Narayan Singh, who is also a defence witness in this case.

7. Apart from that following documents have been brought on record by the defence side and marked as Ext. A – F.I.R of Kalyanpur P.S. Case No. 129/92, Ext. B – Order-sheet dated 29.09.93 of Dy. Director, Chakbandi and Ext. C - Order dated 18.05.92 passed in Case No. 75/92 by the Consolidation Officer Kalyanpur.

8. Post trial, the learned trial court convicted the appellants and sentenced them in the manner stated above, finding the evidence of P.W. 2 (informant and injured) consistent and reliable supported by the evidence of P.W. 1 and P.W. 3 (doctor) and also disbelieved the defence story that the present case is a counter blast of Kalyanpur P.S. Case No. 129 /92 on the ground that F.I.R in that case was lodged after the F.I.R of the present case.

9. Contention of the appellants is that no such occurrence has ever taken place rather it is a counter blast of Kalyanpur P.S. Case No. 129/92 (Ext. A), in which one of the accused, namely, Ram Narayan Singh was assaulted, for which he was treated in Samastipur, however, learned Trial Court has disbelieved the said story on the ground that the injured – Ram Narayan Singh was not treated in Kalyanpur, PHC. Further contention is that both the parties are



agnates and there was animosity between the parties from before, which was admitted by learned Trial Court itself and as alleged no such occurrence has taken place in the manner as stated above. It has also been submitted that it is alleged that at the time of occurrence large number of villagers were present but surprisingly the prosecution has not been able to bring any independent witness and one witness, P.W. 1, who has been examined twice in this case, is an interested witness. Further, there is contradiction in the evidence of P.W. 2 as he has stated in his evidence in para -12 that after assault he remained unconscious for two days and it is admitted prosecution story that he recorded his fardbeyan on the same day of occurrence. It has further been submitted that the injuries caused to the informant was found to be simple in nature and in this I.O. has not been examined, which case caused great prejudice to the defence side as had he been examined, he would have drawn light about the manner of occurrence as well as the place of occurrence and the learned Trial Court without considering all these facts has convicted the appellants, which is not sustainable in the eye of law.

10. On the other hand, learned counsel for the respondent – State has submitted that evidence P.W. 1 satisfactorily establishes the overt act of the appellants and informant being the injured witness, the veracity of this witnesses cannot be doubted. Further the evidence of P.W. 3 (doctor) also supports the prosecution story with regard to assault on P.W. 2 (informant). It has further been submitted that in the



criminal trial what is material to be assessed is the quality of evidence and not the quantity of evidence and though in the present case only two material witnesses have been examined, however, their evidence are consistent and reliable and their evidence are free from any embellishment and, therefore, there is no infirmity in the impugned judgment and conviction of the appellants under Sections 447, 323 and 324 of IPC is just and proper.

11. From perusal of the evidence, it appears that P.W. 2 is the informant and injured in this case and he has supported the case of prosecution that while he was taking meal, appellants came to his house and appellant – Sone Lal Mahto assaulted P.W. 2 by means of *farsa* causing head injury to him and other appellants assaulted him by means of *lathi* and on close scrutiny of his evidence, there does not appear to be any inconsistency in his evidence rather his evidence is corroborated by evidence of P.W. 3, who found one incised cut injury in the right side of forehead 3 ½” x ½ x ½”, abrasion on right shoulder 2” x ½” and bruise on the back of leg 3” x ½”. Further the evidence of P.W. 2 found corroboration from the evidence of P.W. 1, who appears to be an eye – witness of this case and examined as witness twice, may be due to mistake and in spite of that there is no inconsistency in his evidence. It further appears that the Trial Court has rightly not convicted the appellants under Section 307/34 of IPC as there was case and counter case between the parties and animosity between the parties from before and injury caused to the informant



was also found to be simple in nature and accordingly, the learned Trial Court convicted the appellant Sone Lal Mahto under Sections 324 and 447 of IPC and other appellants under Sections 323 and 447 IPC.

However, learned counsel for the appellant has argued that the Trial Court has itself observed that there was animosity between the parties from before and injury was simple in nature and further there is case and counter case between the parties and there is no material available on record to show that the accused were previously convicted and there was any conduct against them and in spite of that the trial court did not consider the application of Section 360 of Cr.P.C. against them nor assigned any reason for not giving the benefit of Section 360 of Cr.P.C, specially when Section 361 Cr.P.C. provides that if the court decides not to exercise its jurisdiction under Section 360, it must record the reasons, as such, it is the gross miscarriage of justice. In the present case, I find there is absolutely nothing on record to show that appellants were previously convicted or not. It further appears that appellant no. 1 was aged about 55 years, appellant no. 2 was aged about 54 years and other appellants were also aged about 40 years as on the date of judgment i.e. 25.09.2002 and they were not previously convicted in any offence rather trial court itself has observed that the present case is a result of animosity between the parties. Considering these aspects of the matter, appellants should have been given the benefit of Section 360 of



Cr.P.C. Further, it appears that provisions of Section 360 Cr.P.C. have not at all been considered by the learned Trial Court and even no reason has been assigned as provided under Section 361 Cr.P.C.

12. Hon'ble Apex Court in the case of **Om Prakash and Others. v. State of Haryana** reported in (2001) 10 Supreme Court Cases 477 and 2003 Supreme Court Cases (Cri) 799 has observed that *the provisions of Section 360 Cr.P.C are beneficial to the accused only when the accused is a first offender in case the accused is more than 21 years of age. Section 361 of the Cod of Criminal Procedure indicates that if the Court decided not to exercise its jurisdiction under Section 360, then it must record its reasons as to why the benefit of Section 360 Cr.P.C. is being denied. In view of the peremptory nature of the language of provisions of Section 361, the Magistrate as well as the Court in appeal and revision not having indicated as to why the provisions of Section 360 Cr.P.C have not been applied, there has been a gross miscarriage of justice and the legislative mandate engrafted in the aforesaid two Sections of the Code have not been complied with.*

13. Considering the law laid down by the Hon'ble Apex Court, in the case in hand too, the appellants certainly deserves the benefit of Section 360 of Cr.P.C. as provided under Section 361 of Cr.P.C. as there is nothing to show that they were previously convicted and they had misused the privilege of bail. Hence there is gross miscarriage of justice. Further the occurrence of the year 1992 and since then 25



years have elapsed.

Considering the entire discussions made above though the conviction of the appellants are upheld, however, their sentence are set aside, appellants are directed to execute a bond of Rs. 10, 000/- (Rs. Ten Thousand) each with a surety of like amount for a period of six months within which period, they shall continue to be on probation for good behaviour and keeping peace. The bond shall be executed before the trying Magistrate within a period of two months from the date of receipt of the judgment.

14. With the above direction, this appeal is accordingly, disposed of.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.01.2018
Transmission Date	15.01.2018

