

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1071 of 2017

Arising Out of PS.Case No. -67 Year- 2010 Thana -THAWE District- GOPALGANJ

Pradeep Kumar Pandey

.... Appellant/s

Versus

The State of Bihar & Ors

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sachin Kumar

For the Respondent/s : Mr. Sri Satya Narayan Prasad

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

7 16-08-2018 Heard learned counsel for the appellant, learned counsel for respondent nos. 2 to 7 as well as learned Additional Public Prosecutor for the State on the point of admission, on I.A.No. 2317 of 2017 and I.A.No.1993 of 2017.

The appellant has challenged the impugned judgment dated 20.04.2017 passed by the learned Session Judge, Gopalganj in Session trial no. 250 of 2012 arising out of Thawe P.S.Case No. 67 of 2010 by which and whereunder respondent nos. 2 to 7 were convicted for the offences punishable under sections 341/34, 323/34, 325/34 and 504/34 of the Indian Penal Code and, accordingly, they were sentenced to undergo rigorous imprisonment for six months for the each offences punishable



under sections 341/34, 323/34, 325/34 and 504/34 of the Indian Penal Code and, furthermore, they have been convicted for four years rigorous imprisonment for the offences punishable under section 325/34 of the Indian Penal Code and apart from this, each of the respondent nos. 2 to 7 were fined of Rs. 3000/- under section 325/34 of the Indian Penal Code.

The appellant is informant of the present case and the grievance of the appellant is that the learned trial court only convicted the respondent nos. 2 to 7 for the offences punishable under section 325/34 of the Indian Penal Code, whereas the respondent nos. 2 to 7 ought to have been convicted for the offence punishable under section 307/34 of the Indian Penal Code.

Learned counsel appearing for the appellant submits that Para-6(f) of the impugned judgment goes to show that injured Pradeep Kumar Pandey sustained three injuries on his head and one of the injuries was found grievous in nature and similarly, injured Kripa Shankar Pandey sustained altogether, six injuries and injury no. 5 was found grievous in nature but the learned trial court ignored the aforesaid facts and held that the intention of respondent nos. 2 to 7 was only to cause grievous injury to the above stated injured and on the aforesaid ground, the learned trial court refused to convict respondent nos. 2 to 7 for the offence



punishable under section 307/34 of the Indian Penal Code.

On the other hand, learned counsel appearing for the respondent nos. 2 to 7 refuted the above stated submissions arguing that the learned trial court has rightly refused to convict the respondent nos. 2 to 7 for the offence punishable under section 307/34 of the Indian Penal Code as there was no material to constitute the offence punishable under section 307 of the Indian Penal Code.

Having heard the rival contentions of both the parties, we went through the impugned judgment. We find that according to prosecution case, the alleged occurrence took place on account of land dispute and in that course, respondent nos. 2 to 7 are said to have assaulted the appellant and others. The injury reports of the injured go to show that only hard and blunt substance was used in causing injury to the injured persons.

To constitute an offence under section 307 of the Indian Penal Code, there must be an intention or knowledge to cause death of a person and the aforesaid intention and knowledge can be judged on the basis of circumstances i.e. the weapon used in committing the crime or causing injury as well as other circumstances. In the present case, only hard and blunt substance is said to have been used. No doubt, some force was used in



causing injury to the injured but only the aforesaid circumstance is not sufficient to constitute an offence under section 307 of the Indian Penal Code and, therefore, we do not find any ground to interfere into the impugned judgment. Accordingly, this Criminal Appeal as well as I.A.No. 2317 of 2017 and I.A.No.1993 of 2017 stand dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

N.K/-

(Rajendra Kumar Mishra, J)

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