

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.71 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- JEHANABAD

- =====
1. Surendra Yadav, s/o Chandeshwar Yadav
 2. Chandeshwar Yadav
 3. Bhuneshwar Yadav, both s/o late Lal Bihari Yadav, all r/v-Fholadpur, P.S.- Sakurabad, District-Jehanabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satish Chandra
Mr. Uday Narayan Singh

For the Respondent/s : Mr. Bal Mukund Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 30-08-2018

By judgment and order dated 24.12.2008 passed by learned Additional District & Sessions Judge, F.T.C. V, Jehanabad in S. Tr. No. 14/2006, arising out of Sakurabad P.S. Case No. 05/2005, Appellant no. 1 has been convicted for offences under Sections 325, 307, 341 and 504 of the Indian Penal Code and has been sentenced to undergo R.I. for five years for offence under Section 307 of the Indian Penal Code. He has been sentenced to undergo R.I. for three years for the offence under Section 325 of the Indian Penal Code and also has been ordered to pay fine of Rs. 500/- each under Sections 341 and 504 of the Indian Penal Code. Appellant Nos. 2 and 3 have been convicted for offences under Sections 341, 323 and 504 of the Indian Penal Code.



They have been sentenced to undergo R.I. for one year under Sections 323 and 504 of the Indian Penal Code and to undergo R.I. for one month for the offence under Section 341 Indian Penal Code.

Heard the learned counsel for the appellants as well as the State.

Learned counsel for the appellants has submitted that no offence under Section 307 of the Indian Penal Code is made out. Appellant no. 1 has remained in custody for about 11 months.

Prosecution case on the basis of written report of one Sidhnath Yadav is that when the informant came near Darwaja of accused Surendra Yadav in the way to going Badhar, accused Surendra Yadav abused him and told that why he had made complaint to so many persons regarding plucking of papaya by his son. Thereafter, other accused persons also arrived there armed with *lathi* and *Garasa* and started abusing the informant. It is alleged that Surendra Yadav assaulted the informant with *Garasa* as a result of which he fell down. Accused Dharmendra Yadav fired two round of firing with pistol causing injury to none.

On the basis of aforesaid *fardbeyan*, Sakurabad P.S. Case No. 05/2005 was registered for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 504 and 307 of the Indian Penal Code.

In this case altogether eight witnesses have been examined on behalf of the prosecution.



Informant Sidhnath Yadav has been examined as P.W. 6. He has stated in his examination-in-chief in para 3 that he was assaulted by all the accused persons indiscriminately. He has further stated that Surendra Yadav had assaulted him on head with *lathi*.

Other witnesses, namely, P.W. 1 Santosh Kumar, P.W. 2 Yadunandan Yadav, P.W. 3 Awadh Singh and P.W. 4 Bindeshwar Yadav have stated that Appellant no. 1 assaulted the informant on his head with *Garasa*. Son of informant, namely, Ravindra Yadav has been examined as P.W. 5. He has stated that at the time of occurrence, he was with his father (P.W. 6). They were going to see the land and when they reached near the door of accused Surendra Yadav, he had altercation with accused Surendra Yadav and he gave *Garasa* blow on the head of his father. The other accused persons also assaulted his father with *lathi*.

P.W. 8 is doctor. He has examined the injured/informant. He has found following injuries on the person of injured:

(i) Lacerated wound 6"x1/8"xskin deep on left parietal region of scalp extending till frontal region

(ii) Pain left locin.

Injury no. (ii) is opined to be simple in nature. Opinion with regard to injury no. (i) is reserved till C.T. Scan of brain with report or X-ray plate with report.

P.W. 7 is I.O. of this case. He has described the place of occurrence in his evidence. He has stated that blood was seen at the



place of occurrence. After completion of investigation, he submitted charge-sheet in this case.

Defence of the accused is that altercation had taken place on account of plucking of Papaya from the land of informant. The defence has brought some documentary evidence, which has been marked as Ext. A to E.

In this manner, from the evidence of witnesses, it appears that informant and other witnesses have stated that Appellant no. 1 assaulted the informant with *Garasa* on his head. P.W. 8 has found one injury on the head of informant caused by hard and blunt substance. As such, there was no any repetition of blow on the person of injured. Injury no. (i) was opined to be grievous in nature. The doctor has stated that such injury can be caused by fall on hard and blunt substance also.

In such circumstances, this Court after looking into nature of the injury sustained by informant and evidence of witnesses does not find any ingredient of Section 307 of the Indian Penal Code in this case.

Therefore, conviction of Appellant no. 1 under Section 307 of the Indian Penal Code is set aside. So far as conviction of Appellant No. 1 under Sections 325 and 341/34 of the Indian Penal Code is concerned, the same is found to be correct.

There is no evidence of any specific overt act against Appellant nos. 2 and 3. None of witness has levelled any specific allegation of overt act against them. Therefore, Appellant Nos. 2 and 3



are acquitted of the charges levelled against them. They are discharged from liability of their bail bonds.

Appellant no. 1 has already remained in custody for about 11 months as submitted by the learned counsel for the appellants, which is also apparent from the order of this Court dated 11.11.2009.

In aforesaid circumstances, the order of sentence passed against Appellant No. 1 is modified as period already undergone by Appellant No. 1 during trial. He is not required to go to custody any further.

Accordingly, this Criminal Appeal is allowed in part with modification in sentence of Appellant No. 1.

(Sanjay Priya, J.)

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AFR/NAFR	
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