

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.187 of 2004

Sessions trial no. 179/1991 arising out of Hajipur P.S. Case No. 46/1990
District- VAISHALI(HAJIPUR)

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1. Raghunandan Rai Son of Tota Rai
2. Pradeep Rai Son of Raghunandan Rai
3. Ramdeep Rai Son of Raghunandan Rai
All resident of Village Daulatpur P.S. Sadar Hajipur District Vaishali
.... Appellant/s

Versus

State of Bihar
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhay Kumar Shambhu, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 26-03-2018

1. This criminal appeal has been preferred against the judgment of conviction and sentence order dated 26.2.2004 passed by the Addl. Sessions Judge VI, Hajipur in Sessions trial no. 179/1991 by which and whereunder he convicted appellant no.1, Raghunandan Rai for the offences punishable under sections 324 and 447 of the Indian Penal Code whereas remaining two appellants were convicted for the offences punishable under sections 323 and 447 of the Indian Penal Code and accordingly, appellant no.1 was sentenced to undergo rigorous imprisonment for one year for the offence punishable under section 324 of the Indian Penal Code and three months under section 447 IPC and similarly, remaining appellants were sentenced to undergo rigorous imprisonment for six months for



the offence punishable under section 323 of the Indian Penal Code and three months under section 447 IPC. However, both sentences were ordered to run concurrently.

2. Informant, Bengali Sharma gave his fardbeyan on 5.3.1990 at 1.30 P.M. to this effect that on the same day at about 10 A.M. he was taking meal in his house whereas his grand daughter (PW2) and daughter-in-law (PW3) were sitting at Verandah of the house. In the meantime, appellants came there and put their claim over bundle of **Tori** upon which PW1 and PW2 made protest but the appellants started abusing and appellant no.1 gave garasa blow causing injury on the forehead of PW2 whereas two appellants started assaulting PW2 and PW3 by fists and slaps. Furthermore, appellant Pradeep picked up Balti and Lota and all appellants fled away from there. Informant claimed that witnesses saw the occurrence.

3. After institution of the FIR, investigation was taken up by the Investigating officer and charge sheet was submitted against the appellants for the offences punishable under section 307 and other minor sections of the Indian Penal Code. The cognizance of the offences was taken in usual course and the case was committed to the court of sessions. All the appellants were put on trial and accordingly, they stood charged for the



offences punishable under sections 307/34, 447, 323, 324 and 379/34 of the Indian Penal Code whereas appellant no.1, namely, Raghunandan Rai was separately charged for the offence punishable under section 307 of the Indian Penal Code.

4. In course of trial, prosecution examined, altogether, six witnesses, out of them PW1 is formal witness, PW2 and PW3 are injured witnesses, PW4 is husband of PW3, PW5 is a hostile witness as he has not supported the prosecution case whereas PW6 is also a formal witness who has proved the injury report as exhibit 2. The statements of the appellants were recorded under section 313 of the Code of Criminal Procedure in which they denied the prosecution story. The defence also examined one witness and got exhibited entry of case diary as exhibit A. Learned court below, having considered the materials available on record, convicted and sentenced the appellants in the manner as stated above. However, trial court acquitted the appellants for the offences punishable under sections 307 and 379 of the Indian Penal Code.

5. Learned counsel appearing for the appellants submitted that neither the informant nor Investigating officer was examined and similarly, doctor was also not examined and injury report was proved by formal witness but even then the



learned court below took note of the contents of the injury report which was not admissible in the eye of law. Learned counsel, further, submitted that the learned court below committed error in convicting the appellant no.1 for the offence punishable under section 324 of the Indian Penal Code. He, further, submitted that moreover, alleged occurrence took place near about 27 years ago and, therefore, even if the conviction of the appellants is maintained, then also it would not be proper to send them behind the bar and the appellants may be released after due admonition.

6. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that PW2 and PW3 have very clearly stated about the alleged occurrence and both the above stated witnesses are injured witnesses. He, further, submitted that no doubt, doctor has not been examined but injury report has been brought on record through a formal witness who claimed to identify the writing and signature of the doctor who had issued injury report.

7. Having heard the contentions of both parties, we went through the record. According to the prosecution case, PW2 and PW3 are injured witnesses and it is obvious that both



the above stated witnesses supported the prosecution story stating that they were assaulted by the appellants on the alleged date of occurrence. Injury report of PW2 has been brought on record and formal witness proved the injury report. No doubt, content of the injury report shall not go into the evidence unless doctor who had issued injury report is examined but the aforesaid injury report, at least, proves this fact that PW2 had sustained injury on the alleged occurrence and it were appellants who had assaulted him.

8. Admittedly, the alleged occurrence had taken place 27 years ago on account of petty dispute and, therefore, I do agree with the submissions of learned counsel for the appellants that all appellants may be released after due admonition.

9. Accordingly, this criminal appeal stands dismissed modifying the sentence of the appellants and the appellants are released after due admonition.

Shahid

(Hemant Kumar Srivastava, J)

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