

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.48 of 2009

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

[Against judgment of conviction and order of sentence dated 20.01.2009 passed by the Additional Sessions Judge, FTC III, Sheikhpura, in S.C. No.688 of 2005 arising out of Seikhpura P.S. Case No.163 of 2004]

- =====
1. Baleshwar Yadav, son of late Karu Yadav,
 2. Raja Ram Yadav, son of Sita Ram Yadav,
 3. Masudan Yadav, son of Sita Ram Yadav,
 4. Kailash Yadav, son of late Lakhan Yadav,
 5. Krishannandan Yadav, son of Mishri Yadav, all resident of village- Kare, P.S.- Shikarpur, District-Sheikhpura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

=====

Criminal Appeal (SJ) No. 117 of 2009

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

[Against judgment of conviction and order of sentence dated 20.01.2009 passed by the Additional Sessions Judge, FTC III, Sheikhpura, in S.C. No.688 of 2005 arising out of Seikhpura P.S. Case No.163 of 2004]

=====

Yadu Yadav, son of Mishri Yadav, resident of village-Kare, P.S.-Sheikhpura, District-Sheikhpura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

(In both Appeals)

For the Appellant/s : Mr. Rakesh Kumar Sinha 1, Advocate

For the Respondent/s : Mr. Bal Mukund Pd. Sinha, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-07-2018

Both the Criminal Appeals have been taken up together as they arise out of the same judgment.



2. By judgment of conviction and order of sentence dated 20.01.2009 passed by the Additional Sessions Judge, FTC III, Sheikhpura, in S.C. No.688 of 2005 arising out of Seikhpura P.S. Case No.163 of 2004, all the Appellants have been convicted for the offence under Section(s) 147, 323, 341 Indian Penal Code and sentenced to undergo simple imprisonment for six months under Section 147 Indian Penal Code, 15 days simple imprisonment under Section 341 Indian Penal Code, simple imprisonment for six months under Section 323/149 Indian Penal Code. Further, Appellant Yadu Yadav and Kailash Yadav been convicted under Section 148, 325 Indian Penal Code and sentenced to undergo rigorous imprisonment for one year six months under Section 148 Indian Penal Code and three years under Section 325 Indian Penal Code. All the sentences were ordered to run concurrently.

3. Counsel for the Appellants has submitted that no offence under Section(s) 325 Indian Penal Code is made out as there was no X-ray of the injured. All the injuries were bruise, abrasion, swelling etc.

4. Counsel for the State has submitted that all the witnesses have supported the case during evidence. The doctor has also found injury on the person of the injured.

5. As per *fard-e-beyan* of the Informant, while the Informant was passing through the Crusher of Yadu Yadav and



shop of Raja Ram Yadav, all of sudden, all the accused persons appeared near Crusher of Baleshwar Yadav. It is alleged that accused persons including Appellants were armed with pistol, lathi, Gandasa etc. Accused, Baleshwar Yadav, gave order to break his limb on which Pravin Yadav hit him with rod with intention to commit murder. Other accused persons also joined his hand. Fifteen days earlier, Praveen Yadav and Baleshwar Yadav asked the informant to pay rupees four thousand per month by way of *Rangdari*.

6. It is also stated that the Informant sustained fracture injury of both legs and right hand and also sustained injury near left eye at the hands of accused persons. On *halla* raised by the informant, Arjun Yadav, Lakhan Yadav, Kailash Yadav and Ram Balak Yadav arrived at the place of occurrence and on their coming, all the accused persons fled away. Uncles of the informant arrived and brought the informant to hospital.

7. On behalf of the prosecution, ten witnesses were examined during trial. PW 1 (Shiv Yadav), PW 2 (Khairo Yadav and PW 3 (Dinesh Yadav) have not supported the case and they have been declared hostile.

8. Informant, Surendra Yadav, has been examined as PW 6. He has supported the case of assault and has described manner of occurrence in his evidence and also stated about the



manner in which different Appellants assaulted him.

9. Other witnesses, namely, Bacchu Yadav (PW 4), Arjun Yadav (PW 5), Kailash Yadav (PW 7) and Bhuneshwar Yadav (PW 10) have all been examined by the prosecution as eye witnesses. They have stated that on *halla* they arrived and saw *Marpeet* committed by the accused.

10. Dr. Surendra Choudhary (PW 9) has found total seven injuries on the person of the informant. Injuries were on knees, right leg, right shoulder, bruise, bruise on left eye, lacerated wound on left leg below left knee, lacerated wound on left leg, lacerated wound on right food and bruise on forearm. Doctor has found Injury No. I to III to be grievous in nature caused by hard and blunt substance.

11. The Court below after appreciation of evidence has convicted accused Yadu Yadav and Kailash Yadav for the offence under Section(s) 325 and 148 Indian Penal Code. Further, the Court below has convicted all the Appellants for the offence under Section(s) 147, 323, 341 Indian Penal Code.

12. This Court after looking into the evidence finds that there was no X-ray report produced by the prosecution. The doctor has given opinion with regard to Injury Nos.1 to 3 having been grievous without examining the X-ray report. There is no mention in the Injury Report whether there was any fracture etc.



13. This Court is of the view that without examining X-ray report with regard to those injuries, opinion cannot be formed with regard to nature of injury. The Doctor in the instant case has opined Injury No.1 to 3 to be grievous in nature without any supporting document. Injury Nos.I to III is quoted below:

- I. Swelling of whole left leg and foot below the knee with limitation of movement.
- II. Swelling of whole right leg and foot with limitation of movement.
- III. Swelling of right shoulder, upper arm with limitation of movement of shoulder.

14. There is no finding of the Doctor on the basis of supporting document to describe aforesaid injuries to be grievous in nature.

15. Therefore, this Court is of the view that conviction of the Appellants Yadu Yadav and Kailash Yadav under Section 325 Indian Penal Code is not in accordance with law and the same is, accordingly, set aside.

16. The Court below has further held Appellant Yadu Yadav and Kailash Yadav guilty for the offence under Section(s) 148 Indian Penal Code on the ground that they were armed with *Gandasa* and deadly weapon. But, from perusal of the Injury Report, it appears that none of the injuries were so serious, which could have been caused by *Gandasa* as mentioned above. There was no X-ray report with regard to any of the injury. The Doctor has although opined Injury Nos. I to III as grievous, but stated that those



injuries were caused by hard and blunt substance. Therefore, conviction of the Appellants Yado Yadav and Kailash Yadav under Section 148 Indian Penal Code is also not in accordance with law and the same is set aside.

17. This Court on the basis of evidence of prosecution witnesses as well as injury sustained by the Informant finds that prosecution has been able to substantiate the charge against the accused for offence under Section(s) 147, 323, 341 Indian Penal Code beyond all reasonable doubt. Therefore, the judgment of conviction against all the Appellants under Section(s) 147, 323, 341 Indian Penal Code is hereby affirmed.

18. This Court after looking into nature of injuries sustained by the injured is of the view that period already undergone by the Appellants in custody during trial will suffice their sentence. Therefore, sentence passed by the learned Court below is modified to the period already undergone by them in custody during trial.

19. These Criminal Appeals are, accordingly, allowed in part with modification in sentence as mentioned above.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25-07-2018
Transmission Date	25-07-2018

