

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.56 of 2009

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

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1. Bhinu Rai, son of late Anup Lal Rai
 2. Raj Kishore Rai, son of Bhinu Rai
 3. Jai Kishore Rai, son of Bhinu Rai

All resident of village Sirkhiriya, P.S. Runnisaidpur, Distt. Sitamarhi.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

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

For the State : Mr. Bal Mukund Pd. Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-08-2018

1. This Appeal has been filed against the Judgment of conviction and order of sentence dated 14.01.2009 passed by the Additional Sessions Judge, Fast Track Court-3, Sitamarhi, in Sessions Trial No. 317 of 2001/51 of 2008 arising out of Runnisaidpur P.S. Case No. 177 of 2000, G.R. No. 1575 of 2000 by which the Appellants have been convicted and sentenced to undergo rigorous imprisonment for three years for the offence under Section 324, six months for the offence under Section 323 and further six months for the offence under Section 341 of the Indian Penal Code. All the sentences were ordered to run concurrently.

2. As per First Information Report lodged by informant Ganesh Rai, he was going to call labourers and when he



reached near the place of occurrence, he heard hulla and went there. He found that the Appellants were altercating with Ram Sagar Rai, nephew of the informant. He saw that Raj Kishore Rai (Appellant No. 2) and Jai Kishore Rai (Appellant No. 3) ordered to assault Ram Sagar Rai, upon which Bhinu Rai (Appellant No. 1) assaulted the informant with spade on his head causing bleeding injury to him on account of which he fell down on the ground. Appellant No. 2 also assaulted the informant with *lathi* on his *Panjra*. The villagers came there and anyhow succeeded to save him from further assault. The motive behind the occurrence is that nephew of the informant was going to his field with oxen by passing through the field of Appellant No.1.

3. Heard learned counsel for the Appellants and learned Additional Public Prosecutor.

4. In the instant case prosecution have examined total eight witnesses during trial. Ram Nandan Rai (PW-4) and Paltu Rai (PW-5) have not supported the case of prosecution. They have been declared hostile. Pramod Kumar (PW-3) is formal witness. Dr. Intekhab Mahmood (PW-2) is Doctor and Rajeeb Barnwal (PW-7) and Kunal Anand Chakraborty (PW-8) are Investigating Officer. Ganesh Rai (PW-6) is the informant of the case. He also got injury. He has stated in his evidence that on the date of occurrence, Appellant No. 1 assaulted him with spade on his head on the instigation of



Appellant Nos. 2 and 3, on account of which, he sustained injury. He has further stated in his evidence that Jai Kishore Rai (Appellant No. 2) assaulted the informant with *lathi* on his *Panjra*. The informant was sent to Hospital for treatment.

5. PW-1 Ram Sagar Rai is nephew of the informant. He has stated that at the time of occurrence Appellant No. 1 assaulted his uncle Ganesh Rai on his head with Spade on instigation of Appellant Nos. 2 and 3, on account of which, his uncle fell down on the ground.

6. The Doctor has been examined as PW-2 who has proved the injury report of the informant Ganesh Rai which has been marked as Exbt. 1. The Doctor has found one cut injury on posterior region of head with shape "X". The Doctor has found injury on the person of informant Ganesh Rai simple in nature caused by hard and blunt substance.

7. The court below after looking into the evidence of prosecution witnesses has convicted the Appellants for the offence under Sections 323, 324 and 341 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for three years for the offence under Section 324, R.I for six months for the offence under Section 323 and further R.I. for six months for the offence punishable under Section 341 of the Indian Penal Code. All the



sentences were ordered to run concurrently.

8. This Court after looking into the evidence of prosecution witnesses finds that there is no evidence of any specific overt act committed by appellant Nos. 2 and 3. Therefore, Judgment of conviction and order of sentences against Appellant Nos. 2 and 3 is set aside. They are acquitted of charges levelled against them. They are discharged from the liabilities of their bail bonds.

9. So far Appellant No. 1 namely, Bhinu Rai is concerned, it appears that informant himself has stated that he was assaulted by Appellant No. 1 on his head with spade. Such evidence is corroborated by evidence of PW-1, who is nephew of informant. The Doctor has found one injury on the head of the informant caused by hard and blunt substance.

10. From the nature of injury found on the person of injured, this Court finds that no offence under Section 324 Indian Penal code is made out against appellant No. 1. Therefore, he is acquitted for the charge under Section 324 Indian Penal Code. The conviction under Section 323 and 341 of the Indian Penal Code with regard to Appellant No. 1 is however upheld.

11. Counsel for the Appellants has submitted that Appellant No. 1 has already remained in custody for about one month during Trial.



12. This Court after looking into the nature of allegation against Appellant No. 1, is of the view, that period already undergone by the Appellant No. 1 in custody during trial is sufficient punishment for him.

13. Therefore, the sentence passed against the Appellant No. 1 is modified to the period already undergone during trial by the Appellant No. 1. The Appellant No. 1 is not required to be sent to custody further.

14. This Criminal Appeal is accordingly allowed in part with modification in sentence of Appellant No. 1 as ordered above.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
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