

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.363 of 2003

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

- =====
1. Mahendra Ram, son of Indrajeet Ram
 2. Rajendra Ram, son of Chandradeep Ram, both are residents of village Sonbarsa, P.S. Nawa Nagar, District Bhojpur

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Advocate (amicus curiae)

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 28-03-2018

Both the appellants stand convicted under Sections 452 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years under Section 452 IPC and six months simple imprisonment under Section 323 IPC and both the sentences were directed to run concurrently vide judgment and order dated 23.6.2003 passed by Sri Rajendra Prasad Rai, the then Presiding Officer, Additional Court No.1, Buxar. It further appears that other two accused persons died during trial and case was abated against them.

2. Prosecution case as appears from the fardbeyan of informant Sukhal Ram (PW 3), in short, is that brother of informant Ram Chander Ram was practicing black magic to drive away evil spirit from his wife with prayer and holy words and in the meantime appellants and other accused persons entered inside his courtyard and



accused appellant Mahender Ram instigated other accused persons to make assault by saying that Ram Chander Ram used to send evil spirit in his house, upon which Mahender Ram gave a lathi blow on the head of informant and he fell down and thereafter other accused persons assaulted him by lathi and blood started coming out from his head. Further prosecution case is that accused persons have also assaulted his Bhabhi also.

3. On the basis of aforesaid fardbeyan, Nawanagar P.S. Case No. 112 of 1986 was registered against the accused persons under Sections 341, 452, 323 and 307/34 IPC and post investigation police has submitted charge sheet and cognizance of the offence was taken and after commitment, the case traveled to the file of the learned Trial Judge for trial and disposal.

4. During trial altogether five witnesses have been examined by prosecution in order to substantiate its case, they are PW 1 Ram Chander Ram, who is brother of informant, PW 2 Jonhiya Devi, who is Bhabhi of the informant, PW 3 Sukal Ram, who is informant and injured, PW 4 Parbatiya Devi, who is wife of the informant and PW 5 Krishna Prasad Sharma, who is a Constable and has proved injury reports as Exts 1 & 1/1. Fardbeyan is Ext.2 and formal FIR is Ext.3.

5. In this case neither I.O. nor Doctor has been examined.

6. Learned trial court on conclusion of trial has convicted the appellants under Sections 452 and 323 IPC and sentenced them as



stated above.

7. Learned amicus curiae Mr. Ranbir Singh has assailed the judgment on the ground that prosecution evidences do not make out a case under Section 452 IPC, as there is no evidence available on record that appellants have entered into the house after preparation of assault and so far conviction under Section 323 IPC is concerned, I.O. has not been examined in this case and, as such, the conviction is not sustainable in the eye of law under the aforesaid Sections.

8. On the other hand, learned counsel for the State has defended the impugned judgment on the ground that evidence clearly shows that the accused appellants entered inside the house armed with lathi and assaulted the brother of the informant and Bhabhi of the informant with lathi and, as such, a case under Sections 452 and 323 IPC is made out and hence the conviction is just and proper and does not require any interference by this Court.

9. Having heard both sides and on perusal of evidence it appears that PW 3 is the informant in this case and he has stated that accused persons entered inside his house and complained that evil spirit was sent to their house and assaulted him and his Bhabhi (PW 2) and his evidence also found support from the evidence of PWs 1 and 2, who are brother and Bhabhi of the informant and their presence cannot be doubted and PW 4 is wife of informant and she has supported the prosecution case. It appears that in this case I.O. has not



been examined and submission of learned amicus curiae is that in absence of examination of I.O. the prosecution has not established its case but there are consistent evidence that accused persons, including the appellants entered inside the courtyard of the house of the informant, as such place of occurrence has been established by the prosecution and evidence further shows that they have been assaulted by them. No doubt, Doctor has not been examined but for conviction under Section 323 IPC it is well settled that examination of Doctor is not essential when the ocular evidence is consistent.

10. So far submission of learned amicus curiae that no offence is made out under Section 452 IPC is concerned, Section 452 IPC provides as follows :

“S. 452- House-trespass after preparation for hurt, assault or wrongful restraint- Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

On perusal of Section 452 IPC itself it appears that to prove a case under Section 452 IPC, prosecution has to establish the factum of house-trespass and further to prove preparation for causing hurt to any person but in the present case no doubt there is evidence that the appellants committed house-trespass by entering inside the courtyard of the house of the informant but there is no evidence on record that



they have entered inside the house with preparation for causing assault, rather evidence shows that altercation took place between them and thereafter they have assaulted the informant. It is also well settled that there must be clear evidence of preparation for causing hurt to sustain a conviction under Section 452 IPC and the fact that a person entered another man's house and committed an assault does not necessarily presuppose such preparation, for it may be a case of *post hoc ergo propter hoc*. In the present case also there is nothing available on record to show that the appellants entered the house with preparation to assault them, rather it appears that they have entered inside the house to complain about sending of evil spirit to their house.

11. In such view of the matter, the conviction of the appellants under Section 452 IPC does not appear to be sustainable in the eye of law and at best the appellants may be convicted under Section 448 IPC. So far conviction of appellants under Section 323 IPC is concerned, in view of the evidence available on record that appears to be sustainable in the eye of law.

12. Accordingly, the conviction of the appellants under Section 323 IPC is affirmed and conviction under Section 452 IPC is modified to conviction under Section 448 IPC.

13. Submission of learned counsel for the appellants is that the occurrence is of the year 1988 and occurrence took place due to



petty dispute and both the appellants by now are at the age of more than 50 years, which appears from the assessment of age at the time of judgment and in such view of the matter, they may be released on probation of bond under Section 360 Cr.P.C.

14. It appears that the occurrence is about 30 years old and both the appellants by now aged about 50 and more than 50 years respectively, as such, instead of confirming of sentence they shall be released on due admonition under Section 360 Cr.P.C. by learned trial court.

15. With the above modification in conviction and sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

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