

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.366 of 2003

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

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1. Sher Jama Mian son of Iltaf Hussain Mian
2. Ajam Mian, son of Sher Jama Mian
Both resident of village Jangalia, P.S. Gopalganj, Dist. Gopalganj
..... Appellants

Versus

State of Bihar
..... Respondent

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Appearance :

For the Appellants : Mr. Uma Shankar, Sr. Adv.
Mr. Lal Babu Keshari, Adv.
For the Informant : Mr. Shekhr Singh, Adv.
Mr. Shree Nivas Madhuvan, Adv.
For the State : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 05-07-2018

This appeal is directed against the judgment and order dated 15.7.2003 and 18.7.2003 respectively passed by Sri Lakshman Sinha, 4th ADJ, Gopalganj in Sessions Trial NO.54 of 1996/203 of 2000, by which the appellants were convicted under Section 307 of the Indian Penal Code and sentenced to undergo R.I. for seven years.

2. During the pendency of the appeal, it has been reported that the appellant no.1 (Sher Jama Mian) has died and as such a report was called for and from the report received from the S.P., Gopalganj, it appears that the appellant no.1 has died and as such the appeal against the appellant no.1 stands abated.

3. The prosecution story as per fardbyen of Md. Ali



(informant) (P.W.4) in short is that there was land dispute between the informant and his neighbour Sher Jama Mian (appellant No.1) and it is stated that Sher Jama Mian was player of black magic and on the day of occurrence Sher Jama was standing on the roof of his neighbour Shabra Begum concealing himself and thereafter he jumped upon his own roof. Shabra Begum found some mustard and sand sprinkled on her roof on which she stated as to why he is harassing them. It is also the prosecution story that thereafter the appellant no.1, his wife, appellant no.2 and grand daughter went on their roof and sprinkled liquid substance on the informant and others causing injury to them.

4. On the basis of the aforesaid fardbeyan Gopalganj P.S.Case no.139 of 1995 was registered, post investigation, charge-sheet has been submitted and the cognizance of he case has been taken and the case was committed to the court of sessions, which ultimately came to the file of Sri Lakshman Sinha, 4th ADJ, Gopalganj for trial and disposal. It further appears that in this case charges were framed under Section 307 and 34 of the Indian Penal Code.

5. The prosecution has examined altogether seven witnesses, they are P.W.1 Md. Idrish, P.W.2 Hasbun Khatoon, P.W.3 Jahangir, P.W.4. Md. Ali (informant) P.W.5 Dr. Janak Lal



Sharma, P.W.6 Tej Narayan Lal (I.O.) and P.W.7 Shabara Begum, who is not charge-sheeted witness and she has been examined on the prayer of the prosecution.

6. No documentary or oral evidence has been adduced on behalf of the defence and his evidence as per cross examination and the statement under Section 313 of the Cr.P.C. is of innocence and of false implication in this case.

7. The learned trial court on conclusion of the trial has convicted the appellant under Section 307 of the IPC and sentenced to undergo R.I. for seven years.

8. The learned counsel for the appellant has assailed the judgment on the ground that the learned trial court in spite of the evidence of the Doctor that injury was caused by boiling water, has convicted the appellant under Section 307 of the IPC and under the aforesaid facts and circumstances the conviction under Section 307 of the IPC does not appear to be sustainable. Further submission is that the no specific allegation has been attributed against the appellant no.2 in spite of that he has been convicted under Section 307 of the IPC.

9. On the other hand the learned counsel for the informant has submitted that the evidence in chief of P.Ws. had stated that it is acid like substance and learned trial court considering the same



and injuries convicted the appellants under Section 307 of the IPC.

10. Considering the evidence available the record it appears that the witnesses have stated that the appellants have sprinkled acid like substance on that causing injury to them and in the FIR it is mentioned that acid like substance was thrown over them.

11. P.W.5 is the Doctor and he has found following injuries on the body of Jahangir :

- i. Complain of burning sensation in left eye.*
- ii. Multiple superficial burn spots on face. The injuries may be caused by boiling water or diluted acid.*

Similarly the Doctor has examined Md. Ali (P.W.4) and has found following injuries :

- i. Complain of burning sensation on chest and abdomen.*
- ii. Complain of burning sensation and redness on neck.*
- iii. Complain of burning sensation on pelvic region*
- iv. Complain of burning sensation on pelvic region.*

He has also examined Hasmat Khatoon (P.W.2) and found following injuries :

- i. Complain of burning sensation on neck.*
- ii. 3 superficial burn spots at right chest with burning sensation.*
- iii. Diffuse tenderness over all body.*

12. However, the Doctor in his cross examination has stated that he has categorically opined that the said injuries are caused



by boiling water. He has not mentioned about acid burn symptom on there three injured even hot tea is poured on the body, it will cause same type of injury as boiling water. The learned trial court considering the fact that the Doctor after examination has stated about the boiling water or dilute acid but in cross examination he differed with the earlier opinion as given has not relied above finding and relied on ocular evidence. In this case, the I.O. has been examined and it appears that he has seized burnt cloth and earth soil but that cloth were not sent for Forensic Science Laboratory for examination to come to a conclusion that it was acid. In the first information report also the initial version is that acid like substance has been thrown and as such there is inconsistencies in prosecution, so far allegation of sprinkling acid, in such a situation finding of the trial court that all the injuries were caused by acid is not free from reasonable doubt and possibility can not be ruled out that it is caused by boiling water. There is also no motive that the appellants for throwing acid.

13. In such a situation, the finding of the trial court convicting the appellants under Section 307 of the IPC does not appear to be sustainable in the eye of law, however in the above facts and circumstances of the case there are enough materials available on the record constituting an offence under Section 324 of the IPC



against the appellants.

14. Submission of the learned counsel for the appellant no.2 is that he remained in custody for three months during the pendency of trial and appeal and case is 23 years old, hence, lenient view may be taken and he should be released on period already undergone.

15. Under the aforesaid facts and circumstance, this appeal is disposed of with modification in conviction and sentence and conviction under Section 307 of the IPC is modified under Section 324 of the IPC and he is sentenced under Section 324 of the IPC to the period already undergone by the appellant no.2 in custody.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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