

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.4 of 2011

=====

1. Uma Yadav @ Birendra Yadav, Son of Shyam Bihari Yadav
2. Shyam Bihari Yadav, Son of Late Indu Yadav
3. Mahendra Yadav, Son of Late Jai Prakash Yadav
4. Surendra Yadav, Son of Late Bhai Ram Yadav
All Residents of Village Mani, P.O. Mani, P.S. Bikramganj, District Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Subodh Kumar Sinha
For the Respondent/s : Mr. AJAY MISHRA (APP)

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 25-01-2018

The appellants being aggrieved by the judgment of conviction dated 18.12.2010 and the order of sentence dated 20.12.2010, passed in Sessions Trial No.267 of 2000/Tr. No.143 of 2004, arising out of Bikramganj P.S. Case No.115 of 1999 by learned Additional Sessions Judge (Fast Track Court No.-I), Rohtas at Sasaram have preferred the present appeal. The trial court has convicted all four appellants under Sections 341, 307/34 of the Indian Penal Code but Uma Yadav and Mahendra Yadav were acquitted from the charge under Section 379 of the Indian Penal Code. Consequently Uma Yadav @ Birendra Yadav, Shyam Bihari Yadav, Mahendra Yadav and Surendra Yadav all four appellants are sentenced to undergo one month rigorous



imprisonment for committing offence under Section 341 of the Indian Penal Code and rigorous imprisonment for seven years under Sections 307/34 of the Indian Penal Code, however, both sentences shall run concurrently.

2. The allegation in brief mentioned in the written information is that while informant Ganesh Pratap (PW2) was returning back to his home in the evening at around 5.30 P.M. from the field after attending the call of nature then on the way he was intercepted by all four accused persons Uma Yadav armed with farsa, Shyam Bihari Yadav and Surendra Yadav armed with lathi and Mahendra Yadav armed with iron rod wrongfully restrained him and asked why he got a case lodged against them and suddenly Uma Yadav gave a farsa blow over his head, others also started assaulting him, Shyam Bihari Yadav assaulted on his left hand by lathi, Mahendra Yadav gave iron rod blow on his back and Surendra Yadav also gave one lathi blow on his shoulder. In the mean while, Uma Yadav snatched his golden chain and Mahendra Yadav snatched his wrist watch. The informant raised alarm thereafter villagers rushed there but all accused escaped away.

3. On institution of the FIR, police started investigation and submitted charge-sheet under Sections 307, 323, 341 and 379/34 of the Indian Penal Code finding evidence against the



accused persons. After taking cognizance of the offence, case was committed to the court of sessions for trial and thereafter by the impugned judgment and order the appellants have been convicted as mentioned earlier.

4. Learned counsel appearing on behalf of the appellants submits that there is no eye-witness in the case except the informant. However, four prosecution witnesses have been examined, the informant Ganesh Pratap (PW2), his brother Yogendra Singh (PW3), one independent witness Rajesh Kumar Chandel (PW1) but his testimony was not relied upon by the trial court and last witness is Dr. Raghvendra Sharma (PW4), the Medical Officer who had examined the informant. However, I.O. has not been examined in the present case. Learned counsel for the appellants further lays emphasis that even entire prosecution evidence do not prove the case under Section 307 of the Indian Penal Code. There is complete absence of any intention to make an attempt on life of Ganesh Pratap (informant). Uma Yadav is alleged to have given only one farsa blow however there is no repetition despite any intervening circumstance and that injury is simple. However, the doctor PW4 in paragraph-3 of his examination has accepted that injury no.1, the incised wound, is simple in nature which rules out use of a heavy sharp cutting



weapon like *farsa*. The informant's statement and the FIR itself shows that at the place of occurrence there was no other person was present except the informant and these four appellants, so they had all the opportunity to give the repeated blow if they had any intention to commit murder and rest other appellants are said to have given a single blow by lathi and iron rod that too on non-vital part of the body, so no ingredients of Section 307 of the Indian Penal Code is established by the prosecution side. At best charge of Section 324 of the Indian Penal Code is proved against Uma Yadav and only under Sections 323 and 341 against rest three appellants. This case is of the year 1999, much time has elapsed approximately two decades have passed away and Uma Yadav has remained in custody approximately four months and rest other appellants for a month and prosecution has also not brought on record that the appellants have been convicted earlier in any other case.

5. Per contra, learned counsel for the State submits that the prosecution has been able to establish the charge beyond all reasonable doubt however, concedes that the injury on the person of the informant was found simple in nature by PW4, the doctor.

6. Having considered the rival submissions and on perusal of the records, the Court finds that there are three



witnesses examined by the prosecution, who are eye-witnesses to the occurrence namely Rajesh Kumar Chandel (PW1), Ganesh Pratap (PW2), the informant and lastly Yogendra Singh (PW3). Ganesh Pratap (PW2) has narrated the manner of occurrence in paragraph-3 of his testimony which clearly indicates that none of the appellants made any attempt to repeat any blow by their weapons. It is deposed that Uma Yadav gave a single *farsa* blow on his head but *farsa* is a heavy sharp cutting weapon but PW4, the doctor, who had examined the informant has deposed that the said corresponding injury is simple in nature which does not establish injury caused by heavy sharp cut weapon. Rest other accused persons have assaulted with *lathi* as it is deposed that Shyam Bihari Yadav gave single *lathi* blow on the hand of the informant and Surendra Yadav gave one *lathi* blow on his neck and Mahendra Yadav gave single iron rod blow on his back but only one injury in form of swelling is found on the left arm which is attributed to Shyam Bihari Yadav that too is simple in nature. It is not necessary that to justify conviction under section 307 of the Indian Penal Code injury to the nature of capable of causing death is to be inflicted rather the intention and knowledge is the primary consideration. It is sufficient in law if there is an intent coupled with some overt act in execution to achieve its object but failed



due to intervening circumstance. However in the present case there is no evidence on record to prove that appellants failed to commit murder of Ganesh Pratap due to intervening circumstance. The informant Ganesh Pratap was refrained by four appellants at a lonely place around 400 meters distance to the village in the field and started assaulting but according to his own testimony no repetition of blow was given by Uma Yadav. This clearly proves that the appellants had no intention to kill the informant otherwise they had assaulted by giving repeated blow on his vital part but there is complete absence of such evidence, hence the prosecution has failed to establish the charge under Section 307/34 of the Indian Penal Code against all four appellants, so appellants are acquitted from the charge under Section 307/34 of the Indian Penal Code. However, the prosecution has been able to establish the charge under Section 324 of the Indian Penal Code only against Uma Yadav, who is said to have given single blow with sharp cutting weapon on the person of the informant Ganesh Pratap (PW2), so his conviction is modified and accordingly convicted under Sections 324 and 341 of the Indian Penal Code and rest other appellants are convicted under Section 323 of the Indian Penal Code. However, approximately 19 years have elapsed since the occurrence which is dated 18.08.1999 and both sides are co-



villagers and there is no evidence that they were ever convicted previously prior to this case, so they are sentenced to the period already undergone as Uma Yadav has remained in custody for four months and rest others for one month.

7. With the aforesaid modification in conviction and sentence, the criminal appeal stands dismissed.

(Arun Kumar, J.)

S.KUMAR/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.04.2018
Transmission Date	18.04.2018

