

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.378 of 2017

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1. Md. Sohrab, Son of Late Md. Illiyas @ Polo,
2. Md. Rustam, Son of Late Md. Illiyas @ Polo,
3. Md. Sajjad @ Teni, Son of Late Md. Illiyas @ Polo,
4. Md. Kalam, Son of Md. Ajeej, All are residents of Village-Madhepura, Laheri Tola, Ward No.12, P.S. and District-Madhepura.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dr. Sanjay Kumar Singh, Adv.

For the State : Mr. Sri Sanjay Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

3 29-03-2018

The petitioners were tried and convicted under Sections 323/34 of the Indian Penal Code (*in short "the I.P.C."*) by the learned Trial Court in connection with Madhepura P.S. Case No. 95 of 2000, dated 20.04.2000, by judgment dated 23.09.2015, but they were released after admonition under Section 3 of Probation of Offenders Act, 1958 (*in short "the Act"*).

The question raised by the learned counsel for the petitioners is that even for convicting a person under



Section 323 of the I.P.C., the Trial Court ought to have taken into account the injury report. In the present case, neither the Doctor was examined nor the Investigating Officer has stepped in the witness-box to depose before the Trial Court. It has been argued that in face of the specific allegation against the petitioners of having assaulted the victim by an iron rod leading to bleeding injuries, the Trial Court ought not to have convicted the petitioners without looking at the injury report.

In support of such a submission, it has been submitted that the word "*voluntarily*" used in Section 323 of the I.P.C. has been defined under Section 39 of the I.P.C., which reads as follows:-

39. "Voluntarily".—A person is said to cause an effect "*voluntarily*" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

For the sake of completeness, the provision of Section 323 of the I.P.C. is also being extracted hereinbelow:-

323. Punishment for voluntarily causing hurt.— Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.



What actually means by the word "*voluntarily*" is that if an accused causes an injury by means whereby he intended to cause it or by means which at the time of employing those means, he knew or had reasons to believe to be likely to cause it.

In the present case, the petitioners are alleged to have used an iron rod.

True it is that in the face of the specific allegation, the Trial Court ought to have looked for corresponding injury and the report regarding the same, but from the perusal of the Trial Court judgment, it appears that the Trial Court relied upon the consistent ocular testimony of the witnesses regarding the assault.

A Bench of this Court, while dealing with a case of similar nature, in case of ***Chandradeep @ Chandeeep Sao & Ors. Vs. The State of Bihar***, reported in ***2014(2) PLJR 286***, has held in paragraph 6 and 10 as follows:-

6. On a bare perusal of Section 324 or Section 323 of the Indian Penal Code, what may be found is that the act has to be "*voluntarily*" and the act of causing hurt in case of an offence under Section 324 of the Indian Penal Code should be done by using a weapon which is an instrument either of shooting or of cutting or of stabbing, etc. as per the language of that particular provision of the Indian Penal Code. Word "*voluntarily*" gets defined by Section 39 of the Indian Penal Code as causing an effect by employing a means intending the effect to be caused by such



employment of a means or with the necessary knowledge that by employing such means that particular effect shall be caused. Thus, what appears from Section 39 of the Indian Penal Code is that the "means" has also to be judged from the facts as regards the application of Section 324 or 323 of the Indian Penal Code, if there is a case of "effect", that is to say, any injury being caused to the injured or the victim. This is the reason that in some of the decisions of this Court also, a particular view percolated on the above basis that thought there might not be any necessity of the medical evidence being adduced in support of a charge under Section 323 of the Indian Penal Code, but if there is a case of a particular bodily injury being caused by the voluntary act of the accused, then in that case there could be the necessity for the Court to look to the medical evidence.

10. I have already noted that in a case of conviction under Section 323 of the Indian Penal Code, there may not be any need of examination of a doctor or production of a medical evidence, but if the prosecution case is very definite that there was some injuries caused to some injured by voluntary act of an accused to cause the effect intentionally or knowingly by employing a means, then in that case for doing complete justice, it is always desirable that the opinion of the doctor is elicited by examining him. Appellant Shanker Prasad was alleged to have given a Lathi blow to the informant's father on his right hand. There is no dispute that he had also been examined by the doctor and injury certificate or report had also been issued in respect of his injuries. And again, the situation was the same on account of the non-examination of the doctor or non-production of the medical evidence. In that view, the conviction of



Shanker Prasad under Section 323 of the Indian Penal Code also appears not sustainable.

What the Bench intended to say in the aforesaid decision is that in particular cases of bodily injury alleged to have been caused by the voluntary act of the accused, there could be necessity of the Court to look into the medical evidence. It was only a word of caution and such observation is limited to the facts of the case which were available before the Hon'ble Judge.

This cannot be a general proposition that in the absence of the medical evidence, there could be no conviction under Section 323 of the I.P.C.

For the aforesaid reason as also taking into account that the petitioners have only been admonished under the provisions of Section 3 of the Act, this Court is not inclined to interfere with the order impugned.

The revision petition is, thus, dismissed.

(Ashutosh Kumar, J)

Praveen-II/-

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