

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.18 of 2009

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Jiut Ram son of late Paltan Ram, resident of village Saraya, P.O. Basantpur,
P.S. Basantpur, District Siwan

... .. Appellant/s

Versus

1.The State Of Bihar

... .. Opp.Party

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Appearance :

For the Appellant : Mr. Ram Swaroop, Amicus Curiae
For the State : Mr. Bal Mukund Prasad Sinha APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date : 22-02-2018

None appears on behalf of the appellant hence Mr. Ram Swaroop, learned advocate is appointed as *amicus curiae* to defend the appellant. Mr. Bal Mukund Prasad Sinha has appeared on behalf of the State.

2. The sole appellant, namely Jiut Ram has been convicted for the offence under Section 326 of the Indian Penal Code vide judgment dated 26.09.2008 , passed by learned Additional District & Sessions Judge, Fast Track Court No. III, Siwan in Sessions Trial No. 419 of 1995 arising out of Basantpur P.S. case no. 56/1995. Vide order of sentence dated 27.09.2008 the appellant has been sentenced to undergo R.I. for 5 years and also pay a fine of Rs. 5,000/- and, in default of payment of fine, to further undergo R.I. for one year.

3. The prosecution case , in brief, is that on 19.6.1995 at 8



A.M. the informant was returning from his field along with his father then he saw his uncle Jiut Ram was cutting Merh near the door. The informant raised objection on which his uncle Jiut Ram(the appellant) assaulted on the head of the informant with sharp edge portion of the spade. The informant tried to stop with his hand, as a result of which, he sustained grievous injury on his head as well as on the right hand. On hulla, his father and villagers came but the accused persons fled away. The informant was brought to Basantpur hospital for treatment.

4. The charge was framed for the offence under Section 324, 326 and 307 of the I.P.C. but the learned Court below after conclusion of the trial convicted the appellant for the offence under Section 326 of the I.P.C.

5. The entire Lower Court Records has been received.

6. The prosecution has, in all, examined seven witnesses during trial. Ram Deo Ram father of the informant is PW-1. Bijendra Ram, informant of this case is examined as PW-2. Sita Devi and Prabhawati Devi have been examined as PWs 3 and 4. Dr. Bhairav Prasad is examined as PW-5. Doctor Vimal Kumar is examined as PW-6. Bishwanath Pandit, the Investigating Officer of this case has been examined as PW-7.

7. Informant Bijendra Ram (PW-2) has stated in his evidence that on the alleged date of occurrence he along with his father came to his house after ploughing the land. The accused person was



flowing water on his door. He made protest on which the appellant gave spade blow on his head which was stopped by his right hand, as a result of which, he sustained hurt on the head and on the right hand. Thereafter, he along with his father came to Basantpur hospital for treatment. The learned trial Court has mentioned in the impugned judgment that there is no cross-examination on the point of assault. The informant has stated in paragraph no. 16 of his cross-examination that blood had fallen on the ground after assault and also on his cloth. He had sent the blood stained soil and cloth to the police.

8. The other witnesses , namely, Ram Deo Ram (PW1), who is father of the informant, has stated that he along with his son Bijendra Ram came to his door from his field and saw the appellant was cutting Merh. His son Bijendra Ram raised objection on which Jiut Ram assaulted his son Bijendra with sharp edge portion of the spade. He has also stated in his evidence that accused assaulted with intention to kill. The son of this witness stopped with his hand, as a result of which, he sustained injury in his hand. He brought his son to Basantpur hospital after assault for treatment. The doctor of Basantpur referred him to Siwan hospital as the injury was grievous . The learned Trial Court has mentioned in the impugned order that there is nothing in the cross-examination on the point of assault on behalf of the defence.

9. Similarly, witness Sita Devi (PW3) has stated in her



evidence that on the date of occurrence accused Jiut Ram was cutting Merh at her door and her husband and son Bijendra Ram came to the door after ploughing field, Bijendra Ram obstructed on which Jiut Ram assaulted on the head of Bijendra Ram with sharp edge portion of the spade which he stopped by his hand, as a result of which, he sustained hurt on his head and also on hand and the bone of the head was cut. She has further stated that prior to this occurrence Jiut Ram assaulted on the hand, leg and head of her husband and the injury was grievous and due to assault her husband is still weak. She has stated in her evidence that she had gone to Basantpur hospital along with her son and husband. Her son was referred to Sadar Hospital for treatment. She has further stated in her evidence that she showed the spade to the police by which his son was assaulted.

10.PW-4 has corroborated the evidence of the informant. She has stated that on the alleged date of occurrence her father-in-law and his Dewar Bijendra Ram after ploughing the field came at his door and they saw that Jiut Ram was cutting Merh. Bijendra Ram obstructed then appellant Jiut Ram assaulted on the head of Bijendra Ram with sharp edge portion of spade. Bijendra Ram stopped spade with his right hand, as a result of which, he sustained injury on the head and on his right hand. Thereafter Bijendra Ram was brought to Basantpur Hospital from where he was referred to Sadar Hospital, Siwan.



11. Dr. Bhairav Prasad (PW5) the then in-charge Medical Officer of Primary Health Centre, Basantpur has examined Bijendra Ram and has found two injuries on the person of injured one Incised wound on the frontal area of head and other on the right forearm as mentioned in the injury report which has been marked as (Ext.2).

12. Dr. Bimal Kumar (PW-6) is another doctor of Sadar Hospital, Siwan, who has examined Bijendra Ram (PW2) who was referred from P.H.C. Basantpur and found one lacerated wound on left parietal region and X-ray showed fracture on frontal bone of the skull, on the right side of injury no.1 was grievous in nature. The aforesaid injury report is marked as Ext. 2/A

13. The Investigating Officer of this case PW-7 has found the case true and submitted charge sheet.

14. In this manner, there is consistent evidence of the witnesses including the informant that the appellant assaulted the informant with spade causing head injury which also gets support from the injuries found by the doctors who have been examined as PWs 5 & 6. Therefore, this Court does not find any illegality in the order of conviction passed by the learned Court below against the appellant for the offence under Section 326 of the I.P.C.

15. This Court finds that the instant Sessions Trial is of the year 1995. The appellant was convicted on 27.9.2008. From the order dated 15.4.2009 it appears that at the time of filing of the



appeal, the appellant was in custody since 26.9.2008. It was directed that his application for bail shall be considered after completing one year in custody. Thereafter, the appellant has been allowed bail vide order dated 17.2.2010. Therefore, from the order dated 15.4.2009 itself it appears that the appellant has remained in custody for more than one year.

16. In such circumstances, the sentence passed against the appellant is modified to the extent the period already undergone by the appellant. Appellant will not require to undergo in custody any further. He will also not liable to pay fine as directed by the learned Court below.

17. Accordingly, this appeal is dismissed with modification in sentence as noted above.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	N/A
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