

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.58 of 2009

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Lav Kush Singh, son of Kapideo Singh, Resident of village Kajhiya Police
Station- Akbarpur, District-Nawada

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amresh Kumar Sinha, Advocate
For the Respondent/s : Mr. Bal Mukund Pd. Sinha APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 16-08-2018

This appeal arises out of judgment of conviction dated 16.12.2008 and order of sentence dated 18.12.2008 passed by Additional Sessions Judge cum Fast Tack Court no.1, Nawada in Sessions Trial no. 301/2004/43/2008 by which appellant was convicted for the offence under Sections 307 and 341 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years under Section 307 of the Indian Penal Code, Simple imprisonment for one month under Section 341 of the Indian Penal Code. All the sentences were ordered to run concurrently.

The prosecution case as per the F.I.R., in brief, is that on the date of occurrence informant along with his brother had gone to his land to plough the same and at about 11 AM this appellant with other accused persons came with tractor and



damaged the paddy crops of the informant. The informant raised protest then they abused the informant. It is further alleged that this appellant ordered to assault then co-accused Sargun Singh gave khanti blow on the left hand as a result of which he fell down. Thereafter this appellant gave a garasa blow on the head of the informant and other accused persons, namely, Mohan Singh and Sunil Singh also gave lathi blow. It is further alleged that on the cry of the informant, witnesses as named in the written report arrived and saved the informant from further blows. The informant was brought to the hospital for treatment. In course of assault, brother of the informant, namely Srikant Singh also sustained some injuries.

The learned Court below, after trial, acquitted three accused persons, namely, Sargun Singh, Mohan Singh and Sunil Singh from the charges levelled against them. This appellant was convicted for the offence under Section 307 and 341 of the Indian Penal Code. He was sentenced to undergo rigorous imprisonment for five years for the offence under section 307 of the Indian Penal Code. He was further sentenced to under simple imprisonment for one month for the offence under Section 341 of the Indian Penal Code.

The prosecution, in altogether, examined nine prosecution



witnesses. No defence witness has been examined,

The injured has been examined as PW-7. He has supported the case as made in the F.I.R. He has stated in his examination-in-chief that he sustained injury on his head on account of garasa blow by this appellant causing cut injury. This witness was cross-examined by the defence. In para 6 of his cross-examination, he has given the description of the assault on him. But in the said paragraph he has not mentioned about the assault by Garasa.

The other witnesses examined on behalf of the prosecution, namely, PWs 1, 2 and 5 have also supported the case as made in the written report levelling allegation against the appellant that he assaulted the informant on head with Garasa.

The doctor who has examined the informant has been examined as PW-3 has found following injury on the head of the informant (injured):-

“1. Incised wound 1” x 1/4” x scalp deep over left parietal region of scalp with paresis of right upper limb.
2. Bruise 2” x 1”, red colour over anterolateral side of right arm.”

Injury no.2 was opined to be simple in nature and patient was referred to PMCH, Patna. Opinion with regard to injury



no.1 was kept reserved. The injury report has been marked as Ext. 2. City scan of the informant was done in the private Udayan Scan Centre which has been marked as Ext. 3, wherein, the doctor has given finding as Nondepressed fracture is found in the left temporal region. The discharge ticket of the P.M.C.H. has also been produced during trial which is marked as Ext. 4.

This Court, after looking into the evidence of the doctor and also the injury report finds that there was no any repetition of blow on the person of the injured. He has sustained single injury on the head as mentioned above. Therefore, this Court, on the basis of aforesaid evidence, does not find any ingredients for the offence under Section 307 of the IPC. Therefore, the conviction of the appellant under Section 307 of the IPC is set aside.

However, looking into the nature of injury this Court holds the appellant guilty under Sections 324 and 341 of the Indian Penal Code. From the order of this Court dated 9.9.2009 it appears that appellant has remained in custody for about one year. Therefore, this Court finds that period already undergone by the appellant in custody will be sufficient in the ends of justice. Appellant will not require to undergo to the custody



again.

Accordingly, this Cr. Appeal is allowed in part with
modification in sentence as mentioned above.

(Sanjay Priya, J)

shyambihari/-

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