IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.487 of 2015

Arising Out of PS.Case No. -155 Year- 2001 Thana -BARAUNI District- BEGUSARAI

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1. Anandi Mahto S/o late Moti Mahto
2. Dinesh Mahto S/o late Moti Mahto Both are R/o Vill- Maida Babhangama, p.s Barauni, District Begusarai.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Shubhesh Pandey, Adv.
For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 16-05-2018

Appellant, Anandi Mahto has been found guilty for an offence punishable under Section 324 IPC and sentenced to undergo S.I for one year, appellant Dinesh Mahto for an offence punishable under Section 323 IPC and sentenced to undergo SI for 3 months vide judgment of conviction dated 17.6.2015 and order of sentence dated 18.06.2015 passed by Additional Sessions Judge, 7th, Begusarai in Sessions Trial No. 236/2002.

2. PW-5, Hari Mahto while was admitted at Sadar Hospital, Begusarai gave his fard-beyan on 12.05.2001 at about 8 P.M disclosing therein that on the same day at about 3 P.M while he was unloading husk at his Darwaza, at that very moment Anandi Mahto, Yogendra Mahto, Dinesh Mahto came and forbade him, claiming the land to be theirs which was resisted by him as a result of which, Anandi Mahto took out *chura* and gave a blow causing injury over his cheek (right side). Dinesh Mahto assaulted

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him with fist and slap as a result of which, there happens to be swelling over his left eye. On hue and cry Arjun Mahto (PW-6), Narayan Mahto (not examined), Sukhdeo Mahto (PW-1) who happen to be his neighbours came and saved. During midst thereof, Yogendra Mahto took out Rs. 1,000/- from his pocket.

3. After registration of Barauni P.S. Case No. 155/2001 investigation commenced and concluded by way of submission of charge-sheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of Cr.P.C is of complete denial. It has further been pleaded that on the alleged date and time of occurrence actually the prosecution party tried to grab their land which was resisted and for that Barauni P.S Case No. 153 of 2001 has been registered at the end of Anandi Mahto. In order to save their skin, this false case has been instituted leveling false, frivolous allegation. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 10 PWs, PW-1, Sukhdeo Mahto, PW-2, Deo Narayan Sharma, PW-3, Awadhesh Mahto, PW-4, Dhirendra Sharma, PW-5, Hari Mahto, PW-6, Arjun Sharma, PW-7, Jamaluddin Anshari, PW-8, Ashok Kumar Jha, PW-9, Vidya Sagar Sharma and PW-10, Dr. Gopal Mishra. Side by side had also exhibited, Ext.1, signature of informant over fard-beyan, Ext.1/1 signature and writing of Sunil Kumar Singh, S.I, Ext.1/2, endorsement over fard-beyan, Ext.1/3, endorsement made by the

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I.O, PW-7, Ext.2 injury report, Ext.3- requisition issued by the police relating to the injuries.

6. As stated above, nothing has been adduced in defence.

7. The learned counsel for the appellant has drawn up Para 17 of the judgment, though it happens to be relating the order of sentence and submitted that when compromise petition was filed before the learned lower court, then in that event as per Section 320 (1) of the Cr.P.C, the Compromise petition would have been accepted and in the aforesaid background, Section 323 of the IPC, being compoundable one without the permission of the court would have been accepted and appellant Dinesh Mahto would have been acquitted under the garb of compromise petition. So far 324 IPC is concerned, though it happens to be non-compoundable but, in the background of the fact that both the parties who happen to be close agnate and were litigating since before had joined their hands then, in order to allow the restoration harmonious atmosphere, the learned lower court would have taken recourse of Probation of Offenders Act. Apart from this, it has also been submitted that learned lower court should have properly appreciated the evidence, more particularly the evidence of doctor PW-10, who had not found sharp cut injury over the person of informant, PW-5 and that being so, the allegation whatsoever been attributed against appellant Anandi that he had inflicted *chura* became falsified. As the injury has been found over cheek caused by hard and blunt substance whereupon, Anandi would have been convicted and sentenced in worst case under Section 323 of the IPC and accordingly would

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have given privilege of compromise. It has also been submitted that there happens to be admission at the end of prosecution party that both the parties are close agnate, land dispute was coming on in between as a result of which so many cases were pending amongst them, the appellant Anandi being aged about more than 70 years whether would have been in a position to indulge in affray on account of physical deformity due to old age, should have been given proper appreciation at least over the quantum of sentence and so submitted that in the facts and circumstances of the case, appellant Anandi should be given privilege of Probation of Offender Act.

8. The learned Additional Public Prosecutor did not dispute in the background of the fact that both the parties have entered into compromise.

9. From perusal of the record in consonance with the judgment impugned, it is evident that though belatedly but compromise petition happens to be and that being so, as soon as the learned lower court had found the appellant Dinesh guilty for an offence punishable under Section 323 of the IPC being compoundable, would have let of accepting the same. That being so, the appeal relating to appellant Dinesh Mahto is allowed accepting the compromise to the extent of Section 323 of the IPC wherein he has been found guilty. So far Anandi Mahto is concerned, considering the subsequent event which the court had also perceived as well as his age being estimated as 70 years which, today would have been near about 75 years and further to allow the parties to enjoy the cordial relationship it looks

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appropriate to give benefit of Probation of Offenders Act and that being so, appellant Anandi Mahto is directed to be released on due admonition as provided under Section 3 of the Probation of Offenders Act modifying the sentence inflicted by the learned lower court relating to an offence punishable under Section 324 of the IPC as found and held by the learned lower court and for that, appellant is directed to surrender before the learned lower court within fortnight till, the privilege of bail is extended.

10. Thus, instant appeal filed on behalf of appellant Dinesh Mahto is allowed setting aside the judgment of conviction and sentence, accepting the compromise petition while relating to Anandi Mahto is disposed of in terms of modifying the sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/~~NAFR~~	A.F.R.
CAV DATE	N.A.
Uploading Date	21-05-2018
Transmission Date	21-05-2018

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