

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1260 of 2017

Arising Out of PS. Case No.-24 Year-2011 Thana- ITARHI District- Buxar

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Mannuar Dafali @ Munauwar Dafaly Son of Late Idrish Dafali, R/o Village-
Kukurha, P.S.- Itarhi, District- Buxar.

... .. Appellant

Versus

1. The State Of Bihar
2. Ramjee Sah, Son of Late Dahari Sah,
3. Nakhadu Nalband, Son of Late Pholan Nalband
4. Nezamu Nalband, son of late Pholan Nalband
5. Kitabu Nalband, son of late Phulan Nalband
6. Munna Paswan, son of late Panchami Paswan
7. Shankar Sah, son of late Bihari Sah
8. Vinod Paswan, son of Bharat Paswan.

All are R/o Village- Kukurha, P.S.- Itarhi, District- Buxar.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Manish Raj Sharma, Adv.
For the Private Respondents	:	Mr. Bachanjee Ojha, Adv.
For the State	:	Mr. Satya Narayan Prasad, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 07-02-2019

Heard learned counsel appearing for the appellant,
learned Additional Public Prosecutor for the State as well as
learned counsel for the private respondents no. 2 to 8 on the point
of admission, I.A. No. 2440 of 2017 and I.A. No. 2249 of 2017.

I.A. No. 2249 of 2017 has been filed under Section 5 of
Limitation Act for condonation of delay of 5 months 13 days in
filing this criminal appeal whereas I.A. No. 2440 of 2017 has



been filed under Section 378(3) of the Cr. P.C. seeking leave to file this criminal appeal.

The appellant happens to be informant and injured of the present case and he has statutory right to file appeal against the impugned judgment and accordingly, I.A. No. 2440 of 2017 is allowed and appellant is permitted to pursue this criminal appeal.

I.A. No. 2249 of 2017 is also allowed on the grounds mentioned in the aforesaid interlocutory application itself.

In the aforesaid manner, both the interlocutory applications stand disposed of.

This criminal appeal has been preferred against the impugned judgment of conviction and sentence order dated 10.04.2017 passed by Additional Sessions Judge-IIInd cum Special Court Excise Act, Buxar in Sessions Trial No. 282 of 2011 by which and whereunder, the learned court below convicted the respondents no. 2 to 8 for the offences punishable under Sections 323, 324 and 149 of the I.P.C. but instead of sentencing them with severe punishment, the learned trial court released them on probation of good conduct on execution of bond of rupees five thousand with two sureties of the like amount each with direction that they shall keep peace and good behaviour for one year.



The grievance of the appellant is that there was sufficient material before the trial court to convict the respondents no. 2 to 8 for the offence punishable under Section 307 of the I.P.C. but instead of convicting them for the offence punishable under Section 307 of the I.P.C., the learned trial court convicted them only for the offences punishable under Sections 323, 324 and 149 of the I.P.C.

Submission on behalf of the appellant is that altogether five persons sustained injury in the alleged occurrence and the appellant sustained, altogether, four injuries out of which three injuries were on his head caused by sharp cutting weapon but the learned trial court completely ignored the aforesaid fact and only on the ground that the injureds had sustained simple injury acquitted the respondents no. 2 to 8 from the charge framed under Section 307 of the I.P.C. Learned counsel of the appellant further submitted that it is well settled principle of law that conviction under Section 307 of the I.P.C. can be passed even there is no injury but the learned trial court ignored the above stated settled principle of law. Learned counsel of the appellant further submitted that moreover, the learned trial court also failed to follow the settled law of sentencing and ignoring the settled principle of law of sentencing, the learned trial court has taken a



very lenient view in releasing the respondents no. 2 to 8 on probation. He further submitted that moreover, after being released on probation, the respondents no. 2 to 8 again committed a crime for which Itarhi P.S. Case No. 179 of 2017 has been lodged and the aforesaid case has been lodged within a period of one year from the date of execution of bond by respondents no. 2 to 8 and, therefore, the aforesaid circumstance goes to show that respondents no. 2 to 8 have violated the terms and conditions of the bonds and, therefore, they should be summoned for awarding severe sentence.

On the other hand, learned counsel appearing for the private respondents no. 2 to 8 refutes the above stated submissions of learned counsel of the appellant arguing that the learned trial court has passed a well discussed judgment and has given reasoning as to why the respondents no. 2 to 8 have not been convicted for the offence punishable under Section 307 of the I.P.C. and it is well settled principle of law that if two views are possible on the basis of facts and evidence, the view taken by the trial court shall prevail. He submitted that no doubt, the doctor, who had examined injureds, claimed that some of the injureds had sustained grievous injury but the aforesaid opinion of the doctor was without any X-ray plate or X-ray report and in the aforesaid



circumstance, the learned trial court doubted the opinion of the concerned doctor. He further submitted that it is admitted case of the prosecution that due to urination near a meat shop the alleged occurrence took place and the aforesaid fact clearly goes to show that simple *Maarpeet* had taken place between the parties. He further submitted that as a matter of fact, both parties lodged cases against each others and taking all the above stated circumstances into consideration the learned trial court rightly released the respondents no. 2 to 8 on probation. He submitted that there is nothing on the record to show that after being released on probation, the respondents no. 2 to 8 violated the terms and conditions of the bonds and moreover, even if it assumed for the sake of argument that the respondents no. 2 to 8 violated the terms and conditions of the bonds, the appellant may file appropriate petition before the learned trial court for taking action against the respondents no. 2 to 8 and only on the aforesaid ground the sentence imposed upon the respondents no. 2 to 8 cannot be set aside.

Having heard the above stated contentions of the parties, we went through the record. We find that the alleged occurrence took place on account of petty dispute of urination near meat shop of the appellant. Furthermore, we find that the learned trial court



noticed that there was nothing in the evidence of the prosecution to show that respondents no. 2 to 8 had intention to kill the appellant and other injureds or they had knowledge that injuries caused to appellant and other injureds might be dangerous to their life and on the basis of aforesaid ground, the learned trial court came to conclusion that prosecution failed to prove charge framed under Section 307 of the I.P.C. against the respondents no. 2 to 8. Therefore, in our view, there is no need to interfere into the above stated findings of the learned trial court.

Furthermore, we find that the learned trial court while passing the sentence order took the facts and circumstances of the case into consideration and decided to give benefit of Probation of First Offenders Act to the respondents no. 2 to 8 and in our view, the learned trial court rightly gave the benefit of Probation of First Offenders Act to respondents no. 2 to 8. There is nothing on the record to show that after being released on probation the respondents no. 2 to 8 violated the terms and conditions of the bonds executed by them before the trial court. However, even if it assumed that the respondents no. 2 to 8 have violated the terms and conditions of the bonds executed by them before the learned trial court, then also, the appellant may file a petition before the



learned trial court for taking action against the respondents no. 2 to 8 in accordance with law.

On the basis of aforesaid discussions and with the aforesaid observation, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

shahzad/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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